
Preliminary Thoughts on a Code of Conduct for Legislators

by Howard Wilson

There has been much debate over the past several years on what might be an appropriate code of conduct for MPs and Senators. In July 1995 a Special Joint Committee of the House and Senate was established to look at this issue. The first witness to appear before the Committee was the federal Ethics Counsellor Howard Wilson. The following article, based on his testimony on September 18, 1995, provides an overview of some of the issues facing the Committee.

From my perspective, the best way to engage the debate is to clearly distinguish between the rules that are appropriate for legislators, whether in the House of Commons or the Senate, and those additional rules that are required of members of the executive branch, that is the Government in particular Ministers.

An important principle, in many ways an over-arching principle, is that MPs and Senators should not be prevented from having outside interests and being active participants in the community. Many argue that this is essential for the health of our parliamentary democracy.

For example in Ontario the *Members' Integrity Act*, 1994 passed the Legislative Assembly last year unanimously. It received Royal Assent on December 9, 1994, but has yet to be proclaimed. In its preamble, the first paragraph states:

"The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise."

In the United Kingdom the Nolan Committee was set up by the Government "to examine current concerns about standards of conduct of all holders of public

office". In its first report, in May of this year, in discussing outside employment for MPs, the Committee made the following comments:

"19. We believe that those Members who wish to be full-time MPs should be free to do so, and that no pressure should be put on them to acquire outside interests. But we also consider it desirable for the House of Commons to contain Members with a wide variety of continuing outside interests. If that were not so, Parliament would be less well-informed and effective than it is now, and might well be more dependent on lobbyists. A Parliament composed entirely of full-time professional politicians would not serve the best interests of democracy. The House needs, if possible to continue with a wide range of current experience which can contribute to its expertise."

"20. As well as having members with continuing outside interests, it is important that the House of Commons should continue to contain Members from a wide variety of backgrounds. We should be worried about the possibility of a narrowing in the range of able men and women who would be attracted to stand for Parliament if Members were barred from having any outside paid interests. We believe that many able people would not wish to enter Parliament if they not only had to take a substantial drop in income to do so but also ran the risk of seeing their source of livelihood disappear altogether if they were to lose their seats. Several of our witnesses regretted the tendency for Members of Parliament to be drawn increasingly from those who have had no employment experience outside the political field."

This led the Committee to conclude with the following recommendation:

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"We recommend that Members of Parliament should remain free to have paid employment unrelated to their role as MPs."

Now contrast that with the situation applying to Ministers and other Members of the Government. Here, for some years, it has been considered essential that there be in place quite specific rules and obligations for these public office holders concerning conflict of interest. At the federal level, these rules, beyond disclosure of assets and liabilities and outside activities, specify that Ministers, and others, cannot engage in a profession, actively manage or operate a business or commercial activity, hold directorships or offices in a financial or commercial corporations, hold office in a union or professional association or serve as a paid consultant. Furthermore, they are not permitted to trade in publicly traded securities, that is, shares on a stock exchange.

Ministers and other members of the Government have considerable powers and access to information that could lead to a conflict of interest situation unless certain steps are taken to prevent or avoid these types of situations. This is what the Conflict of Interest Code for Public Office Holders attempts to do.

All provinces and territories except Prince Edward Island, Nova Scotia and Manitoba make this type of important distinction in the obligations appropriate to members of their respective Assemblies and those which apply to Ministers.

How have other jurisdictions dealt with the question of conflict and legislators? Unlike the case with the executive where an attempt is made to avoid a perception of conflict in advance, the operating assumption has been to accept that situations of possible conflict are inherent for any individual who has a range of assets and outside interests.

In other jurisdictions, and these include most of the provinces and territories, the British House of Commons and the U.S. Congress, accent has been put on disclosure. This requires, normally, an individual legislator to disclose his or her assets, liabilities and outside activities. In most provinces, this is done confidentially with an extract made available in a public registry, generally through the Clerk of the Assembly. These disclosures in Canada include information on the spouse and any dependent children.

Disclosure is thus the heart of the system.

Accompanying disclosure has usually been a general obligation to avoid conflict by not participating in any discussion or debate which might have an effect on that individual's private interests. The essence of the obligation and responsibility is that no prohibitions are placed on Members of the Assembly practising a profession, operating a business or investing in publicly traded securities.

The other issue that a number of other jurisdictions have considered important was establishing guidance on what gifts and other forms of hospitality are appropriate. In Canada, at the federal level, there is generally no concern for gifts to members of the Government up to \$200 and this is paralleled in the provinces with the range varying from "modest value" in Quebec to over \$1,000 from one source in two years in Prince Edward Island.

Some other issues that the special joint committee might want to pursue in its deliberations would include the question of travel as well as the rules specified in the *Parliament of Canada Act* regarding contracts. The rules in this statute, as they apply to Members of Parliament and Senators, perhaps need updating. They permit certain kinds of contracts but, for example, forbid anything relating to the construction of a public work. Ontario recently dealt with this question by generally prohibiting a member from being party to a contract or having an interest in a private company that has contract with the Government of Ontario; however, the company would be permitted to contract with the Government if the member's interest was placed in an approved management trust.

I have put stress on reinforcing the principle that it is highly desirable that Members of Parliament and Senators have outside interests. I regularly speak to the provincial commissioners and they tell me that public confidence in members of their assemblies has increased since there has been a specific requirement for public disclosure.

If the special joint committee were to come to a conclusion that this was a suitable outcome, then it will have to determine to whom this disclosure should be made. This could be the respective Clerks of either Chamber or specially selected individual. There are examples of both approaches in the provinces.

Federal Conflict of Interest Provisions

Significant Element	Category of Public Office Holder			
	Ministers ¹	Legislators Senate, Commons	Senior Officials	Public Servants
Responsible Authority	Ethics Counsellor reporting to Prime Minister	Senate or Commons Committee on Privileges	Ethics Counsellor reporting to Prime Minister	Deputy Heads reporting to Treasury Board
Confidential Disclosure	Yes: 60 days	Not applicable	Yes: 60 days	
Includes Spouse and Dependents	Yes	Not applicable	No	
Changes and/or Annual Filings	Yes	Not applicable	Yes	
Assets/Debts/Activities Prohibited	Yes	Yes ²	Yes	
Trusts Permitted	Yes	Not applicable	Yes	
Limits on Gifts, Hospitality and Other Benefits	Disclose over \$200, protocol, public or official event	No gifts for promoting bills	Disclose over \$200, protocol, public or official event	Nominal value
Public Disclosure: Personal Interests Withdrawals from Deliberations	Yes: 120 days No	No ³ Yes	Yes 120 days No	No No
Sanctions for Breach	Yes	Yes	Yes	Yes
Size of Clientele	54	397	+ 1,200	+ 230,000 ⁴
Post-Employment Time Restrictions	2 years (Parliamentary Secretaries: 1 year)	No	1 year	1 year for executives

1. Includes Parliamentary Secretaries.

2. *Parliament of Canada Act* forbids government contracts, promoting bills for remuneration in both Houses, bankruptcy of a Senator, etc. House of Commons by-laws forbid family hiring.

3. Exception is Register of Sponsored Travel maintained by the Clerk of the House of Commons.

4. Excludes employees of Crown Corporations, Canadian Armed Forces and the RCMP who are subject to measures established within their own organizations.

Source: Office of the Ethics Counsellor, *Conflict of Interest In Canada: Comparative Tables*, 1994, p. 5. Reprinted with permission.