



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Standing Committee on Procedure and House Affairs:
*Section 33 Comprehensive Review of the Conflict of
Interest Code for Members of the House of Commons*

Submission of the Office of the Conflict of Interest and Ethics Commissioner

February 2, 2022

COMMISSIONER'S FOREWORD

I am pleased to present to you my submission for the Standing Committee on Procedure and House Affairs' (Committee) comprehensive review of the *Conflict of Interest Code for Members of the House of Commons* (Code), pursuant to section 33.

It is important to consider the context within which the Committee is undertaking this five-year review, as it relates to conflicts of interest both within Canada and abroad and the evolution of our understanding in this area. As it should, the review will bring forward questions raised by the public and by those with direct experience of the system within which the House of Commons operates.

In this regard, it can be said that current frameworks regulating ethical conduct and conflicts of interest have been noted by many Canadians. In considering my role in the administration of the Code, it is vital to understand the need to have effective rules ensuring fairness without requiring a system so complex or demanding that it deters the functioning of the House of Commons. This while also ensuring that transparency remains front of mind.

I have sought in my submission to consider a diversity of views, both domestic and international, and particularly those heard since my appointment as Commissioner four years ago. I have also sought to reconcile these views with the practical realities of the proper administration of the Code on behalf of the House of Commons. To this end, I have been guided by my experience and by the principles that people have told us should underpin conflict of interest regimes. I have also reviewed domestic and international statutes to better understand what other jurisdictions do in the same context.

The Code, as well as my recommendations, reflects the need to ensure fairness, transparency, and accountability. Participation of the individuals that must follow the Code and of all Canadians needs to be considered so that the amendments do not penalize some nor privilege others. My recommendations are positioned in such a way that they not only meet the intent of the Code, but also create the outcome Canadians want and deserve. Practical considerations as well as timeliness of the proposed amendments also shape my recommendations.

While there is room for improvement regarding certain aspects of the Code, I wish to emphasize that I believe the Code is functioning well overall and allows the Office of the Conflict of Interest and Ethics Commissioner to properly fulfill its mandate in providing Canadians with consistent transparent access to important information pertaining to all Members.

Finally, my recommendations aim to safeguard public trust in the integrity of the House of Commons and its Members, and in their endeavour to fulfill their public duties with honesty all while upholding the highest standards.

Mario Dion
Conflict of Interest and Ethics Commissioner

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EXECUTIVE SUMMARY

In response to the House of Commons Standing Committee on Procedure and House Affairs' request, this submission proposes six substantive recommendations as part of a five-year review of the *Conflict of Interest Code for Members of the House of Commons* (Code). They set out to improve the current regime, but also consider the individuals that must comply with it and their role in the public eye. The recommendations reflect that Canadians are entitled to know how, when, and why their elected officials could find themselves in a conflict of interest.

The recommendations aim to bring coherence to certain requirements—including those concerning the furthering of private interests, the value of gifts or other benefits, and the prohibition of certain outside activities—as well as reflection on the suitability of sponsored travel to aid understanding and reduce the potential for conflicts of interest. To support these proposals and to ensure compliance with the Code itself, an increase in both educational opportunities and autonomy in issuing guidelines is recommended to ensure that Members understand their obligations. In particular, mandatory training for newly elected Members and ongoing annual training for all is put forward.

In addition to these six recommendations, a series of technical amendments are annexed to this submission to enable a coherent reading and understanding of the Code.

A broad spectrum of points of view have been taken into consideration, making it possible to build recommendations that are reflective of the reality within which the Office of the Conflict of Interest and Ethics Commissioner functions. The recommendations also take into account considerations for how the administration of and compliance with the Code could be approached differently, should the House of Commons wish to move in that direction.

INTRODUCTION

The House of Commons Standing Committee on Procedure and House Affairs (Committee) has undertaken the review set out in section 33 of the *Conflict of Interest Code for Members of the House of Commons* (Code).

The foundations of the Code can be traced back to 1867 with Standing Order 21 stating: “No Member is entitled to vote upon any questions in which he has a direct pecuniary interest, and the vote of any Member so interested will be disallowed.” In 2004, this Standing Order was repealed and replaced by the Code, an appendix of the Standing Orders.

The last review of the Code took place in October 2015 and included five amendments.

As the Committee takes up its study and five-year review of the Code with the goal of recommending to the House of Commons how it may be strengthened, I am providing six substantive recommendations for consideration based on my own experience in administering the Code over the last four years. These recommendations are oriented to increase effectiveness and understanding of the actions taken by the Office of the Conflict of Interest and Ethics Commissioner (Office) to ensure Members’ compliance with the Code’s rules.

It is natural that our understanding of conflicts of interest matures and evolves, as does our society. The Code cannot in and of itself solve all issues, nor can my administration of it. What employees of the Office and I can and must do is ensure that Members and the public are kept abreast of concerns in relation to the Code’s purpose and principles. In doing so, we offer a dedicated independent voice in addressing challenges in order to build public confidence in the standards elected officials are required to meet.

This submission to the Committee is intended to provide advice to strengthen the Code. It considers the public’s concerns over transparency and accountability, as well as practical functionality. The overall strength and priority given to the Code should be a matter of great importance to the general integrity of a democratic society and its role in the reputation of Members.

A detailed description of six recommendations follows, along with a separate annex of technical amendments to the Code.

LIST OF SUBSTANTIVE RECOMMENDATIONS

Recommendation 1: Set a baseline minimum amount for gifts and potential influence

Questions pertaining to gifts or other benefits are some of the most frequent that the Office’s advisors receive from Members. In addition to asking about what is or is not considered an acceptable gift, Members ask about smaller items that are more a token of appreciation but fall outside customary standards of hospitality that normally accompany their position. The concepts of “value” and “source” of a gift or other benefit would be better understood if they were further defined within the Code.

In this, it is recommended to clarify the exception to the prohibition on gifts or other benefits in subsection 14(2). During the last review of the Code, the lowering of the value of declarable gifts or other benefits to \$200 in a 12-month period was to serve as a reminder to Members of their disclosure

obligations under the Code but was not to be so low as to create an undesirable administrative burden. Correspondingly, it is proposed to add a new subsection outlining a minimum all-inclusive threshold of \$30 in a 12-month period from which the acceptability of a gift or other benefit must be assessed. This minimum threshold would complement the requirement to disclose any acceptable gifts or other benefits from the same source in a 12-month period whose total value is \$200 or more. This very modest amount is unlikely to present any conflict of interest, so long as it is not a recurring practice from the same donor.

Another recurring question concerns gifts offered by lobbyists who are registered to lobby the House of Commons. Many gifts, in particular meals or refreshments, do not immediately fall into the category of customary standards of hospitality that normally accompany a Member's position. In my view, a gift or other benefit of a modest amount (\$30 or less, all-inclusive in a 12-month period) offered by a lobbyist would be unlikely to present any conflict of interest and should be allowed. It is recommended to create a new subsection to clarify this exception under the general rule.

Adding this clarification would bring a more open understanding of the determination I must make when considering a matter under the reasonable person test (subsection 14(1)), which consists in determining whether a reasonable person with knowledge of the relevant fact could conclude that a gift or other benefit might reasonably be seen to have been given to influence the Member in the exercise of their official duties or functions. In this, a clear standard would be established for all parties, as any gift or other benefit offered by a lobbyist that is over the \$30 all-inclusive threshold would never be acceptable.

Members and their family members would still be prohibited from accepting gifts or other benefits that might reasonably be seen to have been given to influence the Members in the exercise of their parliamentary duties or functions.

The acceptability test also applies to gifts or other benefits received when attending charitable or political events, as well as to gifts or other benefits received from an all-party caucus established in relation to a particular subject or interest.

Recommendation 2: Strengthen and align the Rules of Conduct against furthering private interests of friends and family members

The Code's Rules of Conduct prohibit Members from furthering certain private interests, either when performing their parliamentary duties and functions (section 8), when using their position to influence another person (section 9), or when using information obtained in their positions as a Members that is not available to the public (section 10). The Code sets out three categories of private interests that cannot be furthered in such situations: those of the Member, those of a member of their family, or those of any other person or entity that are improperly furthered.

In this regard, I first note the disparity between the definition of "family" under subsection 3(4) of the Code and that of "immediate family" in the *Members By-law*. The latter document provides for a more expansive definition of "family member" to include a Member's siblings, parents, and in-laws, to name but a few. For both simplicity and to avoid confusion, I recommend a similar expansion of the definition of "family member" in the Code, aligning the Rules of Conduct to the higher standard set out in the *Members By-law*.

This would, however, necessitate consequential amendments to other references to family members throughout the Code where, for example, only disclosures from spouses or children are required.

In addition to a proposed expansion of the definition of “family member,” I also recommend adding a prohibition in the Rules of Conduct against the furthering of a friend’s private interests (sections 8, 9, and 10) and subsequent disclosure and obligation to recuse oneself (sections 12 and 13). Currently, any action taken by a Member to further the private interests of a friend must be qualified as improper to constitute a breach of their obligations set out in the above-mentioned sections. As the Code does not define the types of circumstances in which a Member would be considered to improperly further the private interest of another person, this determination must be made having regard to all the circumstances of each case.

The *Conflict of Interest Act* provides that the private interests of friends cannot be furthered to the same degree as those of public office holders or their relatives. This means that once a friendship has been established, it is inherently improper for that friend’s interests to be furthered by a public office holder in the exercise of their official duties. Several examination reports under the Act provide indicators of what constitutes a friend for the purposes of an examination by the Commissioner. It is proposed to adopt the same test for inquiries conducted under the Code.

Recommendation 3: Prohibit outside activities incompatible with a Member’s parliamentary duties and functions

The Code does not regulate the conduct of Members outside of their parliamentary duties and functions. This is reflected in section 7, which expressly permits Members to engage in a host of outside activities such as practising a profession, carrying on a business, or sitting on a board of directors. I am of the view that many of these activities, especially when done for remuneration, are fundamentally incompatible with service to Parliament, which the Code states is a public trust. A Member’s primary and overriding consideration must be to serve the public interest and represent constituents to the best of their abilities. When Members are engaging in activities that seek to further their private pecuniary interests, the public interest is not best served.

One of the underlying principles of the conflict of interest regime set out by the Code requires Members to perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny. This principle of the Code emphasizes that this is an obligation that may not be fully discharged by simply acting within the law. It confirms that the House of Commons imposes on its Members the highest standards of conduct; accordingly, Members are expected to conduct themselves keeping this principle in mind.

It is therefore recommended to repeal section 7, as it is currently worded, and replace it with a new rule of conduct prohibiting the same outside activities that are currently enumerated under section 7. An exception would be provided for activities that the Commissioner determines are not incompatible with a Member’s parliamentary duties and functions (for example, activities done without remuneration or to maintain accreditation with a professional order).

Recommendation 4: Build coherence within the Code for sponsored travel

Each year before the end of March, the *List of Sponsored Travel* is tabled in the House of Commons (subsection 15(3)). This report compiles Members' sponsored travel for the previous calendar year and any amendments. Questions inevitably arise regarding this process: the public or media will ask the Office whether Members have received approval for certain travel or whether Members who have accepted invitations while sitting on various committees are in a conflict of interest, among other similar subjects. Despite being responsible for providing a summary of this information, I have no role in providing guidance on the acceptability of the travel itself. I believe this should be changed. Subjecting sponsored travel to the acceptability test used for all gifts or other benefits would address any concerns over whether the sponsored travel could reasonably be seen to have been given to influence a Member in the exercise of their parliamentary duties.

Simply put, sponsored travel is a gift that has been expressly carved out of the prohibition on gifts or other benefits (section 14). Although sponsored travel requires that a statement be filed with the Office disclosing travel costs exceeding \$200 (that are not wholly paid from the Consolidated Revenue Fund or by the Member personally, their political party or any parliamentary association recognized by the House of Commons), neither a formal approval process, nor an acceptability test applies to this gift. It is not difficult to see why sponsored travel within Canada and other countries should be considered a potential conflict of interest for the Member who is accepting it.

Although sponsored travel offsets limited travel budgets that Members may have, it creates in many cases the appearance of a conflict of interest. In this regard, it is important to remember that, as is the case for gifts or other benefits that Members can receive, the mere appearance of a conflict of interest from accepting sponsored travel is contrary to the Code's guiding principles (paragraph 2(e)) and can be perceived as compromising a Member's integrity and judgment.

Conversely, not all groups have the means to offer sponsored travel to Members, thereby creating a disparity in terms of the ability of organizations to exchange with interested and influential parties. Organizations with less financial means at their disposal are unable to share their views on issues of mutual concern and strengthen the positive dialogue with different parties in the same fashion. This can also foster the perception of preferential access to elected officials, which does nothing to enhance public confidence and trust in the integrity of the House of Commons as an institution.

Concerns over the acceptability of "free travel" is not limited to the role of the Office in providing Members with conflict of interest guidance, nor is the questioning of the suitability of this type of activity limited to Canada. Adding an acceptability test would at least put aside any concerns over whether sponsored travel could reasonably be seen to have been given to influence a Member in the exercise of their duties, now or in the future, and whether it could compromise their personal judgment or integrity in accordance with the provisions of the Code. This amendment would not negate the ability of a Member to be, for example, a speaker at a conference as this type of activity, in most instances, relates to a Member's position and could be an exclusion.

I would therefore strongly recommend that the Committee reconsider this matter as to enhance the public's trust and confidence in their integrity and that of the House of Commons. If sponsored travel is to be seen as acceptable, it should follow the same acceptability test for gifts or other benefits, and the current practice of making a public declaration and providing supporting documents should be continued. In this, if sponsored travel is to be subject to an acceptability test, the practice of producing the annual *List of Sponsored Travel* could potentially be discontinued (subsection 15(3)) as the travel listed in the public registry would be subject to an acceptability test, the same way gifts are. While used by some as a reference tool, the information in the *List of Sponsored Travel* is replicated in the public registry.

Recommendation 5: Enhance understanding with mandatory training for new Members

As mentioned at my appearance before the Committee on December 14, 2021, I believe that it is incumbent on all Members to develop an understanding of the principles of the Code and to follow them. Under my direction, the Office has been proactively developing opportunities to expand and maintain a focus on education, with an emphasis on high-risk subject areas. While we seek to reach Members where and when they want and continue to explore new approaches, voluntary training sessions offered to Members are generally poorly attended. I therefore recommend establishing mandatory training for new Members within the first 60 days after their confirmation of election, as well as annual training for all Members.

This timeline aligns precisely with the initial compliance process; as a result, mandatory training would improve understanding of requirements before disclosure statements are submitted, as they are at times incomplete due to lack of knowledge on the scope of the requirement. This training would, of course, be open to any other Members who may wish to refresh their understanding. It could be in the form of online self-directed training or interactive group sessions with a representative from the Office. This introductory training should not, however, exceed two hours.

The mandatory annual training that would follow is not intended to be onerous for all Members. Rather, it would be built around a series of specific key topics, addressed in brief self-directed modules focusing on major issues related to conflicts of interest that could include obligations, substantive rules, recusals, changes to the Code, the importance of ethics, and the like. The self-directed portion could be followed by attendance at a live online session. This type of training is not only trackable to ensure genuine completion, but it acknowledges the strides we have taken in recent years to meet Members where and when they are available.

Codifying training is a preventative measure. Mandatory training provides an opportunity to better understand the principles of the Code. It would also enable Members to understand the types of situations in which they should pre-emptively seek advice and guidance from the Office.

Recommendation 6: Increase autonomy to amend forms and provide generalized guidance

Building upon the importance of education, another opportunity to expand understanding was noted during my appearance before the Committee on December 14, 2021. It related to the interconnected nature of certain provisions of the Code, namely the adoption of guidelines and forms (section 30), and the need to undertake educational activities (section 32). Additional autonomy is critical to enable the ability to provide timely and transparent guidance that can be generalized for Members and improve public understanding.

The Code provides that I can adopt interpretative guidelines and forms to ensure compliance with the Rules of Conduct set out in the Code in addition to any procedural guideline. However, the approval mechanism for guidelines and forms has inefficiencies that impact Members' compliance and my duties and functions related to the Code. It would therefore be extremely beneficial for all parties if the Commissioner was granted additional autonomy in order to provide the needed guidelines to explain the Code's provisions, all while respecting the Code's boundaries in terms of disclosure of private information.

The ability for the Commissioner to issue generalized guidelines or forms as part of the administration of the Code should be provided for in section 30, without requiring the prior approval of the Committee and concurrence by the House of Commons. This would still allow the Committee to maintain oversight on such matters should it wish to review, approve and recommend major adjustments or address vulnerabilities related to the Code.

CONCLUSION

A clear and well-understood set of conflict of interest rules provide the foundation of expectations both for elected officials who must comply with them and for Canadians who have elected them. The principles of the Code are well established and have served the House of Commons; overall, they are functioning well. However, as should be the case in any modern democracy, the finer points of the Code need to evolve as we develop a broader understanding of conflicts of interest. This allows us to test their continued relevance and to address shortcomings identified through experience.

This submission was compiled throughout the four years I have held the position of Commissioner, with the participation of advisors and lawyers who work with the Code daily. The six substantive recommendations are carefully considered and reflect the most important of the changes we wish to put forward for the Committee's and the House of Commons' consideration. They seek to add clarity in order for Members to assess the acceptability of gifts or other benefits and to allow for more effective and prudent management by the Office; strengthen and align the rules of the Code related to furthering friends' and family members' private interests and expand the definition of "family member"; prohibit outside activities that are not compatible with Members' duties and functions; enhance the coherence of the Code's provisions for sponsored travel; and build a better understanding of the principles of the Code through mandatory training and consideration for additional autonomy in offering general guidance.

Together, the recommendations and supporting annex of technical amendments are designed to provide greater accountability and improved transparency for Canadians. I believe they are sound and realistic.

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ANNEX

Technical amendments to the *Conflict of Interest Code for Members of the House of Commons*

In addition to the recommendations for substantive amendments to the *Conflict of Interest Code for Members of the House of Commons* (Code), I have included a handful of recommendations for amendments that are more technical in nature. These proposed amendments are equally important since they ensure a coherent reading and understanding of the Code.

Interpretation

1. It is recommended to add, under subsection 3(1), a definition of “parliamentary functions” that incorporates by reference the definition used in the *Members’ By-law*.
2. In order to track the language used in the Rules of Conduct, which reference the furthering of private interests of entities (in particular, sections 8-10), it is recommended to add the word “entity” to subsections 3(2) and 3(3).
3. For greater certainty, it is recommended to add the word “council” to paragraph 3(2)(e), so as to include organizations such as municipal and school councils.
4. Subsection 3(3) of the Code enumerates four instances where a Member is not considered to further their private interests or the interests of another person. The English-language provision requires the matter in question to be situated in one of the four enumerated categories. The *interest in the matter* is then evaluated to determine whether it can be properly excluded from the furthering of a private interest. Conversely, the French-language version focuses only on whether the *interest* itself resides in one of the four enumerated categories.

It is recommended to amend the French-language version of subsection 3(3) to match the reading of the English-language version.

Gifts – section 14

5. The French-language version of subsection 14(1) should be amended to read “[...] qui pourrait raisonnablement donner à penser [...]”

Content of disclosure statement

6. Under section 21, Members are required to submit a disclosure statement that identifies assets or liabilities that “exceed” \$10,000, as well as sources of income “greater than” \$1,000. A disclosure summary is made public under section 24. Assets or liabilities with a value of “less than” \$10,000 and sources of income “less than” \$10,000 are not required to be set out in the summary. To ensure there are no gaps in what must be disclosed and subsequently made public, it is recommended to amend subparagraphs 21(1)(a)(i) and (ii) to read “\$10,000 or more,” and paragraph 21(1)(b) to read “\$1,000 or more.”

Content of disclosure summary

7. Paragraph 24(1)(d) provides that the Member's disclosure summary shall include a copy of any statements of disclosure filed by the Member under subsection 14(3) (gifts), 15(1) (sponsored travel) and 21(3) (material changes to their disclosure statement). Because these three categories of disclosure form part of the disclosure summary, a new summary is prepared and must be signed by the Member upon receipt of every disclosure. To ease the administrative burden on both the Member and the Office of the Conflict of Interest and Ethics Commissioner (Office) of having to prepare and sign new disclosure summaries several times per year, it is proposed to repeal paragraph 24(1)(d) and add, under the sections for gifts, sponsored travel and material change, that these statements shall be filed with the Member's public disclosure documents on the Office's website. This construction already exists for disclosures of private interests requiring recusal under subsections 12(3) and (4).

Public inspection

8. Subsection 23(2) provides that disclosure summaries be placed on file at the office of the Commissioner and made available for public inspection during normal business hours. Disclosure summaries are also placed on the public registry on the Office's website. As offices are increasingly transitioning to paperless business operations, it is no longer necessary, in my view, to provide duplicate paper copies for public consumption. It should also be noted that the paper registry is seldom consulted. In fact, it has been consulted fewer than five times in the last five years. It is recommended that the reference to public inspection of the paper file be struck from this provision.

Inquiries

9. The English-language version of subsection 27(2) provides that requests for an inquiry "shall identify the alleged non-compliance and set out the reasonable grounds for that belief." I have taken this to mean that the specific rule of conduct must be identified, as well as the grounds for the alleged violation. The French-language version of this provision only requires that the grounds must be identified. It is recommended to amend the French-language version to include a reference to the provision that is alleged to have been contravened.