

**Brief to the House of Commons Subcommittee on Gifts
under the *Conflict of Interest Code for Members of the House of Commons:*
Strengthening the Gifts Rules and Enforcement System**
(Democracy Watch, April 2, 2009)

BACKGROUND

Since the federal *Conflict of Interest Code for Members of the House of Commons (MPs Code)* came into force in October 2004, the two Ethics Commissioners who have enforced the *MPs Code* have both highlighted the area of gifts/benefits as one of the most pressing concerns.

Unfortunately, neither Commissioner has issued a public interpretation bulletin that defines clearly what gifts/benefits are acceptable under the decidedly vague and loophole-filled rules, and also unfortunately MPs have not added interpretation provisions to the *MPs Code* themselves (and closed the loopholes). As a result, it remains unclear what gifts/benefits are legal or illegal, and therefore essentially no one can be found guilty of violating the gift/benefit rules in the *MPs Code* because they have the excuse of not knowing what the rules mean.

No MP should not be surprised to see surveys showing a high level of voter concern about the integrity of federal politicians when MPs have left such key ethics rules in a vague state for years (and given that MPs took 147 years after Confederation to enact such rules, and then enacted rules with many loopholes).

Thankfully, the current Ethics Commissioner Mary Dawson took an important step forward in clarifying the gift/benefit measures under the *Conflict of Interest Act* by issuing the *Guideline on Gifts (including Invitations, Fundraisers and Business Lunches)* last year. The *Guideline* sets a world's best standard, and hopefully the Ethics Commissioner will strictly and strongly enforce it.

Hopefully, the Ethics Commissioner will also very soon issue a guideline for the gift/benefit measures in the *MPs Code* that sets the same high standard.

To be at all effective in stopping the use of gifts/benefits as a means of influence over MPs, the current gift/benefit measures (which cover gifts/benefits of money, property or services) in the *MPs Code* must be interpreted as follows:

- the clause 2(e) principle that “Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity” must be the overriding, guiding principle;
- the line that is drawn by this principle must be the same as the line drawn by the Ethics Commissioner in her *Guideline on Gifts*, as follows: “The donor's existing, or future relationship to the public office holder is of particular relevance” (p.5) and “If a gift is being offered by someone whose interests could be affected by a decision the public office holder may be called upon to make, then the Act will likely apply and prohibit its acceptance.” (p.5) -- including even gifts from friends (p.7), and even very small gifts;
- in order not to undermine these fundamental principles, the exception in subsection 14(2) that “A Member or a member of the Member's family may, however, accept

gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Member's position" must be interpreted very strictly to prohibit:

- payment for a speech or appearance at any event;
 - any gift (including lunches, food and drink at receptions, and tickets to events) given in the context of communicating with an MP concerning any issue, program or funding addressed by or overseen by the federal government;
 - any benefit including the provision of significant volunteer services to a nomination race or election campaign or party leadership campaign or riding association;
 - awards of any kind, and;
 - any other gift except the most nominal expressions of courtesy, protocol or hospitality (for example, a meal at an event at which the MP is speaking);
- in other words, the requirement to disclose gifts/benefits under subsection 14(3) should be made essentially irrelevant by enforcing the other rules to ensure that MPs do not receive any gift(s)/benefit(s) from anyone that come even close to exceeding \$500 in value over any 12-month period.

However, interpreting the *MPs Code* measures on gifts/benefits in this way will not be enough to stop the use of gifts/benefits as an unethical, undemocratic means of influencing MPs. The following changes must also be made to the *MPs Code*:

- extend the definition of "family members" as it applies to the gifts/benefits measures to all members of the MP's family;
- extend the *MPs Code* to cover the staff of MPs (at least with respect to gifts/benefits);
- delete section 15 because there is no good reason to allow the gift/benefit of sponsored travel (especially from lobbyists), and this exemption directly and significantly contradicts the prohibition in subsection 14(1), and;
- specific mandatory minimum penalties for violations of various sections of the *MPs Code*, including violating the gift/benefit measures, should be added to subsection 28(6), and the Ethics Commissioner should be empowered and required to impose the minimum penalty (or, possibly, reduce it to a lesser penalty as a result of mitigating circumstances or actions under subsection 28(5)).

These proposed changes relate directly to the role of MPs, as do most of the measures in the *MPs Code*. Democracy Watch also recommends that a parliamentary committee conduct hearings on the role of MPs, including the issues of equal service to constituents, the MP as lobbyist vs. representative of the public interest, cooling-off periods after leaving office, and then add measures to the *MPs Code* to cover these key areas of conduct.

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