



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
OTTAWA, ONTARIO  
CANADA  
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THE CLERK  
LA GREFFIÈRE

Ms. Anna Burke, M.P.  
Chair, Standing Committee of Privileges and Members' Interests  
P.O. Box 6021  
Parliament House  
Canberra, ACT 2600  
AUSTRALIA

Dear Ms. Burke:

I am writing in reply to your letter of December 13, 2010, in which you inquire about the experience of our House of Commons in developing a code of conduct for Members of Parliament.

- **The Conflict of Interest Code for Members of the House of Commons**

In Canada, there are a number of statutory provisions and guidelines governing conflicts of interest. The *Parliament of Canada Act* contains several conflict of interest provisions for Members, pertaining to compensation for services rendered and trusts established by Members on being elected; the *Conflict of Interest Act* establishes conflict of interest rules for public office holders, including Ministers, Ministers of State and Parliamentary Secretaries. In addition, all parliamentarians and public office holders are subject to the general provision in the *Criminal Code* pertaining to corruption (including bribery, influence-peddling and breach of trust).

In 2004, the House of Commons adopted the *Conflict of Interest Code for Members of the House of Commons*. The Code also applies to Ministers, Ministers of State and Parliamentary Secretaries (when they are acting as Members of the House and not as public office holders). It defines private interests, potential conflicts of interest and disclosure requirements for Members and for their families. It also establishes rules of conduct, and procedures for resolving conflicts.

The establishment of the Code is a manifestation of the House's right to regulate its internal affairs and to discipline its Members for misconduct. During the debate in the House about the adoption of the Code, Mr. Gallaway, Parliamentary Secretary to the Government House Leader, spoke to the deliberately non-statutory character of the Code:



“The Standing Orders are procedural in nature. They apply in [the House of Commons] and are not intended to allow... the courts [to] move into this place and pass judgment on what is an internal matter. ... That is why it is important that this code of conduct be included in the Standing Orders and not in a statute. A statute would very clearly allow for someone at some point, under some circumstances, to seek redress or adjudication in the courts and that ought never [to] be done. This code gives a framework for members and guidance.” (*Debates*, April 29, 2004, p. 2549)

Thus, the Code forms part of the Standing Orders of the House of Commons, and oversight responsibility for the Code has been delegated to the Standing Committee on Procedure and House Affairs. The Code can be consulted on the parliamentary website at the following address:

[www.parl.gc.ca/information/about/process/house/standingorders/appal-e.htm](http://www.parl.gc.ca/information/about/process/house/standingorders/appal-e.htm).

- **Procedures for making and investigating complaints**

The Conflict of Interest and Ethics Commissioner - an independent officer of Parliament - is responsible for investigating allegations of breaches of the *Conflict of Interest Code for Members of the House of Commons*.

An inquiry by the Conflict of Interest and Ethics Commissioner may be initiated in one of three ways:

- A Member of Parliament may ask the Commissioner to conduct an inquiry concerning another Member if he or she has reasonable grounds to believe that an infraction is taking place. The request must be made in writing, must identify the alleged non-compliance, and must set out the reasonable grounds for the allegation of non-compliance with the Code.
- The House of Commons may adopt a motion to direct the Commissioner to conduct an inquiry to determine a Member's compliance with the Code;
- If the Commissioner has reasonable grounds to believe that a Member has not complied with the Code, he or she may conduct an inquiry on his or her own initiative.

The Code also provides guidance for the conduct of inquiries, including (for instance) timelines, and information concerning the obligations of the Commissioner during the inquiry. At the end of an inquiry, the Commissioner presents his or her report to the Speaker who tables it in the House; the report is also made available to the public.

The Commissioner is required to report one of three possible outcomes and to include reasons for any conclusions and recommendations.

If the Commissioner concludes that the Code was not contravened, he or she reports accordingly. If the Commissioner finds that there was a mitigated contravention of the Code (i.e., the Member either took all reasonable measures to prevent the non-compliance or that the non-compliance was trivial, occurred through inadvertence or an error in judgement made in good faith), he or she may recommend in the report that no sanctions be imposed. If the Commissioner concludes that a Member has not complied with the Code, and that none of these mitigating circumstances apply, he or she may recommend appropriate sanctions.

In his or her report, the Commissioner may include any recommendations arising from the matter that concern the general interpretation of the Code and any recommendations for revision of the Code that the Commissioner considers relevant to its purposes and spirit.

Within 10 sitting days of the tabling of the report, the Member who is the subject of such a report may make a statement in the House. The Member notifies the Speaker of his or her intention to do so on a given sitting day.

Inquiry reports may be considered by the House. A motion to concur in either a report where no contravention of the Code has been found or in a report where there is a mitigated contravention of the Code may be moved by any Member.

If no concurrence motion is moved with respect to a report where there is either no contravention of the Code or a mitigated contravention of the Code, a motion to concur in the report is deemed to have been moved and adopted at the time of adjournment on the 30th sitting day following the tabling of the report.

In the case of a report where an unmitigated contravention has been found, a Member may move a motion respecting the report. The motion is considered for no more than two hours. If no motion respecting such a report is moved and disposed of before the 30th sitting day following the tabling of the report, a motion to concur in the report will be deemed to have been moved and the Speaker will put every question necessary to dispose of the motion on the 30th sitting day.

The House may refer a report back to the Commissioner for further consideration with instructions. The Commissioner reconsiders the report in light of the concerns expressed by the House and provides the Speaker with a response which is tabled in the House.

- **Role of the Conflict of Interest and Ethics Commissioner**

The Conflict of Interest and Ethics Commissioner, an Officer of Parliament with the rank of a deputy head of a government department, is responsible for the control and management of the Office of the Conflict of Interest and Ethics Commissioner. The mandate of the Commissioner is two-fold: to administer the *Conflict of Interest Code for Members of the House of Commons*, and to administer the *Conflict of Interest Act* for public office holders. The Commissioner also provides confidential advice to public office holders, to Members of the House of Commons, and to the Prime Minister on conflict of interest and ethical matters. In addition, the Commissioner conducts inquiries into Members' compliance with the *Conflict of Interest Code for Members of the House of Commons* and into possible breaches of the *Conflict of Interest Act* by public office holders.

The Conflict of Interest and Ethics Commissioner is appointed by Governor in Council after consultations with the leaders of all recognized parties in the House of Commons and the adoption of a resolution by the House. Pursuant to the Standing Orders, when the government intends to appoint a Conflict of Interest and Ethics Commissioner, the appointee's biographical notes are tabled in the House by a Minister (or Parliamentary Secretary) and referred to the Standing Committee on Access to Information, Privacy and Ethics. The Committee has the option of considering the name of the proposed appointee. If it chooses to do so, the Committee has 30 calendar days following the tabling of the biographical notes to consider the proposed appointment and report back to the House. Before this 30-day period expires, a notice of motion to ratify the appointment is placed on the *Notice Paper* for consideration under the rubric "Motions" during Routine Proceedings, whether the Committee has reported back to the House or not. The motion, when moved, is to be decided without debate or amendment.

The *Parliament of Canada Act* establishes that, in order to be eligible for appointment to the office of Conflict of Interest and Ethics Commissioner, the candidate must be a former superior court judge or a former provincial court judge; a former member of a federal or provincial board, commission or tribunal with demonstrated expertise in matters of conflict of interest, financial arrangement, professional regulation and discipline or ethics; or, a former Senate Ethics Officer or former Ethics Commissioner.

The Commissioner's appointment is for seven years, unless he or she is removed for cause by the Governor in Council following a resolution of the House of Commons. The appointment may be renewed for one or more terms up to seven years each.

The Commissioner prepares a summary of required confidential disclosure statements for both Members of the House of Commons and public office holders, and maintains a public registry of these summaries. The Commissioner also prepares procedural and interpretative guidelines and forms relating to the Code for submission to the Standing Committee on Procedure and House Affairs.

In addition, the Commissioner submits two annual reports to Parliament: one on the administration of the *Conflict of Interest Code for Members of the House of Commons*, and one on the administration of the *Conflict of Interest Act*, no later than June 30 each year. The Commissioner also prepares a list of all sponsored travel by Members of the House of Commons by January 31 each year; the list is tabled in the House.

Finally, the Commissioner is mandated to organize educational activities for Members and the general public regarding the Code and the role of the Commissioner.

- **Role of Parliamentary Committees in relation to the Code of Conduct**

In addition to the Commissioner, two of the Standing Committees of the House of Commons (namely, the Standing Committee on Access to Information, Privacy and Ethics and the Standing Committee on Procedure and House Affairs) are charged with certain responsibilities that touch upon the ethical conduct of Members of Parliament.

Standing Order 108 (3), which sets out the mandate of the Standing Committee on Procedure and House Affairs, specifies that:

“The mandate of the Standing Committee on ... Procedure and House Affairs shall include, in addition to the duties set forth in Standing Order 104, and among other matters...the review of and report on the annual report of the Conflict of Interest and Ethics Commissioner with respect to his or her responsibilities under the *Parliament of Canada Act* relating to Members of Parliament, which shall be deemed permanently referred to the Committee immediately after it is laid upon the Table...”

Section (3)(h) of the same Standing Order provides that the mandate of the Standing Committee on Access to Information, Privacy and Ethics shall include, among other matters:

“the review of and report on the effectiveness, management and operation together with the operational and expenditure plans relating to the Conflict of Interest and Ethics Commissioner; [and] the review of and report on reports of the Privacy Commissioner, the Information Commissioner and the Conflict of Interest and Ethics Commissioner with respect to his or her responsibilities under the *Parliament of Canada Act* relating to public office holders and on reports tabled pursuant to the *Lobbyists Registration Act*, which shall be severally deemed permanently referred to the Committee immediately after they are laid upon the Table.”

You will note that committees do not routinely investigate alleged unethical conduct on the part of Members of Parliament, unless the matter has been referred to a committee by the House, usually following the adoption of a motion arising from a question of privilege. (In Canada, Members of the House of Commons may rise on questions of privilege when they believe that their rights necessary to carry out their duties as Members have been infringed. In rising on a question of privilege, the Member asks the Speaker to find a *prima facie* case of privilege; if the Speaker does so find, then the Member can move the appropriate motion to address the alleged breach. The normal course of action is for the matter to be referred to a committee for study.)

When the Code was first created, Members discussed the advisability of giving one or more committees the power to initiate inquiries into alleged conflicts of interest, even apart from questions of privilege. In the end, however, the House decided that House committees are not well-suited to initiating inquiries of this nature, and that conferring on them the power to initiate could result in vexatious allegations. The reasoning behind this decision is provided in more detail in the Fortieth Report of the Standing Committee on Procedure and House Affairs (37<sup>th</sup> Parliament, 2nd Session).

The report states, in part (emphasis added):

“...the Code **as introduced** provide[s] for a committee to play a very major role in dealing with complaints that Members have not lived up to their obligations under the Code. It was proposed that the Ethics Commissioner would investigate and report to the committee. In serious cases where the facts were disputed and no agreement on a remedy was reached between the Ethics Commissioner and the Member involved, the committee would actually conduct its own inquiry, and then report to the House ... **[U]pon further reflection we have now concluded that this model contains some serious flaws. Members are concerned about the possibility of excessive partisanship and complexity that the committee process could introduce... We also have doubts that a committee is an effective mechanism to conduct a detailed, factual inquiry in which an individual’s rights and reputation may be at stake, and in which procedural fairness is important.** Committees are not used to that kind of inquiry. They are excellent at taking the public pulse on a current issue or a bill; they provide a forum where important public policies can be discussed and through which Members can provide advice to the government. However, we feel that the conduct of all inquiries involving complaints about Members and the Code should be left to the Ethics Commissioner.”

The *Conflict of Interest Act* also requires that there be a five-year comprehensive review of the Act by a committee of either or both Houses of Parliament.

- **How the Code is enforced and what sanctions are available**

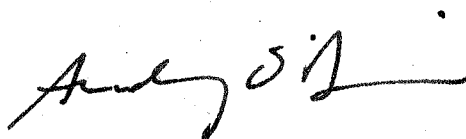
The sanctions available to the House in response to legal or ethical breaches by its Members are largely dependent on the will of the House itself. The *Canada Elections Act* and the *Criminal Code of Canada* stipulate that any person who has been found guilty of an illegal or corrupt practice, or any Member who has been convicted of an indictable offence for which the sentence is two years or more of imprisonment, cannot be elected to or sit or vote in the House of Commons. These statutes are, however, silent about other forms of misconduct, and even the offences just mentioned do not automatically result in the expulsion of a Member or the vacancy of his or her seat. *House of Commons Procedure and Practice*, Second Edition (2009) explains on pp. 244-5 (emphasis added):

“By virtue of parliamentary privilege, **only the House has the inherent right to decide matters affecting its own membership. Indeed, the House decides for itself if a Member should be permitted to sit on committees, receive a salary or even be allowed to keep his or her seat.** The power of the House to expel one of its Members is derived from its traditional authority to determine whether a Member is qualified to sit. A criminal conviction is not necessary for the House to expel a Member; the House may judge a Member unworthy to sit in the Chamber for any conduct unbecoming the character of a Member. Even the laying of a criminal charge against a Member has no effect on his or her eligibility to remain in office.

If convicted of an indictable offence, a formal resolution of the House is still required to unseat a Member.”

While it would be outside my mandate to offer specific suggestions or recommendations, I trust that these details about our experiences in Canada will prove useful to you. I wish your Committee of Privileges and Members' Interests every success in its current undertaking.

Yours sincerely,



Audrey O'Brien