

Elder, David (REPS)

From: DawsoM@parl.gc.ca
Sent: Wednesday, 26 January 2011 5:48 AM
To: Elder, David (REPS)
Subject: Canada's Conflict of Interest Code for Members of the House of Commons

Dear Ms. Burke,

I am pleased to respond to the letter dated December 13, 2010 that you sent me on behalf of the Standing Committee of Privileges and Members' Interests as it seeks to draft a code of conduct for Members of the Australian Parliament. In light of the length of time it took for the letter to reach me—I did not receive it until January 4, 2011—I have chosen to respond via email.

In the letter, you asked for my views on the code of conduct that I administer on behalf of the Canadian Parliament, namely the *Conflict of Interest Code for Members of the House of Commons*. It is a code of conduct appended to the standing orders of the House of Commons.

I have provided some brief comments, below, on the areas of interest identified in your letter. As starting point, however, I also recommend that your research staff visit my Office's website at <http://ciec-ccie.gc.ca>. It contains a variety of information about our Members' Code, including links to the Code itself, as well as my annual reports on its administration.

Background

The *Conflict of Interest Code for Members of the House of Commons* applies to Canada's 308 elected Members of Parliament; there is a separate conflict of interest code for Senators which is administered by the Senate Ethics Officer. The Members' Code includes rules on conflict of interest, processes for the confidential disclosure of personal information to the Commissioner, procedures for making Members' summary information public, an advisory role for the Commissioner and a process for the conduct of inquiries for alleged contraventions of the rules by Members.

Members of the House of Commons who are ministers or parliamentary secretaries are subject, as well, to the *Conflict of Interest Act* for public office holders, which I also administer. The Act applies to the approximately 2,800 full- and part-time appointees of the Government of Canada. All appointees are considered public office holders under the Act and are subject to its general rules on avoiding conflict of interest. Full-time appointees, who number about 1,100, are also subject to the Act's requirements relating to the disclosure and divestment of controlled assets. These "reporting public office holders" include ministers and parliamentary secretaries, ministerial staff, senior public servants and all full-time Governor in Council appointees.

1. *The nature of an appropriate code of conduct for Members of Parliament having regard to your own experience*

Our Members' Code is concerned only with conflicts of interest and not with all types of ethical behaviour.

In my recent reports on investigations under the Code, however, even though I found that the Code had not been contravened, I also commented, where appropriate, on several broader ethical concerns that could raise questions about the integrity of elected public officials and governing institutions.

2. *Any comments on processes for making and investigating complaints*

The Members' Code sets out the processes that must be followed for the Commissioner to investigate whether Members have failed to comply with their obligations under it. A background on investigations under the Code is available on our website by clicking [here](#).

The Code prohibits the Commissioner from making any public comments relating to an inquiry. I have proposed that the Commissioner be allowed to make public the reasons for not pursuing an inquiry where the matter is already in the public domain.

3. *The role that an individual person such as a proposed Parliamentary Integrity Commissioner can play in upholding codes of conduct*

First, let me point out that in Canada there is a separate office unconnected to mine called the Public Sector Integrity Commissioner. The Integrity Commissioner also reports to Parliament, but deals with whistleblowing within the public service. That role is described as "to provide a safe and confidential mechanism enabling public servants and the general public to disclose wrongdoings committed in the public service." The Integrity title causes confusion as to who does what.

With respect to my Office, as noted above, the role of the Conflict of Interest and Ethics Commissioner is primarily to administer Canada's federal conflict of interest regimes and not to deal with all manner of ethical concerns.

The enforcement provisions of the Members Code are limited and the powers they give the Commissioner to encourage or enforce compliance or to deal with breaches are limited. This reflects the fact that the Commissioner's role is primarily to advise, inform and try to prevent contraventions. Public disclosure following an investigation is the most potent sanction for a failure to comply. I can also recommend sanctions.

4. *The role a relevant parliamentary committee can play in relation to a code of conduct*

The House of Commons Standing Committee on Procedure and House Affairs has oversight responsibility for the Members' Code, dealing with any amendments, but not for my administration of the *Conflict of Interest Act*.

Because it is a code of conduct rather than a legislative instrument, the Members' Code can be changed more easily than the Act. I provide input and suggestions to the Committee on aspects of the Members' Code that I believe should be clarified or amended. On the Committee's recommendation, the House of Commons has amended the Code in each of the past three years. The most recent amendments, concerning the rules on gifts, came into effect in June 2009.

I am required to seek the Committee's approval of any forms or guidelines prepared by my Office in order to assist the administration of the Code. Unfortunately, this has been problematic in that it has created long delays. I have proposed that the Code be amended to remove this approval requirement.

5. *How a code of conduct might be enforced*

Please see comment 3 above.

In the absence of any information on what you may be proposing, it would be premature for me to make additional comments. I would, however, be happy to answer any specific questions you may have. I thank the Standing Committee of Privileges and Members' Interests for seeking my views.

I would appreciate receiving an email acknowledgement from you that the Committee is in receipt of this communication.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner /
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