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Opening remarks before the House of Commons Standing Committee on Access to Information, Privacy and Ethics

Honourable Konrad W. von Finckenstein, C.M., K.C. –
Interim Conflict of Interest and Ethics Commissioner
Ottawa, Ontario, October 16, 2023

Thank you for inviting me to appear before you today about the Office's 2022-2023 annual report under the *Conflict of Interest Act*.

I acknowledge that we are meeting on the traditional territory of the Anishinaabe Algonquin people.

The annual report for 2023 that was tabled on September 18 covers actions taken under the leadership of former Commissioner Mario Dion from whom you just heard, so no comment from me is necessary.

The mandate of the Office has three key activity areas.

One, giving public office holders clear and consistent direction and advice.

Two, education and outreach, to help public office holders understand the rules so as to recognize and avoid potential conflicts of interest.

And, three, to address non-compliance as needed.

Key to all these three areas is maximum transparency.

As I mentioned in my appearance on September 18, my approach is to be as transparent as possible about everything the Office does. I would therefore like to bring to your attention four small changes to the administration of the Act that have been made under my tenure.

These changes reflect a common-sense approach to the application of the Act. They are effective immediately and only apply prospectively.

The first change is to the definition of "entity" related to the Act's rules on post-employment and offers of outside employment. This term is no longer being read to include federal public sector entities.

I see no reason why someone leaving a government post and then working for it as a contractor or public servant would be in a conflict of interest or carry with them confidential information that would be harmful to the Government of Canada. The government is one entity and there cannot be any conflict of interest between different government departments or agencies.

Consequently, as of now, reporting public office holders who wish to work for the federal public service must no longer seek an exemption, reduction, or waiver of their cooling-off period.

The second change involves gifts.

Under the Act, public office holders and their family members are not allowed to accept any gift or benefits that might reasonably be seen to have been given to influence the public office holders in the exercise of an official power, duty, or function.

On the other side of the coin, under the regime administered by the Commissioner of Lobbying, lobbyists are not allowed to give gifts or hospitality to an official whom they lobby or expect to lobby.

The new *Lobbyists' Code of Conduct (2023)* introduced an exemption for low-value allowed gifts and hospitality. Its benchmarks are a value of $40 or less for each gift or instance of hospitality, and an annual limit of $200 on the cumulative value of such gifts from the same source.

It makes no sense to have different rules under the *Lobbyists' Code of Conduct (2023)* and under the *Conflict of Interest Act*.

Therefore, the practice of the Office will now mirror those provisions of the *Lobbyists' Code of Conduct (2023)*.

However, as has always been the requirement under the *Conflict of Interest Act,* all gifts or benefits with a total value over $200 must be disclosed within 30 days.

The third change in the Office's practice is with respect to what we call the minimal value exemption.

It is the value of controlled assets that reporting public office holders who are not ministers or parliamentary secretaries do not have to sell after their appointment. The Commissioner must believe the assets do not pose any risk of conflict of interest in relation to the reporting public office holders' official duties and responsibilities, given their minimal value.

The practice of the Office capped the minimal value exemption at $30,000 about 10 years ago. Obviously, the economic situation has changed since then and there has been inflation. The Office has now doubled it to $60,000 as a more realistic amount.

The fourth change applies only to about a dozen individuals appointed to the Canada Energy Regulator. It affects how they can deal with open-ended mutual funds and exchange-traded funds or ETFs.

The *Canadian Energy Regulator Act*, or CER Act, prohibits certain outside activities and holdings and effectively amended the *Conflict of Interest Act*. Based on an unnecessarily restrictive interpretation, appointees were required to sell both mutual funds and ETFs. Ownership of these instruments does not cause a conflict of interest. From now on, the practice of the Office will allow them to keep open-ended mutual funds as these are exempt assets under the *Conflict of Interest Act*. For ETFs, which are controlled assets under the Act, new appointees will have the option of putting them in a blind trust or selling them.

This change will help the Canada Energy Regulator attract qualified candidates.

In conclusion, in keeping with the purpose of the Act, all four recent changes should help encourage experienced and competent persons seek and accept public office and facilitate interchange between the private and public sectors.

All Office practices, including these changes, are designed to reflect the Act's purpose of helping public office holders avoid conflicts of interest and deal with issues ethically, thereby building public trust.

Thank you for your attention. I would be pleased to answer any questions you may have.