

GUIDE TO LOBBYIST GIFTING RULES

2018

THE RULES OF GIVING AND RECEIVING FOR FEDERAL LOBBYISTS, BUREAUCRATS AND POLITICAL STAFF

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A Guide to Lobbyist Gifting: Rules of Giving and Receiving
for Federal Lobbyists, Bureaucrats and Political Staff

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LOBBYIST GIFTING: AN OVERVIEW

Political creatures of the Ottawa bubble have to navigate complex dynamics that underpin their interactions.

■ Ex-staffers-turned-lobbyists must tread carefully when socializing with former colleagues, regardless of whether the cooling-off period is still in effect. Government officials, likewise, have to continuously assess if a gift, favour or benefit, even one offered by a friend, carries a whiff of influence peddling.

With different sets of rules governing the relationships between lobbyists and government officials, figuring out where the lines are drawn can feel like walking a tightrope.

Through this gift guide, The Lobby Monitor seeks to outline the rules and interpretations surrounding the issue of gifts released by the lobbying and ethics commissioners in recent years. We also provide a summary of the latest developments around gifts that are shaping conversations on the Hill and influencing the government's agenda.

We pulled together references relating to gifts from sections in the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. We also reviewed the Lobbying Act and the Lobbyists' Code of Conduct to see what it has to say about improper influence.

The previous edition of A Guide to Lobbyist Gifting Rules was in 2015, and Ottawa looks a bit different now. New commissioners in the lobbying and ethics offices are setting their agendas for their first year in office, and the prime minister is a Liberal whose personal vacation choices have helped to revive the debate on gifts.

Readers will find a summary of the Trudeau Report, which has cast renewed scrutiny on the "friend" exemption in the Conflict of Interest Act. Former ethics commissioner Mary Dawson found Prime Minister Justin Trudeau violated some provisions in the Conflict of Interest Act when he accepted the Aga Khan's invitation to spend time at the spiritual leader's Bahamas retreat.

Under conflict-of-interest rules, it may be acceptable for government officials to receive gifts offered by friends or family. But Dawson overruled Trudeau's assertions that he and the Aga Khan qualify as friends.

We also revisit past recommendations to reform the rules on gifts and what has changed since those were raised. The guide also features a piece on what happens to gifts forfeited by the prime minister.

As the debate on gifts continues, a statutory review of the Conflict of Interest Act is underway and one for the Lobbying Act looms. The previous reviews did not result in any changes to gift rules within those acts, and it remains to be seen whether the upcoming reviews will change the dynamics.

Guide to Gifting Rules

Keeping conflict of interest rules in mind

by Mario Dion, Conflict of Interest and Ethics Commissioner

■ Ministers, parliamentary secretaries, ministerial staff and other public office holders are subject to the Conflict of Interest Act. Elected Members of Parliament are subject to the Conflict of Interest Code for Members of the House of Commons.

When socializing with lobbyists or other stakeholders, it is the responsibility of individual public office holders and Members to ensure they meet their obligations under these regimes. Here are some of the things I believe they should keep in mind.

Gift Rules

The Act and the Code prohibit public office holders and Members and their family members from accepting any gift that might reasonably be seen to have been given to influence the public office holders or Members in the exercise of their duties or functions.

This acceptability test applies to all gifts, including event invitations, regardless of their value. The test is not whether the donor intended to influence the recipient or whether the recipient was influenced, but whether it might reasonably be seen that the gift or other advantage was given for that reason.

In cases where a gift was accepted but should not have been, my Office recommends that it be returned to the donor. When returning the gift is impossible given its nature, we have allowed recipients to pay the donor its fair market value.

The best practice for public office holders and Members is to decline offers made by stakeholders, including lobbyists, to avoid any perceptions of influence.

Proper Channels

When going to events attended by lobbyists, public office holders, in particular, should refer all lobbying activities to their offices through proper channels.

This will ensure they meet the Act's requirement to arrange their private affairs in a manner that will prevent them from being in a conflict of interest. It will also ensure that any lobbying that does take place is transparent.

Friends and Relatives

In order to avoid the perception of preferential treatment and, ultimately, to avoid improperly furthering private interests, public office holders cannot engage in an official capacity with friends or relatives.

While the term "friend" is not defined in the Act, it has been interpreted to mean a

person with whom one has some history of mutual personal regard beyond simple association. While acquaintances can become friends, they do not do so simply because of frequent interaction.

If a friend or relative is also a lobbyist and it is likely that lobbying will be done with the public office holder's office or organization, a conflict of interest screen may be necessary to avoid a conflict of interest.

Three things lobbyists should keep in mind when socializing with public office holders

■ The best way to avoid a conflict of interest, or the perception of one, is to not offer a gift at all.

Events such as lobby days, talks and non-political fundraisers are arranged in advance. Any registrable matter discussed at the event must be reported, as required by the Lobbying Act.

Lobbyists should be mindful that perception matters when engaging with public office holders at events, especially when gifts may be involved.

Source: Office of the Commissioner of Lobbying

A summary of gifting rules in the Conflict of Interest Act

■ The Conflict of Interest Act defines “gift or other advantage” in Section 2 of the act:

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

• Section 11 of the act outlines the prohibitions for public officeholders on accepting gifts:

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

Exception

(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

- (a) that is permitted under the Canada Elections Act;
- (b) that is given by a relative or friend; or
- (c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder’s position.

Forfeiture

(3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(c) that has a value of \$1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.

Section 23 of the act outlines the requirement that public office holders publicly declare gifts with a value of \$200 or more:

If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds \$200 from any one source other than relatives and friends in a 12-month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds \$200.

Section 25 of the act deals with the public disclosure of gifts valued at \$200 or more that a public office holder or a member of his or her family has decided to accept:

If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.

Section 51 of the act stipulates that the commissioner shall maintain a registry that includes the following documents for public disclosure:

- c) notes of every gift or advantage forfeited under subsection 11(3)

Source: Conflict of Interest Act

A summary of gifting rules in the Conflict of Interest Code for Members of the House of Commons

■ There are 11 references to gifts in the Conflict of Interest Code for Members of the House of Commons. The code was last amended in 2015.

• One of the main principles of the code states that:

2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected

(e) not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this Code.

In the Rules of Conduct for MPs, Rule 14 states that:

“Neither a Member nor any member of a Member’s family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.”

This rule applies to gifts

- a) related to attendance at a charitable or political event; and
- b) received from an all-party caucus established in relation to a particular subject or interest.

There are exceptions to Rule 14.

“Despite subsection (1), a Member or a member of a Member’s family may 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.”

“If gifts or other benefits that are related to the Member’s position are accepted under this section and have a value of \$200 or more, or if the total value of all such gifts or benefits received from one source in a 12-month period is \$200 or more, the Member shall, within 60 days after receiving the gifts or other benefits, or after that total value is exceeded, file with the Commissioner a statement disclosing the nature of the gifts or other benefits, their source and the circumstances under which they were given.”

— *Source: Conflict of Interest Code for Members of the House of Commons*

A summary of gifting rules in the Lobbying Act

- A summary of gifting rules in the Lobbying Act

The Lobbying Act makes no direct mention of gifts or other benefits.

A summary of gifting rules in the Lobbyists' Code of Conduct

■ Rule 6 of the Lobbyists' Code of Conduct deals broadly with conflict of interest and states that:

“A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.”

Under the umbrella of Rule 6, the code outlines rules for specific conflict-of-interest issues:

10. Gifts, favours and advantages

Rule 10 directly addresses the issue of gifts. It states that a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder whom they are lobbying or expect to lobby that the official is not in a position to accept, because it could create a sense of obligation.

The new Lobbyists' Code of Conduct went into effect on Dec. 1, 2015, and has not been amended since.

Source: Lobbyists' Code of Conduct

GUIDANCE ON GIFTS FROM THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER AND LOBBYING COMMISSIONER

Summary of the Trudeau Report

■ Faced with the looming deadline of her departure, days before Christmas, Mary Dawson dropped a scathing report that found Prime Minister Justin Trudeau violated four provisions of the Conflict of Interest Act.

On Dec. 20, 2017, the ethics commissioner released the 75-page report, titled “the Trudeau Report,” which delved into the ethical implications surrounding vacations that Trudeau or his family took to the private Caribbean island of the Aga Khan, the spiritual leader of the Ismaili branch of Shia Islam.

Dawson found that, on three separate occasions, the Trudeaus were invited to spend time at the Aga Khan’s retreat at no expense to themselves.

In the report, Dawson accounted for a holiday that Trudeau and his family took in 2016, a stay in December 2014 and a trip in March 2016 that his wife, Sophie Grégoire Trudeau, took with her friends and children in tow.

While the Aga Khan is not a registered lobbyist, the Aga Khan Foundation Canada, for which he is a board member, has long-running business ties with the federal government. His foundation lobbies for support for its international development projects.

In rendering her decision, Dawson determined that Trudeau broke four provisions in the Conflict of Interest Act:

Section 5: an obligation to arrange his or her private affairs to prevent the public office holder (POH) from being in a conflict of interest;

Subsection 11(1): POHs or his or her family members are prohibited from accepting a gift or advantage that might reasonably be seen to have been given to influence the POH in the exercise of an official power, duty or function;

Section 12: ministers, parliamentary secretaries, family members, ministerial advisers or staffers shall not accept travel on non-commercial chartered or private aircraft for any purpose unless the commissioner has signed off prior to the departure;

Section 21: a POH has a duty to recuse himself or herself from participating in any discussion, debate or vote in which he or she could be in a conflict of interest.

Trudeau's position has long been that he considers the Aga Khan to be a longtime family friend. Under section 11(2) of the Conflict of Interest Act, a POH and his or her family members may accept a gift from a friend or relative.

In his account to Dawson, Trudeau said that his friendship with the spiritual leader deepened as his public stature grew while he was leader of the third-party Liberals and then running for prime minister. He felt he could engage the Aga Khan as an equal, as they had similar values, and not simply as a family friend. Trudeau also characterized the relationship as one that "comes in and out depending on life circumstances."

But Dawson ruled that the Aga Khan did not qualify as a friend, as the two had not had "personal or private interactions" for 30 years, with the exception of seeing each other at the funeral for Trudeau's father in 2000.

Dawson did not dispute that the Aga Khan and Trudeau have a "warm relationship," built on family ties and shared principles. However, she ruled that it was "unlikely that invitations would have been given" had Trudeau not gained prominence on the political scene.

In defending his acceptance of the invitations, Trudeau also said that the Aga Khan is not a registered lobbyist and "there was no ongoing or foreseeable business relationship" between the government and the Aga Khan.

But Dawson's report concluded there were two occasions during which Trudeau should have recused himself.

Those discussions surrounded the issue of an outstanding \$15-million grant to the endowment fund of the Global Centre of Pluralism, a not-for-profit corporation that the Aga Khan founded, which had been promised under the previous Conservative government in 2015. The ethics commissioner said that Trudeau was in a position to "improperly further the private interests" of the centre, and should have avoided participating in those discussions.

At the same time, Dawson cleared Trudeau of other allegations. She ruled, for example, that there is no evidence he "ever gave instructions to advance any projects of the Aga Khan's institutions" or helped arrange meetings with government officials, and as a result, Trudeau did not violate section seven of the act.

Updated guidance from the Office of Commissioner of Lobbying

■ In 2016, the Office of the Commissioner of Lobbying (OCL) updated its guidance on gift-giving to provide a directive to lobbyists on how to handle inviting parliamentarians to receptions.

The office stated that three conditions must be present in order to mitigate the risk of creating a sense of obligation:

All members of Parliament and/or the Senate are invited.

The total cost of any gifts (including food, beverages and any other objects offered to attendees) provided or promised is reasonable.

The invitation is not accompanied by any information related to lobbying activity nor is there lobbying at the event.

Lobbyists are also advised in the guidance to “exercise caution” in deciding whether to invite a parliamentarian who they are lobbying to a reception.

In an email in February, the OCL told The Lobby Monitor that a lobbyist considering inviting public office holders (POH) to events should ask these questions: “Am I lobbying or will I lobby this public office holder? Would a reasonable person see this gift as creating a sense of obligation?”

If the answers are yes, then the gift of food or drinks at the reception should not be offered.

Industry leaders representing the interests of the government-relations community have a similar strategy in advising their members whether the hospitality provided through a reception is reasonable.

“The rule of thumb is that if we have any questions or doubts [regarding an event], we put the scenario over to the [lobbying] commissioner’s office and get a response back,” said Philip Cartwright, president of Government Relations Institute of Canada and senior vice-president of Global Public Affairs in Ottawa, in an interview with The Lobby Monitor. He noted that this is a practice encouraged within his firm.

John Capobianco, president of Public Affairs Association of Canada and national public-affairs lead for FleishmanHillard HighRoad, agreed with Cartwright in a separate interview. “If ever in doubt, call and find out,” he said. “[The OCL] encourages it.”

Both consultants say that the focus on the possibility that an MP could be placed in a conflict of interest by attending a reception has definitely changed the way these events are organized.

“The days of big fancy receptions are, maybe not over, but those kinds of events are far fewer, and organizations that do want to do receptions are making it much more modest. That isn’t to say that you can’t have food and a bar setup, but people are aware of optics, and I think are managing events accordingly,” Cartwright said.

Capobianco is noticing less swag being given out at receptions. In the past, companies would give out swag to POHs on their way out, he said, but most companies have shied away from that. “Given the rules and a chill [around receptions], nobody wants to do something that would inadvertently put an office holder in a position [of conflict of interest].”

Commissioner's guidance for lobbyists regarding the application of rule 10 of the Lobbyists' Code of Conduct — gifts

Purpose of Commissioner's Guidance

■ Federal public office holders are required to make decisions in the public interest. When public office holders are placed in a conflict of interest, public confidence in the integrity of their decision making is diminished.

The purpose of this document is to provide guidance for lobbyists in the area of gifts, so that they may avoid placing a public office holder in a real or apparent conflict of interest. Public office holders should always consult the appropriate authority when they have questions about the acceptability of a gift from a lobbyist, be that the Conflict of Interest and Ethics Commissioner, the Senate Ethics Officer, or their departmental Values and Ethics Officer.

Conflict of Interest

A conflict of interest is a situation where an individual's judgment is influenced, or might be influenced, from making decisions in an organization's best interest due to a competing sense of obligation. A conflict of interest is created when there is a perception that a public office holder's private interests may influence their performance when carrying out their duties.

Rule 6 of the Lobbyists' Code of Conduct states:

A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.

Providing or promising a gift, favour, or other benefit to a public office holder could create a sense of obligation, or the appearance of one. This could in turn generate a tension between the public office holder's primary duty to the public interest and their private interest.

To prevent such a situation, Rule 10 of the Lobbyists' Code of Conduct states:

To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder whom they are lobbying or will lobby, which the public office holder is not allowed to accept.

Definition of "gift"

The Commissioner defines "gift" to include anything of value, given for free or at a reduced rate, when there is no obligation to repay.

Documents that set out acceptability of gifts for public office holders

Examples of documents that lobbyists could consult include:

Conflict of Interest Act (applies to Ministers, Ministers of State, Parliamentary Secretaries, their staff, and GIC appointees, including Deputy Ministers)

Conflict of Interest Code for Members (applies to Members of Parliament)

Ethics and Conflict of Interest Code for Senators

Values and Ethics Code for the Public Sector

Organizational Values and Ethics Codes

When is a gift allowed?

Given the rules in place governing the acceptability of gifts, there are some exceptions when gifts would be acceptable. These exceptions are typically when gifts are expressions of courtesy, protocol or hospitality provided when a public office holder is carrying out job-related duties. Examples include:

Refreshments/meals served at an event where the public office holder has a role to play. These circumstances could include ceremonial or presentational roles, or active participation by a public office holder as a representative of the government, or a federal department or agency.

Tickets to a public event such as a community event or charitable fundraiser given by event organizers to a Member of Parliament for events in their riding or region.

A gift given following an appearance, speech, or presentation as a token of thanks or appreciation.

Gifts that are not allowed

If a lobbyist is actively lobbying or will lobby a public office holder, gifts, including meals and tickets to events, other than the exceptions listed above, are most likely unacceptable.

Lobbyists are cautioned against providing public office holders whom they are lobbying or will lobby with tickets to charitable or other events, when these tickets are at a reduced cost or no cost. The provision of such a ticket may reasonably be viewed as creating a sense of obligation on the part of a public office holder, and therefore risks creating a conflict of interest for the public office holder.

Charging the public office holder the actual cost of the ticket (i.e., the cost the lobbyist paid for the ticket or, if the cost of the ticket price included a charitable receipt, the cost of the ticket minus the amount of the charitable receipt) means that no gift has been offered, and therefore no sense of obligation has been created.

The Commissioner of Lobbying recognizes that the rules governing the acceptability of gifts for public office holders may not always be clear. When in doubt as to the acceptability of a gift, the lobbyist should ask the public office holder if the gift is something the public office holder can accept.

Commissioner's advice regarding receptions for Parliamentarians

If a lobbyist or a corporation or organization organizes a reception to which Parliamentarians (members of Parliament and Senators) are invited, they should consider the risk posed by inviting Parliamentarians they are lobbying, or will lobby. It is the Commissioner of Lobbying's view that meeting all three conditions listed below when inviting Parliamentarians will mitigate the risk of creating a sense of obligation, or the appearance of one:

All members of Parliament and/or the Senate are invited;

The total cost of any gifts provided or promised is reasonable (including food, beverages, and any other objects offered to the attendees); and

The invitation is not accompanied by any information related to lobbying activity nor is there lobbying at the event.

In determining whether to invite Parliamentarians that a lobbyist, corporation, or organization is lobbying, the Commissioner encourages lobbyists to exercise caution.

Source: Office of the Commissioner of Lobbying

Conflict of interest commissioner's guidance on invitations and receptions

■ In March 2016, the Office of the Conflict of Interest and Ethics Commissioner issued an advisory opinion to public office holders in an effort to address questions that have been frequently posed.

Below is the advisory opinion, which outlines responses to those questions.

I have interpreted gifts and other benefits to include:

- Money, including cash or cheques, other than a bona fide loan;
- Consumer goods, such as books, flowers, artwork, furniture or wine;
- Property such as furniture, computers or television monitors;
- The use of property or facilities, such as vehicles, offices, houses, cottages or sports facilities, at a reduced rate or no cost;
- Membership in a club or other organization, such as a golf or tennis club, at a reduced rate or no cost;
- Services, such as dry cleaning or a haircut, at a reduced rate or no cost;
- Meals paid for by another individual or organization; or
- Invitations or tickets to attend an event, such as a dinner, reception, sports match, gala, concert, play or fundraiser, at a reduced rate or no cost.

Invitations or tickets to attend an event at which your attendance is considered to fulfil an official duty or function would automatically be deemed acceptable as they would be received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a Member's position. This would also extend to a ticket offered to your guest.

In other circumstances, however, events to which you may be invited do fall within the definition of benefit and are therefore subject to the acceptability test set out in subsection 14(1) of the Code, namely whether the invitation might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office. The aims of the donor and the worthiness of the cause that it represents are not factors in deciding whether or not a gift is acceptable under the Code. Most relevant is whether the donor is seeking or may in future seek your support in the exercise of a duty or function of your office.

When you are offered event invitations and other gifts, it is your responsibility as a Member to ensure that you meet your obligations under the Code and caution should be taken when such offers are extended by stakeholders who may appear before a Standing Committee on which you are a member. Those Members who are also ministers or parliamentary secretaries must also meet their obligations under the Conflict of Interest Act.

I encourage you to contact your advisor in my Office for guidance on specific gifts or other benefits that you are offered.

The following is a series of questions and answers based on the issues that have been raised with me.

Can I accept reception invitations from stakeholders?

Invitations to receptions offered by stakeholders, including lobbyists, are subject to the acceptability test set out in subsection 14(1) of the Code for gifts and other benefits. If such an invitation might reasonably be seen to have been given to influence you, then you may not accept it.

For example, an invitation to an event organized by a person or organization that has an interest in legislation that is before a committee on which you sit could reasonably be seen to be an attempt to influence you and must be refused. An invitation to an event at which you could expect to be lobbied in relation to a current issue that is before you, as opposed to an information session offered to all Members to provide general information on a matter, must also be declined.

Invitations to events intended to raise awareness of issues that are widely attended and where you have not been targeted are less likely to be problematic.

The location of an event—whether it is held on or off Parliament Hill, for example—is not necessarily a factor in determining whether an invitation to attend it is acceptable.

Can I accept invitations to events where I will perform an official role?

If your attendance at an event fulfils an official duty or function, then the invitation is expressly acceptable under the exception for courtesy and hospitality. It must also be publicly declared if the value of the ticket to the event is \$200 or more.

For example, you would be considered to be fulfilling a duty or function if you give a speech or presentation at an event, or if you perform a representational role by attending an event in your riding.

Can I accept invitations to charity events?

The purpose of inviting Members to attend charity events free of charge is to get them to lend their names to charitable undertakings in order to promote charitable goals. As a general rule, such invitations directly from the charitable organization could not reasonably be seen to have been given to influence you in the exercise of a duty or function of your office and are therefore acceptable.

When the invitation to such an event comes from a stakeholder or a charity that has a live interest in a matter that may come before you in your official capacity as a Member, rather than from a charitable entity that has no interest at stake with you, the invitation should not be accepted.

Are there any cases in which the acceptability test does not apply?

You and members of your family may accept “gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a Member’s position.” (subsection 14(2)). Gifts that fall within this exception are not subject to the acceptability test.

I consider a normal expression of courtesy or protocol to be a token expression of appreciation received in the context of some official interaction. This exception could apply, for example, to an invitation to attend an event, which could include a meal, at which you are expected to perform an organizational, ceremonial or representational role in your capacity as a Member.

What is considered to be within the “customary standards of hospitality” accompanying your position depends on the circumstances. For example, a gift given by

a visiting official from a foreign or international organization would normally be covered by this exception. Similarly, a token thank-you gift following an appearance, speech or presentation is acceptable.

You may accept gifts that are not related to your position from family and friends. For example, a colleague or friend may buy you a meal in a restaurant.

The acceptability test does not apply to sponsored travel because it is expressly excepted under section 15 of the Code.

What should I do if I have attended a reception that I shouldn't have?

If you have accepted an event invitation or ticket that you should not have accepted and have already attended the event, you must reimburse the donor for its market value, that is, the cost that someone else, such as a member of the public, would have had to pay to attend the event.

Source: Office of the Conflict of Interest and Ethics Commissioner

Gifts (including invitations, fundraisers and business lunches)

The Conflict of Interest Act prohibits public office holders and members of their families from accepting “any gift or other advantage [...] that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.” This guideline seeks to help public office holders better understand their obligations in this regard.

NOTE: Throughout this guideline, the term “gift” is used to refer to a “gift or other advantage” as defined in the Conflict of Interest Act and the term “Office” is used to refer to the Office of the Conflict of Interest and Ethics Commissioner.

1. Relevant provisions of the Conflict of Interest Act

2.(1) The following definitions apply in this Act.

“Commissioner” means the Conflict of Interest and Ethics Commissioner appointed under section 81 of the Parliament of Canada Act.

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

“public sector entity” means a department or agency of the Government of Canada, a Crown corporation established by or under an Act of Parliament or any other entity to which the Governor in Council may appoint a person, but does not include the Senate or House of Commons.

“reporting public office holder” means

- (a) a public office holder who is a minister of the Crown, minister of state or parliamentary secretary;
- (b) a member of ministerial staff who works on average 15 hours or more a week;
- (c) a ministerial advisor;
- (d) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits;
- (e) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or
- (f) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

2.(2) The following are the members of a public office holder’s family for the purposes of the Act:

- (a) his or her spouse or common-law partner; and
- (b) his or her dependent children and the dependent children of his or her spouse or common-law partner.

2.(3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

11.(1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

11.(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

(a) that is permitted under the Canada Elections Act;

(b) that is given by a relative or friend; or

(c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.

11.(3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(c) that has a value of \$1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.

12. No minister of the Crown, minister of state or parliamentary secretary, or member of his or her family and no ministerial advisor or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.

23. If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds \$200 from any one source other than relatives and friends in a 12-month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds \$200.

25.(5) If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.

25.(6) If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

2. When a gift is prohibited

The relevant provisions of the Conflict of Interest Act are:

11.(1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function. (emphasis added)

2.(1) The following definitions apply in this Act.

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

“public sector entity” means a department or agency of the Government of Canada, a Crown corporation established by or under an Act of Parliament or any other entity to which the Governor in Council may appoint a person, but does not include the Senate or House of Commons.

2.(2) The following are the members of a public office holder’s family for the purposes of the Act:

- (a) his or her spouse or common-law partner; and
- (b) his or her dependent children and the dependent children of his or her spouse or common-law partner.

Gifts can be many types of things. The Office has interpreted the definition to include such things as:

- money, other than a bona fide loan, regardless of format (cash, cheques, etc.);
- property (a book, flowers, a painting or sculpture, a car, a house, furniture, wine, etc.);
- use of property or facilities (a vehicle, an office, a house or cottage, a sports facility, a golf course, etc.) at a reduced rate or at no cost;
- membership in a club or other organization (a golf club, a tennis club, etc.) at a reduced rate or at no cost;
- a service (dry cleaning, haircut, etc.) at a reduced rate or at no cost; a meal paid for by another individual (see Specific guidance on business lunches);
- an invitation to and/or tickets to attend an event (a game, a concert, a play, etc.) at a reduced rate or at no cost (see Specific guidance on invitations and fundraisers);
- or an invitation to attend a gala or fundraising event at a reduced rate or at no cost (see Specific guidance on invitations and fundraisers).

The purpose of prohibiting public office holders or their family members from receiving gifts is to preserve confidence in the integrity of public decision-making.

The determining factor is whether the gift might reasonably be seen to have been given to influence the public office holder’s decision-making.

In order to determine whether a gift is being offered inappropriately, all the circumstances surrounding that gift must be considered; hence, no specific rule exists as to which gifts can be accepted by public office holders. The value of a gift is NOT a criterion of acceptability; it is a threshold for the purpose of disclosure to the Office and the public.

It is important to consider who is offering the gift and why it is being offered. The donor’s existing or future relationship to the public office holder is of particular relevance.

In the following examples, the identity of the donor might reasonably be seen to suggest that the gift was given to influence the public office holder’s decision-making:

The donor or the donor’s client or firm has or may, in the future, have dealings with the public sector entity of the public office holder.

The donor or the donor’s client or firm is or may, in the future, be affected by programs, policies or regulations reviewed or controlled by the public sector entity of the public office holder.

The donor or the donor's firm is a registered lobbyist or has hired a registered lobbyist to lobby the public office holder or the public sector entity of the public office holder.

The donor or the donor's client or firm has or may, in the future, have a contract with the public sector entity of the public office holder.

The donor or the donor's client or firm could submit a bid in respect of a request for proposals that the public sector entity of the public office holder has issued or may issue in the future.

A public office holder or family member should consider why a gift is being offered. 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.

Trinkets or favours of relatively little value such as pens, notepads, key chains, t-shirts or inexpensive carrying cases provided to attendees at a convention or similar event would generally not reasonably be seen to have been given to influence the public office holder's decision-making. However, depending on the public office holder's role or the public sector entity of the public office holder, it may still be inadvisable to possess an article that clearly advertises a particular donor.

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

3. When a gift is allowed

The relevant provisions of the Conflict of Interest Act are:

11.(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

(a) that is permitted under the Canada Elections Act;

(b) that is given by a relative or friend; or

(c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.

11.(3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(c) that has a value of \$1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.

2.(2) The following are the members of a public office holder's family for the purposes of the Act:

a. his or her spouse or common-law partner; and

b. his or her dependent children and the dependent children of his or her spouse or common-law partner.

2.(3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

There are three situations in which the general prohibition does not apply and a gift may be accepted even though it might reasonably be seen to have been given to influence the public office holder:

Gifts that are permitted under the Canada Elections Act are acceptable under the Conflict of Interest Act. The Canada Elections Act applies to electoral candidates during an election period.

Gifts from a relative or friend. While there is a definition of “relatives” in subsection 2(3) of the Conflict of Interest Act (“persons who are related [...] by birth, marriage, common-law partnership, adoption or affinity [...]”), there is no definition of “friend”. The Office has interpreted “friend” to mean a person with whom one has some history of mutual personal regard beyond simple association. While acquaintances can become friends, they do not do so simply because of frequent interactions.

When a gift is given by a relative or friend, one does not usually expect it to have been given with a view to influencing public decision-making. In that sense, the rule reinforces this reasonable expectation. However, sometimes there can be both friendship or family connections, and a business relationship between a public office holder and a person offering a gift. If a friend is offering a gift in a context not normally associated with gift-giving and the friend is also doing or likely to do business directly or indirectly with the public service entity of the public office holder, then the gift should not be accepted. Similarly, the Office takes the view that the nature or substance of a gift may suggest that a gift is being given in a business context rather than between friends.

3. Gifts are acceptable if they are received as a normal expression of courtesy or protocol, or are within the customary standards that normally accompany the public office holder’s position. The Office considers a normal expression of “courtesy or protocol” to be a token expression of appreciation in the context of some official interaction. What is considered to be within the “customary standards” of a position depends on the circumstances.

History, tradition, the context of events, as well as the nature of the public office holder’s position (either by virtue of rank or because of the nature of the public sector entity represented) must be considered. For example, a gift given by an official from a foreign or international organization who is visiting a public office holder would normally be covered by this exception. Similarly, a token thank you gift following an appearance, speech or presentation is usually acceptable.

It is important to remember that, even if a gift is permissible because it is an expression of courtesy or protocol or is within the customary standards of the office, a public office holder will have to forfeit a gift valued at over \$1,000. Such gifts must be forfeited into the inventory of the public office holder’s public sector entity or of the government at large.

Where a gift accepted by a reporting public office holder or a member of his or her family exceeds a value of \$200 from any one source other than from family and friends, or several gifts from one source in a 12-month period have a total value of more than \$200, specific disclosure provisions apply (see section entitled When to disclose a gift to the Commissioner and when to publicly declare it).

Where a minister or parliamentary secretary, or a member of his or her family, or a ministerial advisor or ministerial staff member, is offered travel on non-commercial, chartered or private aircraft, specific provisions apply (see section entitled Travel on non-commercial chartered or private aircraft).

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

4. Specific guidance on invitations and fundraisers

An invitation to attend a function where the invitation is duty-related (i.e. for which the public office holder had or has an organizational, ceremonial, presentational or representational role) is not considered to be a gift. Attendance is considered to be the fulfillment of an official function or duty.

However, many events to which public office holders and their family members are invited fall within the definition of a gift. In that regard, the question of whether the invitation “might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function” must be addressed. It is important for the public office holder to consider the reason for the invitation in the context of the office held. Exceptions may apply if the invitation is:

from a friend or relative; or

offered as a normal expression of courtesy or protocol; or

within the customary standards that normally apply to the public office holder’s position.

Where there are official dealings, either current or anticipated, between the public sector entity of the public office holder and the organizers or sponsors of the event, the public office holder should pay the normal price to attend the event rather than accept a free invitation. For example, where a public office holder is part of a public sector entity that regulates the sponsor or organizer of the event or the public office holder has quasi-judicial jurisdiction in respect of the sponsor or organizer of the event, the public office holder should pay to attend the event.

Sometimes public office holders are invited to attend fundraising events as the guests of an individual or organization that has purchased tickets or a table at the event from the organizers or sponsors of the event. Where there are official dealings, either current or anticipated, or a regulatory or quasi-judicial relationship with the individual or organization, the public office holder should pay to attend the event.

Where there are no official dealings and there is no other reason to be concerned about a perception of trying to influence decision-making, then the Office does not consider it a contravention to accept the invitation (gift); however, reporting public office holders are still subject to the disclosure requirements and public declaration requirements of the Conflict of Interest Act (see section entitled When to disclose a gift to the Commissioner and when to publicly declare it).

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

5. Specific guidance on business lunches

Accepting a free business lunch could fall under the general prohibition against gifts if it might reasonably be seen to have been given to influence the public office holder. The nature and venue of the lunch as well as the business relationship to the payer are relevant factors to be considered. While a single business lunch may not give rise to such a perception, a series of free business lunches might reasonably be seen to have been given to influence the public office holder.

The Conflict of Interest Act provides a specific exception for situations where a free lunch (gift) would be considered to be a normal expression of courtesy or protocol or where it would be within the customary standards that normally accompany the public office holder’s position. Where such an exception is not applicable, the public office holder should pay for the lunch.

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

6. Travel on non-commercial or chartered aircraft (ministers, parliamentary secretaries, ministerial staff

The relevant provisions of the Conflict of Interest Act are:

12. No minister of the Crown, minister of state or parliamentary secretary, or member of his or her family and no ministerial advisor or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.

25.(6) If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

The Office interprets the prohibition against the acceptance of certain air travel as referring to an offer of a flight at a reduced rate or at no cost. No minister or any other person referred to in section 12 of the Act is permitted to travel on non-commercial or private aircraft at a reduced rate or at no cost at any time unless one of the following three conditions applies:

The flight is required in his or her capacity as a public office holder. An example might be where there is a need to visit a remote business or corporate facility and the only means of travel would be on the business or company aircraft.

There are exceptional circumstances such as an emergency or commercial aircraft breakdown and no other commercial flight is reasonable in the circumstances.

The prior approval of the Commissioner has been sought and granted.

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

7. When to disclose a gift to the Commissioner and when to publicly report it

The relevant provisions of the Conflict of Interest Act are:

23. If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds \$200 from any one source other than relatives and friends in a 12 month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds \$200.

25.(5) If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of \$200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted. (emphasis added)

2.(1) "reporting public office holder" means a public office holder who is

- (a) a minister of the Crown, minister of state or parliamentary secretary;
- (b) a member of ministerial staff who works on average 15 hours or more a week;
- (c) a ministerial advisor;

(d) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits;

(e) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or

(f) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

Section 23 and subsection 25(5) of the Act establish rules for reporting public office holders on disclosing gifts to the Commissioner and publicly declaring their receipt. These rules do not apply to gifts or other advantages received from family or friends.

Gifts received by a reporting public office holder or by a member of his or her family must be disclosed to the Commissioner if the value of an individual gift exceeds \$200 or the total value of all gifts from one source exceeds \$200 in a 12-month period. Disclosure is required within 30 days of receiving a gift exceeding \$200 or within 30 days of the time when the total value of all gifts from one source exceeds \$200 in a 12-month period.

In addition to the disclosure to the Commissioner, a public declaration must also be made within 30 days of receipt each time a single gift exceeds \$200 in value. The declaration of the gift must provide sufficient detail to identify the gift, the donor and the circumstances in which the gift was accepted.

By way of example, in the case of gifts from one source that exceed the total value of \$200 in a 12 month period, a series of four gifts valued at \$51 each received from one source in a 12 month period would have to be disclosed to the Commissioner within 30 days of receipt of the fourth gift, but no public declaration would be required. On the other hand, the receipt of a single gift valued at more than \$200 would have to be both disclosed to the Commissioner and publicly declared within 30 days of receipt.

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

8. Determining the value of a gift for the purpose of disclosure and declaration

The Office is frequently asked how to determine the value of a gift. All gifts are covered by the Conflict of Interest Act regardless of value. The value of a gift is NOT a criterion of acceptability; it is a threshold for the purpose of disclosure to the Office and the public.

The value for declaration is based on the commercial value of the gift, that is, the amount one would have to pay to purchase a similar gift. Although abstract external factors may appear to increase the value of a gift, the Office does not generally consider them in determining the value of a gift. The Office does not provide reimbursement for the cost of evaluation of a gift's commercial value.

Advisors in the Office are available to provide guidance on specific situations. They can be reached at 613-995-0721.

Conflict of interest commissioner's advisory opinion on public disclosure of gifts received in connection with travel

■ As you may know, I made several recommendations to the House of Commons Standing Committee on Procedure and House Affairs, in the context of the five-year review of the Code, regarding changes to the gift rules under the Conflict of Interest Code for Members of the House of Commons. While those recommendations were being considered, I issued this advisory opinion to clarify the rules as they applied to gifts received in connection with travel and address ongoing confusion about them.

I remind all Members of your obligation to publicly declare, under section 14 of the Code, all gifts with a value of \$200 or more. You are required to file with my Office a Public Statement of Gifts or other Benefits for all such gifts.

These include gifts received as a result of any domestic and international travel in which you participate in your role as a Member of the House of Commons. Travel includes official parliamentary exchanges, which are visits abroad by delegations of Members, led by the Speaker of the House of Commons and organized at the official invitation of the speakers of other countries' national parliaments. Please note that gifts received in connection with sponsored travel must be declared under section 15 as part of the statement of sponsored travel; you do not need to declare them under section 14.

All gifts that you may be offered, whether in connection with travel or in any other situation, are subject to the acceptability test set out in subsection 14(1) of the Code, which prohibits Members and their families from accepting gifts that might reasonably be seen to have been given to influence them in the exercise of a duty or function of office.

Subsection 14(2) provides an exception for "gifts or other benefits received as a normal expression of courtesy or protocol, or within customary standards of hospitality that normally accompany a Member's position." Gifts offered to Members participating in international delegations and those offered subsequent to a speech or presentation made by a Member would normally meet this exception and therefore be acceptable, even if they could reasonably be seen to have been given to influence. Such gifts are, however, still subject to the Code's public disclosure requirements.

Under subsection 14(3), you must, within 60 days after acceptance, publicly disclose all gifts that have a value of \$200 or more, and all gifts received from one source in a 12-month period if their total value is \$200 or more.

Members who are ministers or parliamentary secretaries are also subject to the gift provisions of the Conflict of Interest Act, under which all gifts with a value of \$200 or more must be publicly disclosed. A guideline on gifts under the Act is available on the Office website.

I invite you to contact my Office if you have any questions, by telephone at 613-995-0721 or by email at ciec-ccie@parl.gc.ca.

Mary Dawson

Conflict of Interest and Ethics Commissioner

Source: Office of the Conflict of Interest and Ethics Commissioner; updated July 2016

Acceptability of gifts offered in conjunction with lobby days

■ This advisory opinion from the Office of the Conflict of Interest and Ethics Commissioner was last updated in October 2015.

A number of organizations hold lobby days on Parliament Hill, and I have been made aware of several such events. Organizations hold lobby days in order to raise awareness of various causes and gain support for them, identify champions, issue calls for action and put forward key messages to advance their agenda—in short, to lobby Members of Parliament in their role as legislators and policy makers.

You may be offered gifts or benefits in conjunction with lobby days. I remind you that you are prohibited under the Conflict of Interest Code for Members of the House of Commons from accepting a gift that might reasonably be seen to have been given to influence you. An acceptability test is set out in subsection 14(1) of the Members' Code:

14. (1) Neither a Member nor any member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.

Under the Code, Members are not allowed to accept any gift or benefit that might reasonably be seen to have been given to influence them. I remind you that the \$200 threshold at which acceptable gifts or benefits must be publicly declared (subsection 14(3)) is not a threshold for their acceptability.

If the person or entity offering the gift is seeking or is likely in the future to seek your support in the exercise of a duty or function of your office, then you must refuse it. This applies to all organizations, including non-profit and charitable organizations. Given that organizations that hold lobby days on Parliament Hill are clearly seeking your support as a Member, you are prohibited from accepting gifts from them.

You are prohibited not only from accepting such gifts directly, but also indirectly. This means, for example, that gifts that do not pass the acceptability test cannot be accepted by your staff on your behalf or in your stead. Nor may you accept a gift offered on behalf of an organization seeking to lobby you, even if the individual actually giving you the gift is not registered to lobby.

This prohibition is not affected by the ultimate disposition of a gift that might reasonably be seen to have been given to influence you: you cannot accept such a gift even if you plan to donate it to charity or give it to someone else.

Trinkets or favours of token value, such as pins, pens, notepads or keychains, would generally not reasonably be seen to have been given to influence you and would therefore usually be acceptable. However, depending on your role and whether the gift is being offered by someone whose interests could be affected by a decision that you may be called upon to make, it may still be inadvisable to possess an article that clearly advertises a particular donor.

In addition, the Code provides an exception for "gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a Member's position" (subsection 14(2)). A token expression of appreciation in the context of an official interaction with a lobbyist would be considered a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a Member's position. For example, light refreshments offered in the context of a lobby day would likely be covered by this exception. Advisors in my Office are available to provide guidance on specific situations.

Members who are ministers or parliamentary secretaries are also subject to the gift provisions of the Conflict of Interest Act. A guideline on gifts is available on my Office website.

Members who have any questions are invited to contact my Office by telephone at 613-995-0721 or by email at ciec-ccie@parl.gc.ca.

*Source: Office of the Conflict of Interest and Ethics Commissioner
Conflict of interest commissioner's guidance on gifts (including invitations,
fundraisers and business lunches)*

History of Bill S-207 — An act to amend the Conflict of Interest Act (gifts)

■ There have been five legislative attempts to limit the acceptance of gifts. The first effort stretches back to Stephen Harper’s tenure as prime minister while the Conservatives were shepherding the Federal Accountability Act in 2006.

Senate Liberals proposed three amendments — 7, 10 and 14 — that would remove the exception in the Conflict of Interest Act, which allows public office holders (POH) and their family members to accept gifts from friends, even possibly in the face of a potential conflict of interest. The proposed changes would have also required them to disclose all gifts, save for those from family members, worth \$200 or more.

The Conflict of Interest Act’s exception for receiving gifts from relatives would remain.

The Harper administration rejected the Senate committee’s amendments, saying they would be “an inappropriate intrusion into the lives of public office holders and their families.”

Liberal Sen. Joseph Day, who had been the opposition critic on the accountability bill, saw the friend exemption as a “major loophole,” as he put it during his testimony in 2013, because the act is silent on who qualifies as a friend.

In October 2013, Day revived the effort, with his introduction of Bill S-207. Like the first effort, the bill took aim at the friend exemption.

If Bill S-207 had been adopted, it would have narrowed “the circumstances in which public office holders and their families may accept gifts,” and expanded disclosure requirements for those gifts.

Bill S-207 made its way through the Senate committee, but it failed to reach the House floor for debate.

Day, speaking about how nebulous the word “friend” can be, noted at the time that a friend can mean virtually everyone in the Facebook era. “If the courts were looking to a public, general understanding of what a friend is, and they looked at Facebook, there are thousands, if not millions of people who are on Facebook and social media. They have thousands of friends,” Day said during a Senate committee meeting in 2014.

As it stands, POHs and family members can accept gifts from friends without having to disclose those benefits, even if they are worth \$200 or more.

During the last review of the Conflict of Interest Act, removing the exception for friends was not among the recommendations proposed by Mary Dawson, the ethics commissioner at the time.

Dawson changed her mind following her report in December 2017 on whether Prime Minister Justin Trudeau violated ethics rules by accepting free trips to the island of the Aga Khan, whose foundation is registered to lobby. Dawson, speaking as the former commissioner, told the House ethics committee in January 2018 she supports scrapping the friend exemption.

With the House committee expected to revisit the act this year, calls for limits on acceptable gifts could resurface again.

Similar Bills Introduced in Previous Sessions

Note: The following bills did not progress past second reading stage in the Senate
41st Parliament, 1st Session

S-222, An Act to amend the Conflict of Interest Act (gifts)(Sponsor: Sen. Day)

40th Parliament, 3rd Session

S-208, An Act to amend the Conflict of Interest Act (gifts)(Sponsor: Sen. Day)

40th Parliament, 2nd Session

S-239, Act to amend the Conflict of Interest Act (gifts) (Sponsor: Sen. James Cowan)

Timeline:

October 31, 2013:

Liberal Sen. Joseph Day, who represents New Brunswick, introduced An Act to amend the Conflict of Interest Act (gifts) in the Senate Chamber. Bill S-207 was read a first time.

December 5, 2013:

Bill S-207, an act to amend the Conflict of Interest Act (gifts), was debated at second reading.

March 5, 2014:

Bill S-207, an act to amend the Conflict of Interest Act (gifts), continued to be debated at second reading.

May 8, 2014:

Bill S-207, an act to amend the Conflict of Interest Act (gifts), continued to be debated at second reading, was read a second time and referred to the Senate standing committee on rules, procedures and the rights of Parliament.

What happens to gifts forfeited by the prime minister?

■ The gifts given to Prime Minister Justin Trudeau — and wife, Sophie Grégoire Trudeau — come from all over the map. There's the handmade Bedouin leather saddle bequeathed to him by Jordan's King Abdullah II Ibn Al Hussein, boxes of dates from Algeria's president, Abdelaziz Bouteflika, and a cashmere "resistance" sweater from Lingua Franca, an American fashion line, to name a few.

It is customary for heads of state and other ranking officials to exchange gifts. But even those received during diplomatic engagements are not always for keeps.

Though the Trudeaus presumably kept the US\$285 bottle of Tequila Casa Dragones Joven from Mexican President Enrique Peña Nieto, they couldn't bring home the pants designed by local fashion designer Alejandro Carlin and a pure silver coin featuring the Aztec calendar from Peña Nieto and his wife, Angélica Rivera.

Because of federal conflict-of-interest rules, gifts or advantages worth \$1,000 or more have to be surrendered to the Crown. That rule, outlined in the Conflict of Interest Act, applies "unless otherwise determined by the Commissioner." Gifts from friends and relatives are not captured by disclosure rules.

The commissioner can, however, make exceptions. In an email in March 2018, the Office of the Conflict of Interest Commissioner said: "These determinations are made in exceptional circumstances and on a case-by-case basis, in communication with the individual public office holder, not the gift donor."

Forfeited gifts and other gifts with a value of \$200 or more have to be publicly declared on the public registry that the ethics commissioner maintains. Records are updated regularly.

Despite the rules surrounding gifts, public office holders are not required to clear acceptance of a gift with the commissioner beforehand, but are encouraged to seek advice from the office "specifically tailored to their situation," the office noted in the email.

What the registry lacks in detail about the exact value of these gifts, it does provide a glimpse of what some countries consider to be the nation's treasures.

Take the gift that Trudeau received from Chinese Premier Li Keqiang during his trip to Beijing. Keqiang gave Trudeau the Huawei Mate 10 Pro Android phone, which retails for more than \$1,000 and represents part of China's effort to rival the U.S. in the telecommunications space.

Then there's the wooden humidor containing Cohiba Cigars from Cuban President Raúl Castro and given to Trudeau during his visit to Cuba in 2016, which marked Canada's first state visit to Cuba in two decades. That particular brand of cigars — each is worth roughly \$70 apiece — was traditionally reserved for diplomatic purposes, according to the New York Observer. Because the gift was valued at \$1,000 or more, it's in the inventory of forfeited goods.

Where do forfeited gifts go? Each department, according to the ethics commissioner's office, has its own established procedures for handling those gifts.

Stewardship of gifts forfeited by the prime minister are in the hands of the National Capital Commission (NCC). Since January 2012, the federal agency has been responsible for holding onto the gifts until they can be transferred to a new home, said Jean Wolff, senior manager of communications at NCC, in an email sent in March 2018.

A dossier on each forfeited gift is prepared by a gift co-ordinator at the Prime Minister's Office before it is transferred to the NCC. Each file includes the item's registration, photograph, description, provenance, any press clippings, correspondence or event details. All of this information helps the agency determine the gift's "significance and commemorative value."

As of March 2018, 17 of the 60 forfeited gifts in its inventory were given to Trudeau or a member of his family, according to the NCC.

Some items may find a home at an "appropriate federal institution," likely a museum, which has the "mandate or capacity to preserve such items," Wolff added.

Since the forfeited gifts are considered Crown property, they are destined to remain in the custody of a federal institution, unless individual arrangements are made by the museums to loan them to another institution.

Nine gifts — all of which were given to Stephen Harper during his time as prime minister — are now a part of the Canada Science and Technology Museum's collection in Ottawa.

That museum received three luxury watches, including a Swiss watch made by Hublot, courtesy of forfeiture rules. (Some of Hublot's watches can retail for upwards of \$40,000.) It also received a Louis Vuitton computer bag, monogrammed with Harper's initials, "SH."

But what happens to gifts that are hard to place in a museum?

Those Cuban cigars from Castro are still in the NCC's possession, Wolff said, because the agency does not have an official policy on perishable goods. He added that the NCC is "still working on appropriate guidelines to address this matter."

However, the NCC does have guidelines for perishable delicacies that carry no health concerns. Those goods are offered to the Government of Canada Workplace Charitable Campaign, a charitable-giving arm developed for federal public servants and federal retirees, to help with its fundraising.

Other gifts with a limited shelf life, including perfumes or computers, might be auctioned off through Public Workers and Government Services Canada, as long as they haven't been engraved or don't carry a commemorative intent.

Rules under the Conflict of Interest Code for Members of the House of Commons

The members' code has similar provisions that require disclosure of any gift or benefit received that has a value of \$200 or more, or if the total of the benefits received from one source in a 12-month period is within that threshold. Those subject to the code have 60 days after receiving the gift or benefit to file a statement with the commissioner. The exemption that applies to gifts from friends or relatives is also in the code.

Past recommendations on the lobbying act and the conflict of interest act

■ As lobbyists and parliamentarians await the upcoming review of the Lobbying Act, and with the review of the Conflict of Interest Act underway, The Lobby Monitor has produced a guide to the gift-related recommendations produced in the previous studies. Although the vast majority were not implemented, they could play a part in the pending studies of both acts.

The Lobbying Act

The Office of the Commissioner of Lobbying of Canada produced a report with its recommendations for possible amendments to the Lobbying Act in March 2011. Between January and February 2012, the ethics committee heard testimony from various witnesses, including Karen Shepherd, the lobbying commissioner at the time. The committee produced a report with its own recommendations in May 2012.

Karen Shepherd's recommendations

The former commissioner made nine recommendations regarding possible changes to the Lobbying Act. Not one recommendation concerned the issue of gift-giving.

The ethics committee's recommendations

Of its 11 recommendations for possible amendments to the Lobbying Act, one centred on the giving of gifts. Recommendation seven said that the act should include “an explicit ban on the receipt of gifts by lobbyists.”

The government's response

In his role as president of the Treasury Board, Conservative MP Tony Clement indicated in a letter to the ethics committee that it would consider an explicit ban on gifts.

“The Government will therefore consider making it more explicit to lobbyists that they must not place public office holders in a real or perceived conflict of interest. Specifically, the Government will prohibit, under the Lobbying Act, lobbyists from giving gifts to public office holders,” Clement wrote. “This will include providing clarity regarding the nature and value of gifts such that lobbyists will know the standards they will be expected to meet.”

Result

The current version of the Lobbying Act still does not include any reference to the provision of gifts from lobbyists to public office holders. The 1997 version of the Lobbyists' Code of Conduct, which had no explicit reference to gifts, was amended on Dec. 1, 2015, and is still in effect. The 2015 version of the code added Rule 10: “To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.”

The Conflict of Interest Act

The review of the Conflict of Interest Act took place between January and June 2013. Mary Dawson, ethics commissioner at the time, submitted a report with 75 recommendations in January and spoke before the committee on four separate occasions. The ethics committee released a report with its own recommendations for possible amendments in February 2014.

Mary Dawson

The now-former ethics commissioner submitted seven recommendations related to public office holders' responsibilities when receiving gifts:

Recommendation 1-1: "That the Act be amended to establish certain disclosure and public reporting requirements for non-reporting public office holders in relation to outside activities, recusals and gifts or other advantages."

Recommendation 3-6: "That section 11 include references to the other provisions relating to gifts, namely section 23 and subsection 25(5)."

Recommendation 4-8: "That the threshold for disclosing gifts or other advantages accepted from any one source be reduced to a minimal amount (such as \$30, individually or cumulatively)."

Recommendation 4-13: "That subsection 25(5) be amended to reduce the value of \$200 to a lower amount, if a lower amount is established pursuant to Recommendation 4-8."

Recommendation 4-26: "That section 23 of the Act, relating to the disclosure to the Commissioner of gifts or other advantages, be amended to apply to all public office holders."

Recommendation 4-27: "That subsection 25(5), relating to the public declaration of gifts or other advantages, be extended to apply to all public office holders, where the gifts or other advantages relate to their duties as public office holders."

Recommendation 6-13: "That section 52 be amended to provide for penalties for substantive contraventions of the Act where an examination is not warranted because it is clear that a contravention has occurred. These could be applied, for example, in relation to gifts (section 11), prohibited activities (section 15), holding controlled assets (section 17) and failures to recuse (section 21). Penalties relating to sections 11 and 21 should apply to non-reporting public office holders as well as reporting public office holders."

The ethics committee

The committee noted Dawson's recommendations and the testimony of various witnesses on the matter, but did not endorse those ideas or put forward any of its own regarding gifts in its 16 recommendations. The NDP put forward a dissenting report with its own recommendations for amendments to the Conflict of Interest Act. Of its 10 recommendations, the NDP proposed that the ethics commissioner have the power to administer financial penalties and other penalties for breaching the act, which could include the reimbursement of the value of a received gift, hospitality or benefit and that the value of a gift requiring disclosure be reduced to \$100 from \$200.

The government's response

Clement responded to the committee's report, thanking it for its work, but did not respond to any specific recommendations made by the committee or the NDP in its dissenting report.

“The Government welcomes and supports the sixteen recommendations outlined in the Committee’s report and agrees with the intended improvements to the COIA. The Government will consider how best to implement these improvements in a manner that furthers the purposes of the Act,” the letter reads.

Results

The only notable change to the Conflict of Interest Act in connection with the receipt of gifts is a slight modification to the definition of reporting public office holder. The current edition of the act explicitly states that the chief electoral officer and parliamentary budget officer are reporting public office holders while the 2013 version of the act did not outright name these officials in that definition.

The Conflict of Interest Code for Members of the House of Commons

The last review of the Conflict of Interest Code initially began on May 15, 2012, but was not officially completed. Instead, it resumed on Feb. 19, 2015. Dawson submitted a list of recommendations to the procedure committee that same month.

Mary Dawson’s recommendations

Two recommendations were made in connection with the receipt of gifts:

Recommendation 3: “That the Code be amended to require Members to disclose to the Office of the Conflict of Interest and Ethics Commissioner and publicly declare all gifts valued at a significantly lower threshold than the current \$500.”

Recommendation 4: “That the Code be amended to explicitly exclude from the gift rules attendance at any reception or event to which all Members of the House of Commons are invited. Invitations extended to individual Members, committees or caucuses would not fall within this exception, nor would gifts received at such events other than meals or refreshments offered to all Members.”

The procedure committee’s recommendations

The committee agreed that threshold for disclosure of gifts accepted under section 14 of the Code be lowered from \$500 to \$200.

The government’s response

There was no documented government response to the procedure committee’s report.

Results

Later that year, the code was updated to bring it in line with the rules under the Conflict of Interest Act. Members are now required to file a statement with the commissioner, disclosing the circumstances in which they accept a gift or benefit if it has a value of \$200 or more, or “if the total value of all such gifts or benefits received from one source in a 12-month period is \$200 or more.”

Rules on travel for parliamentary officials

■ There are no explicit rules around expectations for lobbyists regarding the issue of sponsored travel. However, individuals who are subject to the Conflict of Interest Act and Conflict of Interest Code for Members of the House of Commons can refer to standalone sections on the topic.

There is a lack of clarity around the rules lobbyists must follow when offering travel opportunities to MPs, said Duff Conacher, co-founder of Democracy Watch, in a phone interview in March 2018.

Rule 10 of the Lobbyists' Code of Conduct says that lobbyists are not to provide or promise gifts, favours or benefits that a public office holder (POH) they are lobbying or will lobby "is not allowed to accept."

"MPs are allowed to accept gifts of sponsored travel, so does that mean it's not a violation of the Lobbyists' Code to give that gift?" Conacher said.

The Office of the Commissioner of Lobbying (OCL) did confirm to The Lobby Monitor in March 2018 that Rule 10 would apply to any lobbyist looking to provide travel to a POH, but would not clarify whether travel provided by a lobbyist is allowed if the POH in question is able to accept it.

Instead, the email statement from the OCL to The Lobby Monitor reads, "Lobbyists can always contact our Office for guidance on a specific situation. We can be reached at questionslobbying@ocl-cal.gc.ca or 613-957-2760."

Conacher's concern about the trips offered to MPs by lobbying organizations is why he requested an investigation into all trips taken by MPs and paid for by lobbyists from March 2009 to May 2016, when he filed his request. During the interview in March, Conacher said he had not received any information about possible rulings on the individual trips listed on the complaint.

The OCL has yet to issue a decision on any of the cases. In an email to The Lobby Monitor, the office said: "Each allegation is given the time necessary based on its complexity. In this case, the information received is related to over 15 corporations and organizations. Due process is being followed."

Even if Rule 10 were interpreted in a way that would allow lobbyists to pay for MPs' excursions, Conacher's interpretation of the code suggests that sponsored travel violates Rule 6 of that same code. "You would still violate rule 6 because you would have undertaken an action that would place a public office holder in a real or apparent conflict of interest," he said.

Travel rules under the Conflict of Interest Act

Section 12: No minister of the Crown, minister of state or parliamentary secretary, no member of his or her family and no ministerial adviser or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.

Section 25(6): If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

Travel rules in the Conflict of Interest Code for Members of the House of Commons

Section 15: Sponsored travel.

(0.1) Despite subsection 14(1), a Member may accept, for the Member and guests of the Member, sponsored travel that arises from or relates to his or her position.

Statement: sponsored travel.

(1) If travel costs exceed \$200 and those costs are not wholly paid from the Consolidated Revenue Fund or by the Member personally, his or her political party or any parliamentary association recognized by the House, the Member shall, within 60 days after the end of the trip, file a statement with the Commissioner disclosing the trip.

Content of statement.

(2) The statement shall disclose the name of the person or organization paying the travel costs, the name of any person accompanying the Member, the destination or destinations, the purpose and length of the trip, the nature of the benefits received and the value, including supporting documents for transportation and accommodation.

Publication.

(3) By March 31 of each year, the Commissioner shall prepare a list of all sponsored travel for the previous calendar year, including the details set out in subsection (2), and the Speaker shall lay the list upon the Table when the House next sits.

House of commons ethics committee's past meetings

■ Latest meetings:

FEB. 8, 2018

Feb. 8 – Review of the Conflict of Interest Act

Witnesses:

Office of the Conflict of Interest and Ethics Commissioner

- Mario Dion, Conflict of Interest and Ethics Commissioner
- Martine Richard, Senior General Counsel
- Lyne Robinson-Dalpe, Director, Advisory and Compliance

Committee members present: Frank Baylis, Nathaniel Erskine-Smith, Mona Fortier, Michel Picard, Raj Saini, Anita Vandenberg, Jacques Gourde and Peter Kent

Acting member present: Irene Mathysen for Charlie Angus

Minutes: Pursuant to Standing Order 108(3)(h)(vi) and the motion adopted by the Committee on Monday, October 30, 2017, the Committee commenced its review of the Conflict of Interest Act.

Mario Dion made a statement and, with Lyne Robinson-Dalpe and Martine Richard, answered questions.

At 10:06 a.m., the sitting was suspended.

At 10:19 a.m., the sitting resumed in camera.

JAN. 10, 2018

Jan. 10 – Subject matter of the Report entitled “The Trudeau Report”

Witness:

Mary Dawson, as an individual

Committee members present: Nathaniel Erskine-Smith, Mona Fortier, Michel Picard, Raj Saini, Jacques Gourde, Bob Zimmer, Peter Kent and Nathan Cullen

Acting members: Chris Bittle for Emmanuel Dubourg; Greg Fergus for Frank Baylis

Minutes: Pursuant to Standing Order 108(3)(h)(vii), the Committee commenced its study of the Subject matter of the Report of the Conflict of Interest and Ethics Commissioner entitled “The Trudeau Report”.

Mary Dawson made a statement and answered questions.

At 12:07 p.m., the sitting was suspended.

At 12:17 p.m., the sitting resumed.

Questioning of the witness resumed.

Motion

Peter Kent moved, — That the Committee invite the Prime Minister to discuss the findings of the Ethics' Commissioner contained in “The Trudeau Report” released in December as well as her testimony before this Committee today.

After debate, the question was put on the motion and it was negatived on the following recorded division:

YEAS: Nathan Cullen, Jacques Gourde, Peter Kent — 3;

NAYS: Chris Bittle, Nathaniel Erskine-Smith, Greg Fergus, Mona Fortier, Michel Picard, Raj Saini — 6.

JAN. 9

Jan. 9 - Committee business: Letter from the Hon. Peter Kent

No witnesses

Committee members present: Nathaniel Erskine-Smith, Mona Fortier, Michel Picard, Raj Saini, Jacques Gourde, Bob Zimmer, Peter Kent and Nathan Cullen

Acting members present: Chris Bittle for Emmanuel Dubourg; Greg Fergus for Frank Baylis

Minutes: The Committee proceeded to the consideration of matters related to Committee business.

Motion

Peter Kent moved, — That, the Committee invite the Prime Minister to discuss Commissioner Dawson's findings in "The Trudeau Report" released by the Commissioner's office on December 20th, 2017, and that this meeting take place either on January 17th or January 18th, 2018.

After debate, the question was put on the motion and it was negatived on the following recorded division:

YEAS: Nathan Cullen, Jacques Gourde, Peter Kent — 3;

NAYS: Chris Bittle, Nathaniel Erskine-Smith, Greg Fergus, Mona Fortier, Michel Picard, Raj Saini — 6.

At 4:13 p.m., the Committee adjourned to the call of the Chair.

DEC. 12, 2017

Dec. 12 – Certification of the Nomination of Mario Dion to the Position of the Conflict of Interest and Ethics Commissioner

Witness:

Mario Dion, nominee for the position

Committee members present: Frank Baylis, Nathaniel Erskine-Smith, Mona Fortier, Michel Picard, Raj Saini, Jacques Gourde, Peter Kent, Bob Zimmer and Nathan Cullen

Acting member present: Sherry Romanado for Emmanuel Dubourg

Minutes: Pursuant to Standing Order 111.1(1) and the motion adopted by the Committee on Monday, December 11, 2017, the Committee commenced consideration of the certificate of nomination of Mario Dion to the position of Conflict of Interest and Ethics Commissioner, referred to the Committee on Monday, December 11, 2017.

The witness made a statement and answered questions.

Motion

Nathaniel Erskine-Smith moved, — That the Committee report the following to the House:

Your Committee has considered the Certificate of Nomination of Mario Dion, nominee for the position of Conflict of Interest and Ethics Commissioner, referred on Monday, December 11, 2017, pursuant to Standing Order 111.1(1).

Your Committee has considered the proposed appointment of Mario Dion as Conflict of Interest and Ethics Commissioner and reports its recommendation that he be confirmed by the House of Commons as Conflict of Interest and Ethics Commissioner.

Debate arose thereon.

The question was put on the motion and it was agreed to, by a show of hands:

YEAS: 8;

NAYS: 0.

At 4:48 p.m., the Committee adjourned to the call of the Chair.

DEC. 6, 2017

Dec. 6 – Certification of Nomination of Nancy Bélanger to the Position of Commissioner of Lobbying

Witness: Nancy Bélanger, nominee for the position

Committee members present: Frank Baylis, Nathaniel Erskine-Smith, Mona Fortier, Joyce Murray (non-voting member), Peter Kent, Bob Zimmer and Nathan Cullen

Acting members present: Paul Lefebvre for Michel Picard; Brenda Shanahan for Raj Saini; David Tilson for Jacques Gourde

Minutes: Pursuant to Standing Order 111.1(1) and the motion adopted on Monday, December 4, 2017, the Committee commenced consideration of the certificate of nomination of Nancy Bélanger to the position of Commissioner of Lobbying, referred to the Committee on Thursday, November 30, 2017.

Nancy Bélanger made a statement and answered questions.

Motion

Nathaniel Erskine-Smith moved, — That the Committee report the following to the House:

Your Committee has considered the Certificate of Nomination of Nancy Bélanger, nominee for the position of Commissioner of Lobbying of Canada, referred on Thursday, November 30, 2017, pursuant to Standing Order 111.1(1).

Your Committee has considered the proposed appointment of Nancy Bélanger as Commissioner of Lobbying of Canada and reports its recommendation that she be confirmed by the House of Commons as Canada's Commissioner of Lobbying.

Debate arose thereon.

After debate, the question was put on the motion and it was agreed to, by a show of hands:

YEAS: 7;

NAYS: 0.

At 4:34 p.m., the sitting was suspended.

At 4:39 p.m., the sitting resumed.

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Membership:

Chairman: Bob Zimmer

Vice-chairs: Nathaniel Erskine-Smith, Charlie Angus

Members:

Frank Baylis
Mona Fortier
Joyce Murray (non-voting member)
Michel Picard
Raj Saini
Anita Vandenbeld
Jacques Gourde
Peter Kent

RESOURCE GUIDE

[Conflict of Interest Act](#)

[Conflict of Interest Code for Members of the House of Commons](#)

[Lobbying Act](#)

[Lobbyists' Code of Conduct](#)

[Open and Accountable Government: A Guide for Ministers 2015](#)

[Ethics and Conflict of Interest Code for Senators](#)

[Ethics and Conflict of Interest Code for Senators Directive 2015-01](#)

[Ethics and Conflict of Interest Code for Senators Directive 2015-02](#)

[Defence Administrative Orders and Directives 7021,
Conflict of Interest rules and other related rules](#)

[Public Servants Disclosure Protection Act](#)

ARCHIVES

How ex-lobbyists handle stakeholder engagement

NEWS | BEATRICE PAEZ

PUBLISHED: Wednesday, March 14

■ Political insiders within the Ottawa bubble are hemmed in by a series of regulations, governing their interactions with one another.

Ex-staffers-turned-lobbyists ousted through a change in a government may find themselves outside the inner circle while still influencing public policy from an office on Queen Street. Lobbyists-turned-politicians, on the other hand, have to maintain a measure of professional distance from old colleagues and former clients.

Liberal MP Francis Drouin was a former consultant lobbyist at Capital Hill Group before he beat the incumbent Conservative in his riding in 2015. “I am being careful in terms of whom I meet with, with regards to former clients, the ones I’ve represented,” said Drouin in a phone interview. “That’s a relationship I’m aware of.”

In an environment where cocktail circuits, conventions and lobby days are a constant feature on the Hill, public office holders (POH) have to be cognizant of rules surrounding those relationships to avoid finding themselves in a conflict of interest, or even the perception of one.

For Drouin, that means buying his own beer when he’s out with lobbyist friends and avoiding shop talk. “They don’t lobby me,” he said. “Perception is important.”

Perception of a conflict of interest has been a hot topic on the Hill. There has been renewed scrutiny on the ties that bind government officials and lobbyists following then-ethics-commissioner Mary Dawson’s blistering report that found Prime Minister Justin Trudeau broke rules when he stayed at the private island of the Aga Khan at no cost.

A review of the Conflict of Interest Act, which applies to ministers and other high-ranking officials, has begun, confirmed Jean-Denis Kusion, the House ethics committee clerk, to The Lobby Monitor. And there’s a debate brewing on the rules around gifts, including whether to remove the exemption that allows POHs to accept gifts or advantages from relatives and friends.

Sen. Dennis Dawson, a member of the dwindling Liberal caucus, was once a lobbyist before he returned to public office as a senator in 2005. He said in a phone interview that he doesn’t see a need to remove the friend exemption.

“If it was an issue, and we were overwhelmed with gifts, let’s put a cap on it,” Sen. Dawson said.

Drouin, for his part, said he has not done a “deep dive” on which aspects of the Conflict of Interest Act are in need of reform and could not comment.

Senators are bound by a different set of ethics rules, so tinkering with the Conflict of Interest Act wouldn't directly affect them. Instead, they are obligated to follow the Ethics and Conflict of Interest Code, which stipulates that they are only allowed to accept gifts or benefits received as an expression of courtesy or protocol or hospitality. There is no exception allowing them to accept gifts from friends in the code.

Because schmoozing and developing a dialogue with stakeholders is seen as an extension of a politician's official duties, Dawson and Drouin often have to turn down a lot of invitations to meet or attend functions.

In deciding which engagements to prioritize, Drouin said he makes time for stakeholders with a direct link to the issues in his eastern Ontario riding, Glengarry—Prescott—Russell. Drouin sits on three committees, including agriculture, and emerged as the most-lobbied backbencher last year, the Hill Times reported.

"If you look at the registrations, it's mostly [with] agriculture [groups]," he noted.

He explained that those meetings offer an opportunity to dive deeper into pressing issues beyond the seven minutes he gets at committee to pose questions. "[The associations] pick local people, and I happen to have a riding that's close to Ottawa."

Given that Sen. Dawson has occupied both worlds, and has friendships with people who might lobby him, he said he does "draw a line" on those relationships. When lobbyist friends visit his office to discuss files, he doesn't "shy away from" asking them if they're registered on specific files. (MPs and senators alike may be approached by the lobbying commissioner's office to verify meetings with lobbyists.)

Like Drouin, he prioritizes engaging with stakeholders who have issues that speak to his "geographic responsibility" and committee work, but at the same time, he tries not to "overthink" decisions about which functions to attend. "Some of my colleagues will say, 'I don't want to accept any of [the invitations],' but you want to know what's going on."

"I've always encouraged players on different issues to not come to Ottawa when they're in a crisis," he said, noting that lobby days help officials develop a working understanding of issues. "So, that of there is a crisis or [if] legislation comes down the pipeline, we're not playing out of ignorance. We're playing with people we know."

Dion appeals to ethics committee for broader powers, de minimis for gifts

NEWS | BEATRICE PAEZ

PUBLISHED: TUESDAY, 03/13/2018 3:01 PM EDT

■ Should ranking government officials who wrongly accepted a gift be forced to repay that gift?

Ethics Commissioner Mario Dion is asking the parliamentary ethics committee to consider giving that power to his office as the committee studies the Conflict of Interest Act. The request was made public through a letter from Dion to Conservative MP Bob Zimmer, chairman of the committee.

Dion's letter comes after his appearance before the committee in February.

During his appearance before the committee, Dion was asked about potential reforms to the act. He made appeals for sweeping powers, including the authority to impose steeper sanctions for serious breaches, while also committing to produce a written response to outstanding questions at the request of Liberal MP Nathaniel Erskine-Smith.

Erskine-Smith asked Dion at the hearing whether the commissioner should have the authority to require repayment of the value of an improper gift. Dion used his follow-up letter to provide a response.

"As suggested during my appearance before the Committee, I believe that the Committee should consider giving me the power to make relevant recommendations in my reports," Dion wrote. "Such recommendations would be specific to each situation, including recommending that individuals reimburse the value of gifts improperly accepted."

Dion's testimony in February followed his predecessor's report that found Prime Minister Justin Trudeau violated the act when he and his family accepted trips to the Aga Khan's private retreat in the Bahamas.

Conservative MP Peter Kent avoided directly referring to Trudeau's trips during that meeting, but asked if government officials should repay the public in a "situation where a violation of the act or the code might have improperly generated a significant cost to public funds." (At the time, Kent was campaigning to get Trudeau to reimburse taxpayers for all the costs associated with his rule-breaking trips to the Aga Khan's island.)

Dion said it was outside his purview to decide. The Prime Minister's Office said that Trudeau has already reimbursed the cost of the commercial flights, according to a CBC report.

Other recommendations in relation to gifts were raised in Dion's response. He proposed establishing a de minimis amount for acceptable gifts, or a threshold that would indicate that gifts of a certain value could not be seen to influence a public office holder. Former ethics commissioner Mary Dawson suggested setting the de minimis at \$30, while Dion declined to specify an amount, leaving it to the committee to consider the reform.

Whereas Dawson was in favour of requiring POHs to declare the receipt of gifts above the de minimis, Dion said it "would represent an unreasonable administrative burden" for reporting POHs. POHs already report gifts received that are valued at \$200 or more. Dion also noted that that \$200 reporting threshold hasn't been adjusted for inflation over the years.

In the letter, Dion expanded on his recommendation made at the committee meeting, giving the office the authority to impose sanctions for "substantive breaches." As it stands, the commissioner only has the power to enforce administrative monetary penalties when POHs fail to meet reporting deadlines, including declaring assets.

He proposed creating a criteria for sanctions that would, among other factors, account for the severity of the breach.

Dion also settled the issue of his stance on controlled assets. He intends to uphold Dawson's interpretation that there is a distinction between indirectly and directly controlled assets. POHs are currently under no legal obligation to put indirectly controlled assets in a blind trust. Dawson saw that distinction as a loophole and recommended the act be amended to cover "cases where controlled assets are held indirectly as well as directly."

The issue received renewed attention when reports broke last year that Finance Minister Bill Morneau was holding substantial assets outside a blind trust because those assets were considered indirectly held. Facing pressure and concerns about potential conflicts of interest, Morneau decided in November to sell all his shares in Morneau Shepell, which was founded by his father.

A separate investigation into Morneau's sponsorship of pension legislation is still underway.

Ask the Lobby Monitor: Can lobby groups hand out campaign materials at receptions?

NEWS | BEATRICE PAEZ

PUBLISHED: FRIDAY, 03/09/2018 3:10 PM EST

LAST UPDATED: FRIDAY, 03/09/2018 3:51 PM EST

■ Ask the Lobby Monitor is a new column that offers guidance for confusing situations lobbyists might encounter. We ask for input, as indicated, from a variety of sources, including the Office of the Lobbying Commissioner of Canada, lobbyists, lawyers and ethics groups.

(All proposed scenarios are fictional or adapted.)

Scenario: A not-for-profit organization is hosting a reception open to all parliamentarians and their staffers to mark International Women's Day. The group is registered to lobby on issues related to pay equity and international development. For the past year, it has been running a social-media campaign aimed at raising awareness about closing the pay-equity gap in federally regulated sectors. Part of the campaign involves motivating individuals to contact their local representative.

Though the group does not intend to lobby government officials at the reception, it wants to hand out branded buttons, tagged with its message and social-media handle that refers people to their online campaign.

The commissioner's guidance for receptions says that, to mitigate any risk of creating a sense of obligation or the appearance of one, an invitation to a reception should not be "accompanied by any information related to lobbying activity" and there should not be any lobbying at the event.

Given this guidance, should the group refrain from handing out its campaign buttons because it refers to information related to their lobbying activity?

Response

Lobby days and cocktail receptions are regular features on the Hill. For public office holders, attending such functions is seen as a chance to mingle with stakeholders. Stakeholders, likewise, view those gatherings as an opportunity to build a working relationship with the government.

Lobbyists should not be engaged in lobbying during those events, according to the commissioner's guidance. That includes distributing material related to an organization's lobbying efforts.

"Offering branded buttons tagged with the organizations' message and social media handle pointing to their lobbying campaign is information related to lobbying activities," said Manon Dion, spokeswoman at the Office of the Commissioner of Lobbying, in an email statement. "Handing out such buttons to public office holders who are guests at a reception hosted by the lobbying organization goes against the guidance pertaining to gifts. The buttons with branded messages should not be offered."

Ethics czar in talks with lobbying commissioner to clarify advice on gifts

NEWS | BEATRICE PAEZ

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■ Ethics Commissioner Mario Dion says there is little to gain from merging the ethics and lobbying offices, though both watchdogs are working together to clarify rules that affect lobbyists and government officials.

“There are a few important areas of intersection where we will work together,” said Dion in an interview with The Lobby Monitor on Jan. 31. “Our role is to implement the law as it is, not how we wish it to be.”

Both offices often encounter similar issues and cases, but Dion said putting the two offices under one roof risks disrupting their operations. Some MPs, including Conservative ethics critic Peter Kent have long raised the prospect of combining those mandates as a way to reduce confusion around the rules.

Dion, who assumed office on Jan. 9, said he met with Lobbying Commissioner Nancy Bélanger last week to examine issues where there is some overlap and much confusion.

Each office has its own set of rules and systems in place that govern what is acceptable or not. Where possible, he said, the offices plan to exchange information on their processes.

Dion cited the issue of gifts as one area that he and Bélanger have agreed requires more guidance, which will be jointly developed by the two watchdogs.

“We want to explain [the rules] in the same way, so they hear the same things,” he said.

Since Mary Dawson, the ethics commissioner at the time, released her December report on Prime Minister Justin Trudeau’s trip to the Aga Khan’s Bahamas retreat, there has been renewed scrutiny on the perceived shortfalls of the Conflict of Interest Act’s rules on gifts. Trudeau, operating on the belief that he and the Aga Khan are friends, thought he and his family could accept the spiritual leader’s offer.

As it is written, the act does not define who qualifies as a friend.

“It’s not very precise [as to] what is a friend. It depends on your generation, your cultural background, your family story,” said Dion.

He added it’s important that, “when people are punished” for breaking a rule, there is a clear definition in place around the rule in question.

Lobbyists have also called for more guidance on sponsored travel, with some saying that, when advocacy groups offer to host MPs on a trip aimed at promoting their work abroad, they risk inviting negative press coverage.

Dawson had proposed the idea of developing an acceptability test for sponsored travel, similar to what exists for gifts that public office holders receive. Dion, for his part, said he has not formed an opinion on the subject yet. He is open to revisiting the issue if, and when, it comes up in discussions with parliamentarians.

With the Conflict of Interest Act and the Lobbying Act due for statutory reviews in 2018, Dion and Bélanger are in a position to push for reforms that clarify the obligations of lobbyists and public office holders under those rules.

Dion has yet to hear from the House ethics committee on when he is expected to appear before its members to discuss possible amendments.

Setting internal deadlines for investigations

Dion immediately drew criticism after his confirmation hearing in December for not making an airtight pledge to complete unfinished investigations started under Dawson. Now that he is in office, Dion has been unequivocal about his intention to complete those ongoing probes.

He expects to release a ruling on Finance Minister Bill Morneau's sponsorship of pension legislation in late spring. Opposition parties allege that Morneau broke conflict-of-interest rules, saying the legislation stands to benefit Morneau Shepell, the company his family built.

"I put that timeline out there ... to appear to be making the best-possible effort to do it," Dion said. "Of course, this [deadline] is subject to the availability of people being interviewed."

When it is in the public interest in a case already reported on, he said, the office intends to communicate the deadline it has in mind.

"Each time we decide to launch an investigation, we should have, internally, an estimate of the time," he said. "It should not be open-ended. If you think it's possible to do it in nine months, then that becomes your deadline....I don't know if Mary Dawson did it, whether she had a notional deadline, but I intend to have that."

Addressing critics

A veteran public servant, Dion has faced scrutiny over his track record.

During his tenure as public-sector integrity commissioner, two reports from the Auditor General in 2014 found there was "gross mismanagement" of two whistleblower cases being investigated by the office.

Dion said he inherits a much different situation, given that the Dawson left the office "well structured."

"Two of those cases were found to be inadequately dealt with. I accept that," he said. "Here, we have an office that is much more organized. We have a caseload that's much lower than what I was facing in 2014. I'm very confident that we will not have this type of experience here."

Asked if he feels he has to prove himself, he said: "You always have to prove yourself. We're under constant scrutiny."

Focusing on deterrence

Dion plans to place more emphasis on educating government officials about their obligations.

Given the revolving door of staffers and MPs who come and go, he said it's important that people are aware of the requirements in the act and the members' code of conduct.

"After an election, there's a lot of movement," he noted. "It's not a static cohort at all."

The 2015 election that brought the Liberals back in power, for example, saw 136 rookies join the ranks of MPs.

With more than 2,700 people subject to the act or the code, Dion said his focus will be to increase the number of information sessions available to Hill staffers and use social media and webcasts to reach more people.

New lobby watchdog in ‘learning mode,’ waiting to hear from lobbyists before sounding off on reforms

NEWS | BEATRICE PAEZ

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■ Lobbying Commissioner Nancy Bélanger intends to establish a dialogue with lobbyists before forming opinions on which reforms to push for in the upcoming review of the regulations.

In a sit-down interview on Friday, the new commissioner told The Lobby Monitor that outreach and her own education on how the industry operates would shape her priorities early into her tenure.

Bélanger, who is now two weeks into the role, said she wants to build on what her predecessor has accomplished so far.

“What I envision for down the road is an enhanced profile for this organization,” she said, “mainly because the act does require that the commissioner go out there and make lobbyists aware of the rules.”

At committee, the commissioner said that the legacy she would work towards is one that broadens awareness of the Office of the Commissioner of Lobbying’s (OCL) mandate. She has not plotted out what form a new program would take, but wants to engage public office holders and potential lobbyists about the rules lobbyists are bound to.

“I suspect there are a lot of public office holders who don’t know the obligations of lobbyists,” she said. “I may go out to the public office holder and say, ‘Did this meeting really happen?’”

The office has already reached out to the new ethics commissioner, Mario Dion, to explore opportunities to collaborate in its outreach.

In the weeks ahead, Bélanger is scheduled to meet with her provincial counterparts for a biannual gathering and the Government Relations Institute of Canada (GRIC), which speaks for the influence industry.

Without specifying which areas she wants to seek insights on from the other regulators, Bélanger said she hopes to gain perspective on their personal experiences, advice on “what works, what doesn’t work” and how they educate and network with stakeholders. She wants to get up to speed with how the rules vary under each regime.

On management style, experience

During her nomination hearing in December, Bélanger said she would not “shake things up” if she assumed office.

When asked why it was important to strike that tone at the outset, Bélanger said that it speaks to her experience as a jurist, a role that demands commitment to transparency, impartiality, integrity and fairness.

“I’ve never made a recommendation or made a decision that has not been well thought out,” she said. “I don’t want to walk in here pretending I know it all.”

When the opportunity to apply for the post came up, she knew she had the experience for the job, thanks to stints at the ethics and information commissioners’ offices.

Her fear of appearing intent on securing a title as an agent of Parliament “at all costs” motivated Bélanger to hold off on applying as lobby czar. At the time, she was deputy commissioner at the information commissioner’s office and felt it was “logical” to apply to succeed her boss, whose term was set to end. (A search for a new information commissioner remains underway.)

“I was extremely excited, because I know I’m going to learn,” she said, referring to the call asking if she was interested in the job overseeing the federal lobbying scene.

“[With] the other position, it might not have been that much of a learning curve. This was an opportunity to grow.”

On revisiting guidance on political activities, upcoming Lobbying Act review

With the federal elections coming up, lobbyists are likely to broach the issue of political activities during the Lobbying Act review.

The former lobbying commissioner’s guidelines outlining which political activities are considered risky have been a contentious issue for lobbyists. For example, the guidance advises against lobbying a public office holder if one is simultaneously serving as a campaign chair or organizing a campaign fundraiser because it poses the risk of creating a sense of obligation.

Many contend that some of the rules are too restrictive and infringe on their rights to participate in the electoral process.

On whether those guidelines need to be revisited, Bélanger is reserving her judgment. “I haven’t educated myself enough to know what their concerns are, but I will. ... Whether or not they will need revisiting, I can’t tell you that right now.”

While Bélanger has yet to hear from the House ethics committee about the review, she is preparing for an appearance in the spring — a timeline raised during her hearing.

“I can tell you that that’s the deadline I have in my mind,” she said. “I need to meet with the team to see if there’s anything new. I want to possibly go out and meet some of the groups subject to the Lobbying Act to see their perspective and make my own opinion about some recommendations we want to make.”

On the office’s operating budget

At committee, Karen Shepherd, the former lobbying watchdog, said the office was forced to press pause on certain projects to defend its authority to carry out investigations.

Bélanger has inherited leftover case files from her predecessor. Among them, a probe into a Liberal fundraiser in 2015, hosted by Barry Sherman, Apotex’s now-deceased chairman, a registered lobbyist at the time. Justin Trudeau, then running as third-party leader, was the guest of honour at the event.

Apotex filed a lawsuit in federal court to quash the investigation. Sherman’s death has called the fate of the investigation — and the lawsuit — in question. Maclean’s reported on Friday that the OCL is expected to issue a decision on the probe by Feb. 2.

In the face of financial pressures, including the pending legal challenge and the costs of maintaining the registry, Bélanger said, “it would probably make sense that we would ask for more.”

The OCL’s budget has remained the same — about \$4 million—for the past several years and is not projected to increase.

According to the office's disclosure records, it spent \$226,000 in legal costs to fight a lawsuit filed by Apotex. Last year, the government approved a transfer of \$400,000 to help cover those expenses.

Bélanger is at the stage of assessing if her office needs to ask Parliament for a funding boost.

On transparency

Asked if, with greater knowledge of federal lobbying laws, Canadians would, feel that the current system meets increasing expectations for transparency, Bélanger said that it has earned a reputation as a model to follow internationally.

“We can always strive for better,” she said. “I would say that Canadians are well served, and whether or not it can be improved, that will be the exercise during the five-year review coming up shortly.”

‘Tight’ timeline for Lobbying Act review, all rules on the table: new lobbying czar

By SHRUTI SHEKAR

Canada’s new lobbying commissioner says the timeframe to begin a five-year review of the Lobbying Act this spring is “tight,” but doable, and that everything will be studied including restricting the political activities of lobbyists, making the registry more transparent, and overlapping rules in the Lobbying and Conflict of Interest acts.

“I need to do my own analysis,” said Nancy Bélanger, during an interview with The Hill Times on Jan. 17 in her office on Albert Street in Ottawa.

Now that five years have passed, Ms. Bélanger said it’s time to look at the act with a fresh set of eyes. This will be the second five-year review of the Lobbying Act, which was brought into force in 2008.

Liberal MP Nathaniel Erskine-Smith (Beaches-East York, Ont.) asked Ms. Bélanger during her testimony before the House Ethics Committee last month if it would be possible to begin the review by the spring. Ms. Bélanger said she thought there was enough time, but last week told The Hill Times that it would take a lot of work to prepare in that time.

Ms. Bélanger told The Hill Times the five-year-old recommendations from the last review by former lobby commissioner Karen Shepherd will be used for her preparation but noted that a lot has changed since then so more research will be required.

“Of course, every day, every case, you will learn and so it is a matter of consulting with my team, and consulting with lobbyists. But it’s going to be a tight exercise,” said Ms. Bélanger, who grew up in New Brunswick, and is married with two children.

The last statutory review was conducted in 2012. The House Ethics Committee issued a report on the review in May 2012, which followed the House tabling a response on Sept. 12, 2012, that supported some recommendations and noted others would continue to be studied.

According to the Office of the Commissioner of Lobbying’s website, a government’s response does not change any rules in the act. The only way changes are enacted is through an approval process by the governor in council.

Amendments recommended in 2012 weren’t followed through, which Conservative MP Peter Kent (Thornhill, Ont.), his party’s ethics critic, said was probably because it wasn’t a priority for the Conservative government of the time under prime minister Stephen Harper, which was dealing with issues such as coming out of an economic recession.

Bélanger weighs in on what lobbyists say about next review

When Ms. Bélanger was first nominated, former Liberal cabinet minister Don Boudria, now a lobbyist at Hill & Knowlton, said her ethics background meant she could bring with her insight into how to fix overlapping rules between the Lobbying Act and the Conflict of Interest Act. The ethics commissioner, who is now Mario Dion, administers the Conflict of Interest Act.

“She’s going to be able to look at [her role] and say, ‘Wait a minute, there are two sets of rules here. Let’s coordinate our approach so that we don’t say two different things to the same people,’ which has happened so many times in the past,” Mr. Boudria said.

Ms. Bélanger brings to the lobbying watchdog role six years of experience as general counsel with the Conflict of Interest and Ethics Commissioner's Office, between 2007 and 2013.

The term "designated public office holder" in the Lobbying Act has a broader definition than that of the similar "public office holder" term in the Conflict of Interest Act.

Each commissioner's office has also developed its own rules on giving gifts related to receptions and lobby events.

"We've already started communication. I've worked in that office so I know how that works and I know Mr. Dion," Ms. Bélanger said. "We have said we need to get together and look at opportunities to maybe fill in the gaps of understanding [for] the rules that overlap, and possibly looking at education programs [to help lobbyists and others understand the rules]."

Former Liberal MP Joe Jordan, a senior associate with Ottawa's Bluesky Strategy Group, said they think the five-year ban on former designated public office holders from lobbying—the so-called "cooling-off period"—after they leave office should be reduced.

"I think we have to be careful with blanket restrictions that limit employment options," Mr. Jordan said.

Lobbyists in Ottawa also note, for example, if a staffer was working for the Harper Conservatives, they should have the ability to lobby the Trudeau Liberals because the government they worked for is no longer in charge.

In the past, lobbyists have also complained about their inability to perform in political activities and elections campaigns because it could create a sense of obligation to a party. This rule created a hostile relationship between lobbyists and Ms. Shepherd, who strictly limited lobbyists from performing in any extracurricular political activities.

Ms. Bélanger said she had no problem reviewing these rules, though they fall under the purview of the Lobbyists' Code of Conduct, which was established back in 2015 by Ms. Shepherd. The code also has to undergo a review after two years, which has not happened yet.

"I will not hesitate if one needs clarification to clarify, but then again there needs to be a code and I can't make everybody happy," Ms. Bélanger said. "I will look at them, but right now if you ask me what change I should make, I can't say that because I've been here for such a short time."

Ms. Bélanger joined the public service in 1993 as a Federal Court law clerk, and has taken jobs with the Department of Justice and Immigration and Refugee Board, and just before becoming the lobbying commissioner was the deputy commissioner of legal services and public affairs in the information commissioner's office, another officer of Parliament.

New commissioner will look at Shepherd's recommendations

Ms. Shepherd was in her role for seven years and was in charge of managing lobbyists communicating with the federal government, the federal lobbyist's registry, and administering the act and code of conduct.

According to the registry, there are 5,703 active lobbyists that include in-house lobbyists and consultants who are hired by associations or groups.

Ms. Shepherd was also in charge of conducting investigations when she believed lobbyists contravened the law.

High-profile cases of improper lobbying crossed Ms. Shepherd's desk, such as Bruce Carson, the former senior aide to prime minister Stephen Harper, and Jamie Carroll, the former Liberal national party director, both of which were passed on to the RCMP and led to convictions by the courts for violating the federal Lobbying Act.

In 2016, Mr. Carroll was fined \$20,000 for failing to file a return with the Office of the Commissioner of Lobbying, becoming the first person convicted after a trial for a Lobbying Act offence. Later that year, Mr. Carson was fined \$50,000 for three counts of lobbying while under the five-year ban for ex-public office holders, though the total was reduced by \$5,000 after he was acquitted of one of the charges on appeal.

During her time, Ms. Shepherd recommended that within the Act the commissioner should be allowed to give administrative monetary penalties for actions that are not criminal offences, which is not currently allowed. Ms. Bélanger said during her testimony in the House that such a penalty could be helpful.

“Right now the powers under the Lobbying Act are quite limited. It’s really, at the end of the day, public shame,” she said during the Dec. 6 meeting. “I would think that administrative penalties would be possibly a good thing, but maybe not just that. There might be other avenues. There might be a spectrum that could be imposed.”

During the next review, Ms. Bélanger said she also plans to look at making the registry more transparent.

Right now, lobbyists do not need to disclose who attended meetings or how the “communication” was conducted, whether it was by email, over the phone, or in person.

“There is a big chance that, who is at the meeting, likely is something I will recommend,” she said. “Anything to increase transparency is never a bad idea.”

To prepare for an upcoming review, Ms. Bélanger said her office had already set up meetings with the Government Relations Institute of Canada and the Public Affairs Association of Canada, two groups that support and represent the work of GR and PR professionals.

“I hope they will be able to give me some advice as to how I can go out and meet [lobbyists],” she said.

“There needs to be outreach and outreach to me means building relationships and certainly from now on, it will always be an ongoing objective of mine.”

Phil Cartwright, president of GRIC, said in an email that the next review will give the lobbying community a chance to look at the framework to see what needs to be improved.

“GRIC supports measures that ensure the act and related Code of Conduct are as easy to understand and abide by as possible,” Mr. Cartwright said, who is also a consultant at Global Public Affairs.

Ms. Bélanger said she wants to build more educational tools for lobbyists; this would also include a more active social media presence.

For example, she said the office could use Twitter to tweet on the 15th of the month to remind lobbyists to file their communication reports.

‘I’m not someone who is title-oriented’: Why she didn’t apply for the job

The job itself took a long time to fill, and in the process, the Liberal government extended Ms. Shepherd’s term three times over 2016 and 2017 because there wasn’t anyone suitable for the job.

Even after being nominated and appointed, Ms. Bélanger did not receive unanimous support in the House.

NDP MP Nathan Cullen (Skeena-Bulkley Valley, B.C.) abstained from voting because he was not happy with the appointment process, calling it “entirely broken” when Prime Minister Justin Trudeau (Papineau, Que.) only submitted one name for the role.

“We suggested a different option forward: the Speaker of the House to chair a committee made up of the parties. We’ll shortlist, and then we’ll put somebody forward,” Mr. Cullen said at the time of her nomination.

In the end, the House Ethics Committee recommended that Ms. Bélanger be confirmed in the job in a 7-0 vote.

In fact, she didn’t even apply for the job and had been asked if she would be interested in applying for the information and lobbying commissioner roles.

The interview process, which was between June and November, involved phone calls, a psychometric test, and an in-person interview conducted by a four-person committee.

The committee included Janine Sherman, assistant secretary to the cabinet in the Privy Council Office; Yaprak Baltacıoglu, secretary of the Treasury Board; Sabina Saini, chief of staff to Treasury Board President Scott Brison; and Hilary Leftick, director of appointments in the Prime Minister’s Office.

“I probably should have applied for [the job] right from the get-go, and the reason why I didn’t is because I’m not someone who is titled oriented,” Ms. Bélanger said. “I want to contribute where I best fit, and I thought at the time because I had been in the access-to-information position, that the most logical step would have been to apply for that one. Had I applied for this one I thought it would look like all I wanted was to be an agent of parliament.”

New ethics czar Dion says he ‘has no IOUs,’ not looking for another promotion, this is it

By ABBAS RANA JAN. 22, 2018

■ Canada’s new ethics commissioner, who has been criticized by government whistleblowers as a life-long bureaucrat who protects his bosses, says he is best-placed to do the job because he’s not interested in pleasing higher-ups and has no IOUs.

Mario Dion, who decided to do media interviews about his new job over the last two weeks, said he’s financially secure, not pursuing any future career promotions in the federal government, and that his current position is as high as he will get professionally.

“I’m probably in the best situation because I have acquired financial independence, I’m not pursuing other promotions, I’m 61 years old, I have 37 years of service,” said Mr. Dion, who took over his new position on Jan. 9, in an interview with The Hill Times. “I do not have IOUs.”

Mr. Dion, who was appointed to the position of conflict of interest and ethics commissioner last month for seven years, is an independent officer of the House of Commons, and will advise appointed and elected government officials on how to avoid conflicts of interest between their official duties and personal affairs. He will also investigate any complaints of conflicts of interest that arise from time to time about top appointed and elected officials. Mr. Dion has succeeded outgoing commissioner Mary Dawson, who held the position for about a decade. Prior to his current position, he served as chairperson of Immigration and Refugee Board; and before that, was the Public Service Integrity Commissioner, a position intended to protect whistleblowers that expose wrongdoing in the government.

When he was integrity commissioner, he received sharp rebukes for his performance from whistleblower groups and Auditor General Michael Ferguson.

In a report about the Public Sector Integrity Commissioner’s Office released in 2014, Mr. Ferguson said that his staff found “gross mismanagement” in two separate case files of whistleblowers that they reviewed. At the time, some whistleblower groups in media interviews blasted Mr. Dion and asked for his removal, one saying he was no better than his predecessor Christiane Ouimet. “Dion has failed, in my opinion, at least as badly as Christiane Ouimet,” said Allan Cutler, who heads Canadians for Accountability, in an interview with The Toronto Star.

“Now you’re putting these people in a position where their job is to expose wrongdoing which will embarrass their deputy minister and departments, if it’s done properly,” David Hutton, executive director of the Federal Accountability Initiative for Reform, or FAIR, told The Canadian Press in April 2014.

“So you’re asking them to do something that is completely against their instincts.”

After Mr. Dion’s appointment to the current position in December, Mr. Hutton predicted in a recent interview with The Hill Times that the commissioner will side with the government in his decisions on conflict of interest complaints.

“He’ll do exactly what the government would like him to do,” Mr. Hutton said, adding that he was making this prediction based on Mr. Dion’s past performance as the public sector integrity commissioner. “He’s a completely reliable ethics commissioner from their [the government’s] point of view.”

But Mr. Dion told The Hill Times that his record will speak for itself, and he will perform his duties fearlessly.

“I do not fear what will happen and I’m not trying to get a higher promotion,” said Mr. Dion. “It’s about as high as I will get in any event.”

Mr. Dion said, last week, he applied for the job online in August out of his own volition, and no one had asked him to do so. He said that to the best of his knowledge, the Prime Minister’s Office had completely stayed out of the selection process, and did not know how many candidates had applied for this position.

In May, Prime Minister Justin Trudeau (Papineau, Que.) announced that he would recuse himself from appointing the new ethics commissioner. The reason was that Ms. Dawson was investigating Mr. Trudeau for his Christmas vacation in 2016 at the Aga Khan’s private island in the Bahamas. In his place, Mr. Trudeau asked Government House Leader Bardish Chagger (Waterloo, Ont.) to oversee the process.

In November, the Prime Minister’s Office announced that Mr. Trudeau, and four senior officials—chief of staff Katie Telford, principal secretary Gerald Butts, senior adviser and lawyer Mathieu Bouchard, and director of issues management Ryan Dunn—had recused themselves from the ethics commissioner’s recruitment process. The senior staffers recused themselves because they were helping Mr. Trudeau deal with the investigation.

Last month, Ms. Dawson released her report, after a year-long investigation, finding Mr. Trudeau in contravention of the Conflict of Interest Act when he vacationed at the Aga Khan’s home on Bell Island.

Mr. Dion told The Hill Times that for his new job, he was interviewed by two senior PCO officials, the comptroller general of Canada, the chief of staff to the president of the Treasury Board, and the chief of staff to the government House leader. He said there was only one interview, which lasted for about an hour. As part of the selection process, he underwent a psychometric test, and an English proficiency test, as he had misplaced the document that proved he had been granted an exemption from the language proficiency test in 1985.

On Dec. 12, Mr. Dion appeared before the House Access to Information, Privacy, and Ethics Committee to answer questions from the committee members. Following the committee appearance, his appointment was approved by a vote in the House before the Parliament adjourned for the Christmas break.

As ethics commissioner, Mr. Dion will investigate any complaints that the most powerful government officials have potentially breached federal conflict of interest rules. One of the most high-profile cases that he has inherited from Mary Dawson is an examination of whether Finance Minister Bill Morneau (Toronto Centre, Ont.) was in a conflict of interest when he introduced Bill C-27, the pension bill, in Nov. 2016, while he still owned shares in his family-owned human resources and pension management company, Morneau Shepell. Prior to the 2015 election, Mr. Morneau had worked as the company’s CEO.

Before leaving her job, Ms. Dawson cleared Mr. Morneau of another investigation in which the finance minister was accused of getting a financial benefit based on the insider information, when he sold shares in Morneau Shepell after becoming a cabinet minister in 2015. The Conservatives had requested Ms. Dawson to look into the timing of the transaction of sale of shares, and whether Mr. Morneau and his father had benefited financially.

Mr. Dion told The Hill Times last week that in his first week in the new job, he received briefings from his officials about Mr. Morneau’s case and had given the green light to continue the investigation. He said the investigation would start exactly where Ms. Dawson had left off. Mr. Dion said that he’s hoping to file his report by the end of spring. The

House is supposed to rise for the summer recess on June 22, and the last day of spring is June 21. If all parties agree, the House could rise sooner than June 22. Mr. Dion said in the interview that he was aware of the House schedule, but that was not a factor in when the report will be issued.

“I’m quite confident that by the end of this spring this should be completed,” said Mr. Dion, adding that the timing of the release of the final report depended on a number of factors, including availability of people involved for interviews, and whether Mr. Morneau was guilty of a conflict of interest or not.

Mr. Dion said that in his first two weeks in office, he had done about 10 media interviews with English and French newspapers, radio and TV networks, as he thinks media is an important player in any democratic system. He said that it was mainly his idea to do all those interviews, and his communications staff didn’t “oppose this idea.” Mr. Dion said that he follows news closely, and will make himself and his office available for information whenever journalists have questions.

Trudeau's holiday retreat renews attention on how conflict-of-interest rules define 'friend'

NEWS | BEATRICE PAEZ

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■ Prime Minister Justin Trudeau's rule-breaking retreat to the Aga Khan's island has cast focus on the delicate dance that lobbyists have to play when interacting with elected officials they have ties with.

For such a tight-knit community, affectionately known as the "Ottawa bubble," personal and professional ties run deep. In the eyes of the law, the lines determining who might be considered a friend and not are not always easy to draw.

Trudeau's defence that he and the Aga Khan are friends, and that it was acceptable for him to take the spiritual leader up on his offer, failed to meet the ethics commissioner's understanding of what qualifies as a friendship. (Mary Dawson stepped down from her role on Monday; Mario Dion has assumed her post as of Tuesday.)

For years, lobbyists have been wrestling with the question of what constitutes a friend and consulting with regulators across the country, said John Capobianco, president of the Public Affairs Association of Canada and senior vice-president at FleishmanHillard, in a phone interview.

"Is a friend somebody who you have a day-to-day relationship with? Is a friend somebody who you talk to on a regular basis?" Capobianco said. "There are those issues that we deem to be vague in meaning."

His advice to members? Consider the optics. If there's a risk of creating a sense of obligation when you extend a gift to a public office holder (POH) who one might consider a friend, don't lobby that person.

Under the Conflict of Interest Act, public office holders are allowed to, depending on the factors at play, accept gifts from friends.

"If you can expect to lobby a POH while carrying out your duties as someone who's registered on a specific file, you're also not supposed to place [him or her] in a real or perceived conflict of interest," said Rob LeForte, director of government relations and campaigns at Impact Public Affairs, citing a rule in the Lobbyists' Code of Conduct.

He noted that those who have worked alongside POHs in the past, "would be able to make a better case that they're friends."

But, for the most part, lobbyists say that the ethics commissioner's ruling won't have much of an impact on them, though it serves as a reminder to be wary of offering gifts of any kind -- even when meeting with people they have a long-standing relationship with.

"I have people I have worked with for a number of years in government," said Jackie Choquette, vice-president at Hill + Knowlton Strategies, in a phone interview. "I have friends I can't even buy coffee for. I think those are the expectations Canadians have."

A former MP, Joe Jordan, now a senior associate at Bluesky Strategy, notes that his experience as both a lobbyist and elected official makes him an "interesting case study," saying that, while he has developed bonds with former colleagues still in office, he's conscious of handling those interactions.

"I tend to say, 'Let's meet for coffee,' as opposed to lunch — that eliminates the problem," Jordan said, noting that when he meets with friends, they'll take turns covering the cost of a coffee. "You're not going to get in trouble for a \$1.25 coffee."

In the aftermath of the report, LeForte said, POHs are also going to be more careful about accepting things. “It’s probably going to sharpen awareness [of the rules] on the Hill,” he added.

Culture shift

Gone are the days when, apart from cocktail circuits and the occasional luncheon over a lecture, lobbyists would wine and dine government officials while talking shop.

The tradition of offering swag bags, pricey tickets to sporting events, invitations to premiere gala events to those in power ground to a halt following a series of developments, among them a report that found a senior Tory staffer — Michael Bonner — broke ethics rules when he accepted gala and reception tickets from associations that had been meeting with him.

When that ruling was released, in 2015, that had the effect of taking the option of inviting MPs and their staffers to sit-down dinners off the table, lobbyists say.

“Nowadays, most lobbyists, if they do have a meeting outside an office or outside Parliament and it involves a meal, we usually would split the bill 50-50,” Capobianco said. “The whole idea of gifts and offering gifts, that paradigm has shifted a long time ago.”

Jordan echoed that assertion: “There aren’t hockey tickets flying around like five, six years ago. [Dawson’s] decision reinforces what was already in the works in terms of how people were conducting business.”

Terms of Endearment

The Conflict of Interest Act itself is silent on defining the word friend, but over the years, Dawson has elaborated on how it might apply in conflict-of-interest cases.

In guidance addressed to POHs in 2011, Dawson suggested that context matters in determining whether a gift extended by a friend might pose a conflict.

“If a friend is offering a gift in a context not normally associated with gift-giving and the friend is also doing or likely to do business directly or indirectly with the public service entity of the public office holder, then the gift should not be accepted,” she wrote.

Dawson’s assessment of Trudeau’s dealings with the Aga Khan ultimately found it “unlikely” that, had the spiritual leader not been involved in official interactions with the Canadian government, “invitations would have been given” to Trudeau or his family to spend time on the island. In other words, according to Dawson, Trudeau’s elevated stature as prime minister made it more likely that the Aga Khan would extend such a gesture.

In making his case that a family friendship exists, Trudeau asserted that he calls the dignitary “Uncle K,” a term of endearment. He also cited the 2013 Paradis Report, which contemplated the issue of friendship in a case involving the former international development minister.

In that report, Dawson ruled that Christian Paradis and Ghislain Dionne, an associate of his father’s, were friends, given that his father and Dionne had worked at the same firm for years.

The difference in that case, Dawson noted in her report on Trudeau, was that the families had also “socialized together for almost a decade.” Save for the Aga Khan attending his father’s funeral, in Trudeau’s case, Dawson found that there was a 30-year stretch of no interactions between the prime minister and the spiritual leader.

Still, frequency of interactions alone don’t qualify as grounds for friendship, Dawson said in her 2011 guidance. She noted that, while there’s no official definition of “friend” under the act, the office has interpreted that to “mean a person with whom one has some history of mutual personal regard beyond simple association.”

Committee to explore removing ‘friend’ exception from ethics rules

NEWS | BEATRICE PAEZ

PUBLISHED: WEDNESDAY, 01/10/2018 1:58 PM EST

■ Former ethics commissioner Mary Dawson said that removing the exemption that allows, depending on the circumstances, government officials to accept gifts from friends would clear up confusion around who might qualify as a friend.

“I’m not so sure it’s very helpful to have the exception in the act,” Dawson said during a two-hour appearance before the House ethics committee on Wednesday, two days after retiring as ethics czar.

The Conflict of Interest Act and the members’ code of conduct that reporting public office holders are bound by take a different stance on the issue, with the code limiting the acceptance of gifts to those that family members offer.

Scrapping the friend exception was not among the some 75 recommendations that Dawson proposed in the last review of the act. The issue was raised following Dawson’s report, released in December, which found that Prime Minister Justin Trudeau broke four provisions in the act when he took the Aga Khan up on his invitation to spend time on his private island.

Even if Trudeau and the Aga Khan were considered friends, Dawson said, the vacation would still have been problematic — and in violation of the act — because the spiritual leader still had business dealings with the government.

Although the former ethics commissioner said she reserves judgment on scenarios, she also said that had the prime minister cleared the trip with her office beforehand, the facts and circumstances would probably have led her to advise Trudeau against taking the vacation.

The committee has committed to undertake a review of the act and is expected to contemplate getting rid of the friend exception.

Peter Kent, the Conservative ethics critic, told reporters that the commissioner has made “strong arguments” for why the exception should be removed, but more views need to be heard before he takes a stance.

Liberal MP Michel Picard raised concerns about the impact that eliminating the exemption might have. “Now when we meet with a friend, as soon as something is mentioned about our work, [will] we have to say, ‘I will have to bill you because that exceeds the boundaries of our friendship?’” he said.

Dawson, responding to that comment, said that there’s always a “balance” — that may not be immediately apparent — that public officials have to consider when interacting with friends who also do business with the government.

When asked if it’s possible for government officials to temporarily take off their political “hat,” even when dealing with friends, Dawson said they should be “careful” in situations when one is in a position to advance a friend’s interest.

The former watchdog has released past reports and a guideline that tackle the issue of friendship, but the act itself has not defined the word “friend.”

“I don’t think you can ever define it,” she said. “The problem is it means very different things.”

In the report, the former ethics czar also ruled that Trudeau violated the act in failing to recuse himself from bilateral meetings with the Aga Khan on his foundation's petitions to the government to avoid a conflict of interest.

Dawson found that there was no evidence that Trudeau had used his power to further the Aga Khan's interests — securing a \$15-million grant that had been approved under the previous administration — but that, nonetheless, there were two occasions in which he had a “duty” to recuse.

The Aga Khan Foundation Canada is registered to lobby the government, including the Prime Minister's Office, though the Aga Khan himself is not considered a registered lobbyist.

Asked by several committee members if she thinks more stringent penalties — such as fines applying to other breaches — should be included in the act, Dawson said that the “publicity” from the report and the “test of re-election” are “sufficient to encourage compliance.”

In light of the former watchdog's testimony on Wednesday, committee members also revisited a motion to have the prime minister answer questions about Dawson's report. A similar motion was quashed in a 6-3 vote on Tuesday.

The Liberal-majority committee struck down Wednesday's motion, with Grits arguing that the substance and intention behind the request was the same. The Liberals have argued that town halls and Question Period are the best forum to field questions about the Bahamas trip.

Speaking in favour of the motion, Nathan Cullen, NDP ethics critic, said that Trudeau's appearance before committee is warranted because “outstanding” questions remain.

“The prime minister admitted it was a mistake, but we don't know the specific steps his office has taken,” Cullen said. “We want his firm commitment that he will fix these loopholes and these problems within our ethics code, so that future cabinet ministers cannot attempt to exploit the same loopholes.”

In a press conference in December, following the release of the report, Trudeau promised to clear all vacations with the ethics commissioner's office in the future.

At a town hall event in Nova Scotia on Tuesday, the prime minister reiterated that pledge, saying that, “Every single one of my vacations will be cleared in advance with the ethics commissioner because this is really, really important to me, to highlight that we follow the rules.”

Trudeau is currently on a cross-country tour; his latest stop was a gathering in Hamilton, Ont., at McMaster University.

It's not the first time that a reform to the act that would eliminate the “friend” clause has been proposed. In 2013, under the Conservative government, Liberal Sen. Joseph Day testified before the Senate to push for scrapping the exemption, which he perceived to be a “gaping hole” in the legislation.

Trudeau won't appear before ethics committee to testify on Bahamas trip

NEWS | TESSIE SANCI

PUBLISHED: TUESDAY, 01/09/2018 6:38 PM EST

■ The Liberal-dominated ethics committee defeated a motion on Tuesday to compel Justin Trudeau to answer the opposition's questions about his vacations on the Aga Khan's Bahamas island, which were found to have violated ethics rules.

"The opposition will have every opportunity to ask questions in Question Period when the House resumes," said Nathaniel Erskine-Smith, vice-chair of the committee and a Liberal MP, in defending his "no" vote.

Questions still remain over what went into Trudeau's decision to accept the trip and why he opted not to recuse himself from discussions involving government business with the Aga Khan, said NDP ethics critic Nathan Cullen.

"I have asked questions about this issue in that forum. My 30-second question was not given...a 30-second answer," Cullen said.

The last-minute meeting debating this motion follows a request from Peter Kent, the Conservatives' ethics critic, to Bob Zimmer, the Conservative chairman of the committee.

The request follows the late December release of former ethics commissioner Mary Dawson's report on Trudeau's vacations in 2014 and 2016 to the Aga Khan's island. Dawson, whose term ended on Jan. 8, found that the prime minister broke several ethics rules when he accepted the vacation to the spiritual leader's property, which included complimentary use of the Aga Khan's home and personal helicopter.

Kent argued that a committee meeting is the right forum for the prime minister to answer questions.

"This is a calm and respectful setting to discuss the commissioner's findings," Kent said. "There is no heckling, questions are respectfully answered and questions can be [asked] within a relaxed period of an hour or two."

In an interview with CBC Radio on Tuesday morning, Trudeau declined to respond to whether he would appear before committee if the request was passed.

"I think keeping politics and partisan attacks to the side on this is what Canadians want," he said, adding that town halls would provide a venue for Canadians to ask questions about the issue.

In Tuesday's committee meeting, both Cullen and Kent took issue with Trudeau's press conference in December, during which he responded to Dawson's report. Opposition MPs noted that Trudeau disagreed with the former commissioner's findings that the Aga Khan cannot be considered a friend under the Conflict of Interest Act. In some circumstances, gifts from friends are allowed under the act.

Kent and Cullen also discussed their intention to question the prime minister on his decision to attend meetings with the Aga Khan following his vacations.

With the exception of commercial flights, Cullen said, citing the report's findings, Trudeau returned from a trip that was "essentially paid for" by the Aga Khan, and did not recuse himself from meetings that affected the Aga Khan Foundation Canada.

Questions regarding those meetings remain unanswered, he added.

Erskine-Smith said that the committee should be more focused on discussing possible reforms to the act. "I look forward to having the ethics commissioner before us tomorrow and asking her questions about her 2013 recommendations [during the last review of the act] and possible reforms of the act," he said. "I think it's about that substantive work and not relitigating issues that we're likely to see in Question Period."

Although the Aga Khan's foundation is registered to lobby the Prime Minister's Office, and has received government funding, the spiritual leader is not considered a lobbyist. The Office of the Commissioner of Lobbying's determined that the Aga Khan isn't subject to lobbying rules because he isn't paid for his petitions to the government.

Dawson's term in office ended on Monday, but she is due to appear before the committee on Wednesday to discuss possible reforms to ethics rules.

Lobbying commissioner's office to move forward with Aga Khan probe: Democracy Watch

NEWS | TESSIE SANCI

PUBLISHED: WEDNESDAY, 01/03/2018 5:06 PM EST

■ An ethics group says that the lobbying commissioner's office will undergo a review into whether the Aga Khan broke certain lobbying rules related to the prime minister's complimentary use of the spiritual leader's private island.

Duff Conacher, co-founder of Democracy Watch, recently requested that the Office of the Commissioner of Lobbying (OCL) investigate whether the Aga Khan contravened the Lobbyists' Code of Conduct when he allowed Prime Minister Justin Trudeau and his family to use the Aga Khan's private helicopter and island home in 2014 and 2016. On the latter occasion, Liberal MP Seamus O'Regan was also present.

Conacher told The Lobby Monitor in a phone interview on Wednesday that the OCL will undergo an administrative review of the matter. (Administrative reviews are fact-finding missions that may or may not lead to a formal investigation.)

The OCL would not confirm this. "The Commissioner is unable to discuss investigation activities or to confirm whether they are occurring, will be occurring or have occurred," reads an email statement from the OCL to The Lobby Monitor on Wednesday.

The Aga Khan Foundation Canada, a charitable anti-poverty organization, was registered to lobby the Prime Minister's Office and the House of Commons at the time that both incidents took place. The Aga Khan is a member of the board of directors for the foundation, according to the organization's website.

The OCL received a previous complaint about this matter in September 2017, according to a CBC report. At the time, Karen Shepherd, then the lobbying commissioner, determined that because the Aga Khan is not paid to lobby for his foundation, federal lobbying rules don't apply to him.

However, Conacher argued that the spiritual leader's affiliation with the foundation should warrant a review of his actions.

Conacher addressed a letter to the commissioner on Dec. 20, saying that it should be the OCL's position "that anyone working for or associated with a company that is registered to lobby a public office holder who gives to or does anything for that office holder...that is more than an average voter does (e.g. an average voter may post a sign on their lawn, or make a donation or vote) puts that office holder in an apparent conflict of interest (and possibly a real conflict of interest depending on the significance of what they give or do)."

He said that his organization believes the Aga Khan contravened Rule 6, which says that a lobbyist shall not undertake any action that would place a public office holder (POH) in a real or apparent conflict of interest, and Rule 10, that states that lobbyists shall not provide gifts or favours to a POH that they are lobbying or will lobby.

Conacher also requested that neither Shepherd, whose term ended on Dec. 29, nor Nancy Bélanger, the incoming commissioner, be involved in the investigation, should it go forward.

Shepherd's six-month contract extension in June 2016 "causes at least the appearance of a conflict of interest for you," Conacher wrote.

Conacher also argued that Bélanger's appointment to the lobbying commissioner position occurred through a "secretive, PMO-controlled process" and therefore she should refer the investigation to "someone who is fully independent of the Commissioner, the Cabinet and all federal political parties."

His request for an investigation follows the release of Ethics Commissioner Mary Dawson's report on Dec. 20, which found Prime Minister Trudeau contravened provisions in the Conflict of Interest Act when he vacationed on the Aga Khan's private island.

Among the violations, Dawson found that Trudeau should not have accepted the offer of travel from the Aga Khan, and that Trudeau "failed to meet the general duty" in not arranging his "private affairs" to avoid being placed in a conflict of interest.

Trudeau broke ethics rules in accepting holiday trip to Aga Khan's retreat, says watchdog

NEWS | BEATRICE PAEZ

PUBLISHED: WEDNESDAY, 12/20/2017 12:55 PM EST

■ Prime Minister Justin Trudeau broke four provisions in the Conflict of Interest Act when he vacationed in the Aga Khan's retreat in the Bahamas last Christmas, the ethics watchdog ruled on Wednesday.

"When Mr. Trudeau, as Prime Minister, accepted the gifts of hospitality from the Aga Khan and the use of his private island in March and December 2016, there were ongoing official dealings with the Aga Khan, and the Aga Khan Foundation Canada was registered to lobby his office," said Mary Dawson, outgoing ethics commissioner, in a statement. "Therefore, the vacations accepted by Mr. Trudeau or his family could reasonably be seen to have been given to influence Mr. Trudeau in his capacity as Prime Minister."

Addressing the media in the wake of the report, Trudeau apologized for not taking the necessary steps to avoid a conflict of interest. "I should have taken precautions and cleared my family vacation in dealings with the Aga Khan in advance. I'm sorry I didn't, and in the future I will be clearing all my family vacations with the commissioner's office," he told reporters. "I take full responsibility for this. As an office, we will be doing things differently."

At the time of Trudeau's visit to Bell Island, where his family and friends stayed from Dec. 26, 2016, to Jan. 4, 2017, the Aga Khan Foundation was registered to lobby his office.

In defending the trip when news first broke alleging that he was in a conflict of interest, Trudeau said that the Aga Khan had been a longtime family friend.

In her report, however, Dawson disputed this. She noted that while the prime minister's father and the Aga Khan had a decades-long friendship, Trudeau himself had not had any "personal or private interactions" in the last 30 years, save for his father's funeral in 2000.

"I have always believed him to be a family friend," Trudeau said Wednesday, responding to Dawson's assessment of their friendship. "It was an opportunity to visit a friend, to have some family time."

In addition to the holiday visit, Dawson's report disclosed two other trips—one in December 2014, another in March 2016—the Trudeaus took.

Dawson's ruling has some implications for the lobbying community. It renews expectations that lobbyists weigh the optics involved in gift giving. Lobbyists already have to tread carefully in ensuring that they don't provide a public office holder a gift or favour to that could be perceived to carry a sense of obligation.

Two separate complaints alleging that Trudeau violated conflict-of-interest rules were lodged in January. Conservative Leader Andrew Scheer, then running to lead the Official Opposition, and Tory MP Blaine Calkins urged Dawson to open a probe, with Calkins citing section 11 of the act, which prohibits a public office holder — and, by extension, family members — from "accepting any gift or other advantage" that might influence the official.

Dawson's findings provide fresh ammunition for opposition parties, which have doggedly called the Trudeau administration out for alleged ethical lapses. In a tweet on Wednesday, Scheer criticized Trudeau's handling of the controversy, saying, "Throughout this process, Trudeau has not acted like someone who accepts he has made a mistake. It seems he believes the rules do not apply to people like him."

When asked about discussions with the Aga Khan during his stay, Trudeau said, “We talked about global issues. He is a friend with whom I’ve had many discussions with on the international context, whether it’s Syria or what’s happening to the Ismaili communities. We did not specifically talk about political issues in Canada.”

To prevent the appearance of conflict of interest, government officials subject to the act are required to notify the ethics commissioner if they plan to accept sponsored or all-expense paid trips. Trudeau neglected to get the green light from Dawson before going on trip and travelling on the Aga Khan’s private helicopter.

The latter fact was in direct contravention with section 12 of the act, which says that ministers and other high-ranking officials can’t accept travel on a private aircraft — unless there are exceptional circumstances. Dawson rejected the assertion that the use of the private helicopter was exceptional because the island was located in an isolated area, saying that there were other means of getting there.

Trudeau was found in violation of four sections of the act:

Section 5: Trudeau “failed to meet the general duty” in not arranging his “private affairs” to avoid being placed in a conflict of interest;

Section 11: “Public office holders are prohibited from accepting any gift or other advantage that might reasonably be seen to have been given to influence the public office holder.” Exceptions to the rule are allowed when the gift is given by a relative or friend. Trudeau’s “personal relationship” with the Aga Khan did not meet Dawson’s interpretation of the “concept of friend.”

Section 12: “Ministers and members of their families [are prohibited] from accepting travel or non-commercial chartered or private aircraft unless certain exceptions apply.” Dawson ruled that there were no exceptional circumstances and that the trip was not required as part of his official duty.

Section 21: “Public office holders have to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.” Dawson found that there were two occasions in which Trudeau failed to recuse himself from discussions “during which he had an opportunity to further the private interests of the Global Centre for Pluralism,” a not-for-profit corporation founded by the Aga Khan.

At the same time, Trudeau was cleared of two alleged violations. Dawson concluded that there was no evidence Trudeau had made decisions that “furthered the private interest” of Aga Khan or his other institutions. She also determined that he did not give the Aga Khan preferential treatment by advancing the foundation’s projects or facilitating meetings with other departments.

The foundation remains registered in-house with its CEO, Khalil Sharriff. The Aga Khan, a spiritual leader, also has long-running ties with the federal government, partnering with it on a number of international-development initiatives. The foundation has been a recipient of government funding, most recently some \$48 million from Global Affairs Canada and \$396,299 from the International Development Research Centre, its disclosure filing shows.

The findings come just weeks before Dawson is slated to end her tenure in early January, capping a year that has thrust the office into the spotlight, given the government’s struggle to find her replacement and the ethics commissioner’s ongoing probe into Finance Minister Bill Morneau’s sponsorship of pension legislation.

In accepting Dawson’s findings, Trudeau said that the report speaks to the strength of Canada’s institutions: “I think we can all collectively be reassured that we have mechanisms in our institutions here that hold everyone to account and make sure that everyone follows the rules.”

New lobbying watchdog could help bridge gap between her office and ethics commissioner's, lobbyists say

NEWS | SHRUTI SHEKAR
PUBLISHED: DEC. 6, 2017

■ Some Ottawa lobbyists have long advocated for the government to merge the lobbying and ethics commissioners' offices to avoid confusion and improve coordination. While the Liberal government's nomination last week of a new lobbying commissioner makes that prospect unlikely, some lobbyists say the appointee's past experience working in the ethics watchdog's office could help bridge the gap between the two offices.

Former Liberal MP and cabinet minister Don Boudria, senior counsellor at Hill and Knowlton, said the government's Nov. 30 nomination of lawyer Nancy Bélanger comes as good news.

"The ideal thing would have been to redo [the offices] and make one commissioner for both, which is what I have been saying all along. So I guess the next best thing they could have done is do what they have done," said Mr. Boudria.

Ms. Bélanger, should her nomination be approved, would bring to the lobbying watchdog role six years of experience as general counsel with the conflict of interest and ethics commissioner's office, between 2007 and 2013.

"She's going to be able to look at [her role, if she is made lobbying commissioner] and say, 'Wait a minute, there are two sets of rules here. Let's coordinate our approach so that we don't say two different things to the same people,' which has happened so many times in the past," said Mr. Boudria.

He and other Ottawa lobbyists have long advocated for the two commissioners' offices to merge because their respective governing legislation has such similar language that lobbyists argue it creates confusion around reporting, making it unclear which provisions apply to their activities.

For example, the term "designated public office holder" in the Lobbying Act has a broader definition than that of the similar "public office holder" term in the Conflict of Interest Act administered by the ethics commissioner.

Rules on giving gifts related to receptions and lobby events have also emerged as an area straddled by both commissioners' offices, each with their own rules.

Ms. Bélanger joined the public service in 1993 as a Federal Court law clerk, and has since taken jobs with the Department of Justice and Immigration and Refugee Board, and is currently the deputy commissioner of legal services and public affairs in the information commissioner's office, another officer of Parliament.

Ethics commissioner Mary Dawson, whose term was extended for six months for the third time on July 9, told members of the Procedure and House Affairs Committee in February 2016 that merging the two offices might help with overlap and confusion over the rules and guidance dispensed by the two commissioners.

Karen Shepherd, the outgoing lobbying commissioner, did not share that assessment. She told the House Ethics Committee on Nov. 29 that before merging the two offices, the government should "look at how the offices can work better together." Ms. Shepherd has been the lobbying commissioner since 2008.

Former Liberal MP Joe Jordan, a senior associate with Ottawa's Bluesky Strategy Group, said if the government were to merge the two offices, it would have already done it.

Mr. Jordan, who was an early proponent of combining the offices, said he's "come around to seeing the wisdom of leading them separately, but having better communication." He noted that bringing in someone from the ethics side could "resolve" the optics around the two offices not being coordinated enough.

Bélanger brings fresh eyes to Lobby Act review

Ms. Bélanger is set to appear before the House Ethics Committee on Dec. 6. Her governor-in-council appointment, essentially a decision by cabinet, is supposed to be done after consultation with the leader of every recognized party in the Senate and House of Commons, and both chambers' approval by resolution.

That needs to happen before Parliament rises for the winter break in mid-December in order for a smooth transition, as Ms. Shepherd's term expires on Dec. 29.

Should her nomination go through, Ms. Bélanger will have some challenges at her feet.

Generic pharmaceutical giant Apotex is taking the lobbying commissioner's office to court in an attempt to block its investigation of a fundraiser the company's chairman hosted during the 2015 federal election.

It is the first time the office has faced such a legal battle. Parliament granted Ms. Shepherd's request for \$400,000 for legal costs, on top of her office's annual budget of about \$4.4-million.

Tim Powers, vice-chair at Summa Strategies and a former adviser to federal Conservative politicians, said he hopes Ms. Bélanger will bring her own vision to an upcoming revamp of the Lobbying Act. The new commissioner will be expected to provide recommendations. The statutory review happens every five years; the last one was in 2012.

One of Ms. Shepherd's recommendations was to allow the commissioner to give administrative monetary penalties on issues outside of criminal offences.

Mr. Boudria and Mr. Jordan both agreed a five-year ban on former designated public office holders from lobbying—the so-called "cooling-off period"—after they leave office, should be reduced.

Mr. Boudria noted that the new commissioner should ask if rules are reasonable, necessary, and useful, and should make sure the office is equipped in understanding parliamentary procedure.

Appointment process still flawed: critics

Conservative ethics critic Peter Kent (Thornhill, Ont.) said Ms. Bélanger's credentials, at first glance, "seem very sound...and we are delighted that [a nomination] has been made and in a relatively timely fashion."

However, he criticized the Liberal government's appointment process in general.

"A consultation would be appreciated," Mr. Kent said, adding that Ms. Bélanger's nomination stands "at odds with the Liberal commitment to be more transparent and open and to consult with opposition parties on these major appointments."

NDP ethics critic Nathan Cullen (Skeena-Bulkley Valley, B.C.) told reporters last week that the approach was "entirely broken," and that Prime Minister Justin Trudeau (Papineau, Que.) "insulted the entire process" when he submitted to opposition parties only one name to recommend for the role.

“The whole process blew up in their faces when they tried it with the language commissioner,” he said, referring to a former Ontario Liberal MPP who withdrew her name from contention for that job earlier this year after opposition criticism that her appointment was a partisan one.

“I thought they would have learned. We suggested a different option forward: the Speaker of the House to chair a committee made up of the parties. We’ll shortlist, and then we’ll put somebody forward,” Mr. Cullen said.

For the new lobbying and ethics commissioners, the Privy Council Office used Boyden, a headhunting service, to help with the search, at a cost of \$200,000.

Duff Conacher, co-founder of government watchdog Democracy Watch, said the process isn’t merit-based and is flawed.

“[Boyden is] not doing the screening. They are not coming up with the shortlist,” Mr. Conacher said, adding that after speaking with Boyden, he learned that the initial screening did not involve extensive questioning. “The NDP has an entirely legally correct position. They should only receive one name at a time, but they should be able to say ‘Meh, we aren’t really comfortable with that, what are the other names?’ That’s the consultation.”

Penalties could be in cards if nominee for lobbying watchdog confirmed

NEWS | TESSIE SANCI, BEATRICE PAEZ
PUBLISHED: FRIDAY, 12/08/2017 4:11 PM EST

■ Parliament’s upcoming review of the Lobbying Act should “absolutely” explore the possibility of imposing penalties for lobbyists found in violation of laws, said Nancy Bélanger, nominee for the next lobbying commissioner.

“We can look at whether the current penalties are adequate, whether it has to be criminal penalties,” Bélanger said, responding to questions from senators on her nomination. “Everything is on the table.”

“Public shaming” or an investigation by the RCMP, Bélanger noted, is the current method of punishing a lobbyist found in contravention of lobbying laws.

Currently, when the commissioner has reason to believe a lobbyist has violated the act, she refers the investigation to the RCMP, which ultimately decides whether to prosecute.

“It seems clear that the sanctions are not sufficient enough to ensure real compliance with the law and code,” Bélanger said, noting that the idea of creating a spectrum of penalties could be considered. “There’s no real consequence.”

Those indicted for breaches to the act can face a fine of up to \$200,000, or two years in prison; summary convictions carry a fine as high as \$50,000. For violations of the Lobbyists’ Code of Conduct — a non-statutory document — there are no fines or jail terms, only a report that lays out the facts of the case.

Outgoing Lobbying Commissioner Karen Shepherd has long called for administrative monetary penalties (AMPs)— fines that can be imposed for certain contraventions — to be written into the act, similar to what exists in other lobbying regimes, including Quebec and British Columbia.

In the last review in 2012, under former prime minister Stephen Harper’s tenure, the government did not endorse Shepherd’s recommendations to impose AMPs. Instead, it committed to “continue to study” the potential for reform.

Liberal Sen. Dennis Dawson, a former lobbyist himself, questioned Bélanger about her knowledge of lobbying and plans for outreach to the government-relations community, given that she has never been a lobbyist and been lobbied by stakeholders in her past roles.

Dawson said that while there are some “rotten apples among us,” there should be enough consultation with lobbyists before there are changes to lobbying laws. He noted that the “success” of the federal lobbying regime, as opposed to Quebec, is that the office has sought the input of the lobbying community.

Responding to Dawson, Bélanger said her priority would be to “enhance” her “credibility” with lobbyists just as she has built relationships with other government stakeholders over her career.

On top of coming up with her own recommendations for the act’s review, Bélanger may also have to contend with the possible merger of the lobbying commissioner’s office with the ethics commissioner’s office. Ethics Commissioner Mary Dawson, whose term is up on Jan. 8, had expressed support for the amalgamation of duties to resolve issues over how rules that affect both lobbyists and public office holders are interpreted.

In an appearance before the House ethics committee Nov. 29, Shepherd has said there could be areas of co-operation between the two watchdogs, but that there's a "reason for the two offices being separate." Combining the offices would be a reversal of a decision in 2004 when the government decided to separate its functions, citing institutional bias.

Although there has been no official debate on the matter since, it's been widely discussed on the Hill once again.

Earlier this week, at her appearance before the House ethics committee, Bélanger was asked her thoughts on a possible merger. The issue was brought up again by Liberal Sen. Pierrette Ringuette.

"I have not formed an opinion because I don't work [in the Office of Lobbying]," Bélanger responded Friday.

However, she said, if Parliament were to go ahead with a merger, she would follow through on what she is asked to do by Parliament.

She also added there's an opportunity for the offices to collaborate to help lobbyists understand the rules on both the lobbying and ethics sides, which are not necessarily contradictory to each other but their interpretation might not always be consistent.

Bélanger also took the opportunity to emphasize her interest in working to increase Canadians' awareness of the full scope of lobbying in order to combat the cynicism that lobbyists encounter about their work.

"I do want Canadians to know that lobbying is a legitimate activity and there is nothing wrong with it as long as it is being transparent," Bélanger said.

"I think lobbying is an activity that all Canadian should recognize as beneficial because there are causes; there are non-profit organizations that also lobby. They lobby precisely to let decision makers, [such as] politicians, aware of their needs," she added.

The government has long sought to fill the lobbying post. Unable to name a successor up until last week, outgoing Lobbying Commissioner Shepherd was asked to stay on an interim basis three times, each for a period of six months.

Its appointment process has not been without contention. At a committee hearing on Wednesday, all but one parliamentarian — NDP ethics critic Nathan Cullen, who abstained — ruled in favour of her nomination. Citing the government's lack of consultation, Cullen abstained from the vote.

To find Shepherd's successor, along with a replacement for the ethics commissioner Dawson, the office signed a \$200,000 contract with a headhunting firm. A portion of the funds for that search came out of the lobbying commissioner's budget at a time when the office is under a financial squeeze as it faces the first lawsuit that's been filed against it.

The government recently approved Shepherd's request for an extra \$400,000 to battle Apotex's attempt to quash her investigation into a fundraiser it hosted for the Liberals. With a staff of 28, the office has a budget of about \$4.4 million.

Trudeau's nominee for lobby watchdog sought other post, committee hears

NEWS | BEATRICE PAEZ

PUBLISHED: WEDNESDAY, 12/06/2017 5:18 PM EST

■ Nancy Bélanger, nominee for the next lobbying commissioner, presented herself as diplomatic watchdog, one who would not look to “shake things up” upon arrival and would set her sights on enhancing the public’s awareness of the office at a confirmation hearing before the House ethics committee Wednesday.

Bélanger, a longtime public servant, is currently serving a high-ranking position at the information commissioner’s office. When asked by Liberal MP Mona Fortier how she would “make her mark,” Bélanger said she would work to “raise awareness and show Canadians the importance of lobbying,” leveraging social media to bolster the profile of her post.

Her nomination, announced Thursday, comes just as the government is racing to fill the post before outgoing commissioner Karen Shepherd’s term is up. Save for one abstention from NDP ethics critic Nathan Cullen, who said there was a lack of consultation over the nomination process, committee members voted in favour of her nomination.

Before her nomination was made public, Cullen said that the government addressed a letter to the opposition, disclosing only one name — Bélanger’s — drawn from the pool of applicants. Testifying about the application process that she went through, Bélanger revealed that she initially put herself up for consideration to become a parliamentary officer — as the next information commissioner. She interviewed to succeed her current boss, Suzanne Legault, on Aug. 16.

In the span of three months, Bélanger said she passed through the application hurdles. Following an interview for that role, the government wanted her to consider applying for the lobbying position.

Mid-November, she heard word from the Treasury Board Secretariat’s office that they “would likely” put her name forward. By Nov. 22, more than a week before the government announced its nomination, Bélanger was told the job was hers.

Pressed to share more details about her recruitment, including who she sat down with for the interview, Bélanger named four people: Janine Sherman, deputy secretary to the cabinet, senior personnel and public service renewal at the Privy Council Office; Sabina Saini, chief of staff to Treasury Board Secretariat (TBS) Scott Brison; Hilary Leftick, director of appointments at the Prime Minister’s Office; and Yaprak Baltaciolu, secretary at the TBS.

With a little over a week to go before the House breaks for the holiday hiatus, the next stop on Bélanger’s confirmation tour is an appearance before the Senate on Friday at 9:30 a.m.

Outreach, both to the public and lobbyists, will be a top priority for Bélanger.

“Lobbyists don’t know me. One of my challenges will be to settle my credibility and instil trust,” she said.

With the Lobbying Act overdue for its legislative review, Bélanger fielded a number of questions on how she might approach some of the past recommendations that the OCL had raised in 2012 — the last review.

Though Bélanger stopped short of offering her own recommendations, when asked about the political landmines and optics around gift giving, she noted there’s room for co-operation between the ethics and lobbying commissioner’s offices to clarify rules around gifting.

Both the ethics commissioner's office — where Bélanger had a six-year stint as general counsel — and the lobbying commissioner's office produce separate guidance on the issue. Shepherd is responsible for advising lobbyists; Shepherd's counterpart, Mary Dawson, tackles thorny issues that public office holders bring to her attention.

"I can't give you a rule, but certainly I understand this is an issue that will need to be clarified for all," Bélanger said.

If her nomination is approved by both the House and the Senate, Bélanger would be elevated to assume control of an office that monitors the activities of more than 5,000 registered lobbyists, and which many say has matured since it was created in 2008.

She also stands to inherit the challenge of fighting the first-ever lawsuit levelled against the office by pharma giant Apotex because of its investigation into a fundraiser the company hosted for the Liberals. Dealing with the suit has placed stress on the resources of the office, forcing it to hit pause on projects, as Shepherd testified to in an appearance before committee on Nov. 29. Shepherd's request for \$400,000 in funding to cover the legal costs has since been approved by the committee.

Prior to the vote in favour of Bélanger's nomination, Cullen went on the record to say that his abstention was not "personal," explaining that the Liberals' process, framed as "open, transparent and merit-based" does not meet the textbook definition of consultation that's enshrined in law.

Trudeau faces renewed criticism over Aga Khan trip

NEWS | THE LOBBY MONITOR

PUBLISHED: WEDNESDAY, 09/13/2017 3:22 PM EDT

■ Prime Minister Justin Trudeau is facing fresh criticism over his Bahamas vacation after new details surfaced that the cost of his trip was much more than had been publicly accounted for.

On Wednesday, the CBC reported that the RCMP spent more than \$215,000, more than double the amount it initially disclosed in Parliament. In March, the RCMP said the bill for Trudeau's Christmas trip to the Aga Khan's private island was \$71,988 while noting that other expenses were still being processed.

Ethics Commissioner Mary Dawson, whose term expires at the end of the year, has yet to offer a ruling on her investigation into whether Trudeau violated government rules, which prohibit him and his Cabinet from taking sponsored trips without first getting the commissioner to sign off.

The trip has raised eyebrows — and formal complaints — upon revelations that Trudeau, with family and friends in tow, travelled to the private island using the Aga Khan's private helicopter.

Trudeau has said in past press conferences that the Aga Khan has been a family friend since he was a child.

The Aga Khan Foundation Canada has a long history on record of lobbying the federal government, dating back to 2011.

Since then, it has logged 121 communication reports, four of which have been filed in the past six months under CEO Khalil Shariff's name. The most recent, both filed in July, were tied to Global Affairs and Finance Canada on international development and international relations matters.

The latest disclosure filings showed that the foundation received more than \$48 million in funding from Global Affairs Canada for its development work in the last fiscal year. It's expected to receive more in the coming year as well.

To lobbyists, the trip serves as a cautionary tale. The Lobby Monitor previously reported that those in the advocacy business should take care to think about the perception that their actions might trigger.

The news comes as the Liberals are fending off attacks from the business community and the Conservatives on its proposed tax measures that it says would target the wealthy.

Duff Conacher, co-founder of Democracy Watch, said in a phone interview that the government has tried, through its cross-country town-hall tour in January, to "counter both the fundraising event scandals and the Aga Khan gift."

"They obviously recognize how dangerous it is for them to be labelled as friends of billionaires," Conacher said, adding that this latest revelation does not bolster its case for tax reform. "Anything that links the prime minister, the Liberals, to billionaires being friends of theirs is not going to help them with their argument that it's OK for them to increase the taxes of anybody."

Ask the Lobby Monitor: The politics, optics of gift-giving

NEWS | THE LOBBY MONITOR
PUBLISHED: THURSDAY, 08/03/2017 4:28 PM EDT

■ Ask the Lobby Monitor is a new column that offers guidance for confusing situations lobbyists might encounter. We ask for input, as indicated, from a variety of sources, including the Office of the Lobbying Commissioner of Canada, lobbyists, lawyers and ethics groups.

(All proposed scenarios are fictional or adapted.)

Scenario: It's Breast Cancer Awareness Month, and pink ribbons are making a yearly comeback. A charitable organization and an industry association decide to organize an evening reception in a show of solidarity for this largely non-partisan cause that both groups support.

All MPs and senators have been invited via an email invitation, per the requirement that such events be open to all.

Only one of the groups is registered to lobby the MP, who has been asked to deliver some remarks at the event because he or she has had a history of backing the cause as a private citizen. The other group, the charitable organization, is not registered to lobby that MP.

To express their gratitude, both pool their resources to give the MP a ticket to a sold-out theatre production (or an unrelated ticket event) that is well above the \$200 threshold, which requires government officials to publicly disclose such gifts with the ethics commissioner's office.

This isn't the first occasion where the MP has made an appearance at an event sponsored by the industry association and received a gift for their support. Within the last year, the MP in question was given a gift worth roughly \$100.

Is one party — or both — putting itself and the MP at risk of a conflict of interest, given that the MP is a known supporter of the cause? Could the MP be seen as offering preferential access to the groups if he or she has made several appearances at the group's events? And is there a chance that it could be interpreted as an attempt to influence a policy outcome?

Response:

Intersection of interests

The politics of gift giving — and the rules around it — dictate that a gift's value is not the only factor that determines whether it is appropriate. Context plays a huge role when the ethics and lobbying commissioners are asked to probe an MP's or lobbyist's conduct when a gift of considerable weight is given.

“The rule is structured so that whether the gift is acceptable or not isn't contingent on the value of the gift,” said Ian Stedman, a PhD candidate at York University and contributor to a chapter on ethics in *Honest Politics Now: What Ethical Conduct Means in Canadian Public Life*, in a phone interview. (The book, edited by Ian Greene and David Shugarman, both professors at York University, delves into high-profile political scandals, using them as case studies to explore conflict-of-interest issues.)

Regardless of whether or not there is lobbying going on at that charitable event, lobbyists “have to be attentive to the rules” around gift-giving, he said.

He also noted, “If you have given part of the value of that ticket to the public office holder, if you’re part of the contribution, you do have to be attentive to the perception [around it].”

For those sponsoring the event who do not “stand to benefit from it” and have no any intention of lobbying on the issue, Stedman said, “you’re more than likely on the right side of” the rules.

Do event sponsors have an obligation to register with the commissioner, if they have not already? In this case, because the group is not trying to influence policy, but merely supporting a cause, it would not have to register with the lobbying commissioner, an Ottawa-based lawyer said.

On the other hand, groups that are registered to lobby on the cause, have to exercise caution about appearances.

As a general rule — with some exceptions — the lobbying commissioner’s office said in an email that its “best advice is that lobbyists should take steps to minimize the intersection of gifts and its lobbying activities.”

The office added, “When lobbying intersects with the provision of gifts to public office holders (POH) being lobbied, there is a risk of creating a real or apparent conflict of interest.”

On the issue of preferential access, the lobbying commissioner’s office said that “a professional, working relationship” between the POH and a lobbyist would not create a conflict of interest.

If the lobbyist has ties to the POH that cut deeper than that — as friends, family members or business partners — those relationships may create the perception of preferential access, it noted.

When in doubt, consult

A painting by contemporary Indigenous artist Jason Carter. Complimentary tickets to the Calgary Stampede. Round-trip tickets and accommodations to Udine, Italy, given to an intern at the Prime Minister’s Office, who was invited to attend a G7 university summit as a student. These are some of the gifts given, but not necessarily accepted, logged on the public registry in the past few months.

In many instances, when government officials make pilgrimages to various ridings, they will often pop in at local events, celebrate a company’s milestone or participate in a panel discussion.

During those appearances, it is not unheard of, and is acceptable, for a gift — as a gesture of appreciation — to be given to a POH who is acting in an official capacity.

“There are some exceptions when gifts would be acceptable, such as expressions of courtesy, protocol or hospitality provided when a public office holders is carrying out job-related duties,” the lobbying commissioner’s office told The Lobby Monitor in an email.

The office’s emailed response noted three circumstantial exceptions:

an official is playing a ceremonial role, or presenting, at an event where there’s complimentary food and drinks;

an official is visiting a riding and has been given a ticket to a public event in that riding;

an official receives a gift “following an appearance, speech, or presentation as a token of thanks or appreciation”

However, figuring out what is acceptable and what could be construed as inappropriate, even when exceptions apply, can be a tricky matter, especially if the gift's value surpasses the \$200 threshold.

Indeed, under rule 10 of the Lobbyists' Code of Conduct, lobbyists are expected to avoid situations that create "a sense of obligation" by providing — or even promising — a gift or favour that the POH cannot accept.

Even if a group has not registered with the commissioner — but is obligated to — the lobbyists' code of conduct applies, the lobbying commissioner's office said. In other words, just because a group has no file in the registry, does not make the rules any less relevant to them, especially if they plan to engage the government on policy matters.

To stay on side with that rule, the lobbying commissioner's office advises lobbyists to verify with government officials themselves that if, by giving the giving the "gift in question," they are not putting MPs in the line of fire.

Stedman echoed that sentiment, saying that running gift-giving plans by the lobbying and ethics commissioners first to get their approval should be the approach.

Ultimately, the MP can decide whether or not to decline the gift, or to pay for it.

For example, Small Business and Tourism Minister Bardish Chagger recently forfeited the painting by Jason Carter, which Travel Alberta had attempted to give following a visit to Calgary in May, according to the file in the public registry. (While there, Chagger attended an event celebrating Calgary as a host destination for Rendez-Vous Canada 2017.)

From the ethics commissioner office's perspective, which provides guidance to POHs, situations are weighed on a case-by-case basis.

While the office said in an email that it is not at liberty to respond to hypothetical scenarios or "actual situations," it referred to the "acceptability test" in subsection 14(1) of the Conflict of Interest Code for Members of the House of Commons.

Under that provision, MPs — and members of their family — can accept gifts when it is being given as a courtesy or protocol, or as an act of hospitality.

"In deciding whether or not a gift is acceptable, most relevant is whether the person or entity offering the gift is seeking or may in the future seek to influence a member in the exercise of a duty or function of his or her office," the ethics commissioner's office said in an email.

'Business lunch' principle

If there is an established pattern of gift-giving, the MP and, by extension, the gift-giver might start to raise some eyebrows.

Consider this guideline on gifts from the conflict of interest commissioner:

"While a single business lunch may not give rise to such a perception, a series of free business lunches might reasonably be seen to have been given to influence the public office holder," according to the gift guideline published by the ethics commissioner's office in July 2011.

That same principle might apply to giving the MP a series of gifts following his or her appearance at several events.

"It's a trigger for you to think twice about whether eyebrows are raised about you accepting those gifts as an MP," Stedman said. "It triggers for the MP, or the public office holder, to look at that series of gifts, and say, 'OK. Is this normal? Are these really acceptable gifts? Is there another relationship that I'm not paying attention to that's causing them to continue to gift me things?'"

While there may not necessarily be a problem with accepting gifts that add up to \$200, Stedman noted, the situation may give MPs pause to “give some thought to the context” if they find themselves having to regularly disclose such gifts.

Groups that have a high level of engagement with government, particularly those vying for funding or involved in consultations, should err on the side of caution.

“The challenge comes when their industry’s dealing heavily with the government for an extended period of time,” Stedman said.

He cited a hypothetical example in which groups should tread more carefully to avoid bad optics. In the case of organizations that have just received an influx of funding through a government program, he said they should be wary of wining and dining with government officials.

“They just have to be careful in their interactions,” he said. “If there’s a potential for them to be asking for more, then they shouldn’t be giving them gifts and taking them to dinners, because that’s gonna look bad.”

Ask the Lobby Monitor: Cocktail break shifts conversation to shop talk

NEWS | THE LOBBY MONITOR
PUBLISHED: MONDAY, 07/17/2017 1:24 PM EDT

■ Scenario: A consultant lobbyist and an in-house lobbyist who represent a university are at an alumni function. They happen to bump into the innovation minister who they're registered to lobby. They exchange pleasantries, sticking to general news about Canada's push to retain its scientific talent.

The consultant leaves briefly to grab a drink, but casually mentions before he goes that he'd like to discuss a subject — artificial intelligence (AI) research — on which he's registered to lobby.

Does that encounter — upon that person's return — then turn into an oral and pre-arranged meeting? And do both parties have to log the exchange with the commissioner when they file their report by the 15th of the month?

Response:

Split-second transitions

You've talked up a storm about where Canada fits into the AI landscape, and you need a refreshment, but don't want the conversation to end just yet without first finding out how the government foresees advancing the country's prospects.

Even if you hadn't initially intended to segue into a policy discussion, exchanging ideas on how to target funding by bringing it up before hitting pause — and switching into a different role — transitions the conversation into an oral and pre-arranged meeting.

"If the person in question says, 'I'm gonna get a drink, and come talk to you about X,' that's arranged in advance," said Scott Thurlow, Ottawa-based lawyer and consultant with Temple Scott and Associates.

It doesn't matter if the minister wasn't attending the public function in an official capacity. The minister might have been attending as a private citizen, as an alumnus, but if discussions veer into their policy territory, note that exchange in your filings.

"An agreement to discuss registrable subject matters at a later time (even if it is only a short delay) means that any subsequent communication is arranged," Dorin Petriu, policy analyst at the Office of the Lobbying Commissioner, told The Lobby Monitor in an emailed response.

Both parties — regardless of whether it was the in-house or consultant lobbyist who initiated things — have to report the conversation.

Guest of honour

You missed the memo that the innovation minister was among the university's guests of honour, who would be delivering some remarks about his department's commitment to supporting research development.

While you didn't plan on engaging the minister on policy matters you're registered to discuss, the fact that he's attending the public function as a government official triggers an obligation to report the exchange.

“Our interpretation is that the entire event was arranged in advance and the requirement to report oral and arranged communications has been triggered,” Petriu said. “Lobbyists having discussions on registrable subject matters with the minister at the event must report them.”

The first move

When you initiate “an oral and pre-arranged” discussion with a designated public office holder, the onus is on you to report that exchange.

Even if you are offering input on a bill or resolution in the draft stage, sitting before a House committee and awaiting passage, defeat or amendment, that conversation has to be reported, Petriu pointed the reference to subsection 7(a)(ii) of the Lobbying Act.

Everything else that gets into the weeds of policy change or preservation, and talk of funding, is for the registry records, Thurlow said.

For example, if you return from grabbing a cocktail, express how well one policy is going in another country and suggest Ottawa look into it, you have to report that such a discussion took place.

The exception: fact-finding missions, according to subsection 4(2) of the Lobbying Act.

Dawson tables final annual report, says requests to understand Act increased

NEWS | SHRUTI SHEKAR

PUBLISHED: THURSDAY, 06/08/2017 3:20 PM EDT

■ According to the Ethics Commissioner's 2016-17 report, compared to the previous year, the Commissioner's Office saw a significant increase in the number media requests, new ministerial staff appointments and requests to understand the Conflict of Interest Act.

Mary Dawson tabled her last Conflict of Interest Act Annual Report as the Ethics Commissioner Thursday.

She noted in the report that in the past year, she filed 1,753 communications with public office holders (POH), of which 24 per cent reported a personal situation, 15 per cent were post-employment obligations, eight per cent accounted for outside activities, 23 per cent were related to gifts and 30 per cent related to other matters such as fundraising, letters of support, and recusals.

In the past year, Dawson notes there was an increase in requests "for advice about gifts or other advantages, probably due in part to the fact that I issued two examination reports related to gifts during this period."

The report notes she received 401 requests to get more information on gifts and other advantages, compared to 168 the previous year, 52 requests were POHs who declared gifts compared to 23 the previous year, and in total 213 gifts or advantages were declared compared to 80 in the previous year.

The office provides a 30-day deadline to voluntarily disclose acceptance of gifts. For the first time this year Dawson notes she imposed "a penalty for failure to make a public declaration of a gift" within that deadline.

Regarding gift-giving, Dawson draws on the continued increased attention fundraising activity has had in the past year, and notes that the Act does not provide enough information regarding rules around fundraising.

"My recommendation that a more stringent rule be established for ministers and parliamentary secretaries with regard to fundraising still warrants attention," she says.

However, Dawson notes that her office undertakes initiatives to help POHs.

She said she made 16 presentations to organizations and offices that are "aimed at helping public office holders and Members understand their obligations under the Act and the Members; Code, educating and informing other stakeholders and the Canadian public about the two regimes and my role and mandate in applying them, facilitating my reporting to Parliament and exchanging information with other jurisdictions."

Dawson notes that there were an "unusually high" number of new ministerial staff members appointed in the previous year "following the change in government in the latter part of 2015-2016." Dawson adds that 315 new appointments were made in the past year.

"This led to delays in processing the initial compliance cases in the first quarter," Dawson says.

Initial compliance process needs to be completed by all POHs within 120 days following their appointment.

With respect to media requests to the Office, Dawson says it was the first year that her staff collected this data. Dawson says the office sets a 75 per cent target to respond to

requests, and in the past year the office “met its service standards in 83 per cent of cases for media requests and in 81 per cent of cases for public inquiries.”

Dawson indicates that the previous year saw the number of media requests increase again. In the last year there were 315 requests from the media compared to 143 the previous year.

“I believe that the actions taken by my Office have contributed to a growing level of public awareness over the years about the Act and the Members’ Code and the role of my Office in applying them,” Dawson writes in her report. “I believe that overall increase in media inquiries since my Office was created reflects heightened and sustained awareness among journalists about Canada’s federal conflict of interest regimes.”

Dawson’s priorities for the future include, among others, an evaluation of her office’s website and a social media strategy.

Reported investigations

Dawson concludes there was an increase in files opened for investigations, adding that the files in progress have “remained relatively constant over the last five years.”

In the past year Dawson put out five reports including the Vennard report, Bennett report, Philpott report, Toews report and the Wright report.

Recommendations for the future

Overall, Dawson says while the Act has “functioned well,” there is room for improvement.

She lists seven key recommendations, including: “increasing transparency around gifts and other advantages, perhaps by lowering the threshold for disclosure; broadening the scope of conflict of interest to extend it to ‘entities’ rather than limited it to persons; and narrowing the overly broad prohibition to engaging in outside activities and hold controlled assets.”

The Act came into force July 9, 2007, and Dawson has been the commissioner since then. Her appointment term finishes at the end of June.

Sponsored-travel report has group renewing call for clarity on lobbying rules

A new report shows MPs received \$562,237 worth of sponsored travel in 2016 - more than a third from groups that lobby

Groups, governments and lobbyists sponsoring parliamentary travel spent more than half a million dollars last year on MP expenses falling under the line items: gifts, transportation, accommodation and “other.”

Conflict of Interest and Ethics Commissioner Mary Dawson’s 2016 report, released Friday, shows 67 MPs across all parties accepted sponsored trips valued at \$562,237.

On Monday Democracy Watch renewed its criticism and called for clarity on the rules around lobbyist-paid travel - namely that it explicitly be forbidden.

While the vast majority of groups reporting trip sponsorships aren’t simultaneously registered to lobby, several are. The Centre for Israel and Jewish Affairs (CIJA) topped the list with 24 sponsored trips, the \$230,467 representing more than a third of the year’s total.

In May 2016 the ethics group co-founder filed a complaint with Lobbying Commissioner Karen Shepherd calling for a “ruling on gift of paid trips.” The complaint listed 16 businesses and lobby groups that sponsored MP travel since 2009 while registered to lobby the federal government, it also included six other groups that are not registered to lobby. Several of those same names reappear in this year’s report.

“It shouldn’t take so long, we set out pretty clear cases,” said Duff Conacher, who said a lack of ruling 10 months later is a sign of “ongoing negligence” by the commissioner.

Shepherd’s office did not answer a query to confirm when that decision will be released.

“The Commissioner takes all allegations seriously,” Shepherd’s office said by email. “The Lobbying Act requires the Commissioner to conduct all investigations and reviews in private. She has no further comment.”

In response to Conacher’s complaints, CIJA said it “follows all the regulations that pertain to this travel.”

In emailed responses spokesman Martin Sampson said CIJA takes elected officials to Israel to educate them about the country and its citizens, “the centrality of Israel to Jewish identity, and the unique position faced by the people of the region.” “CIJA trips include Israeli and Palestinian speakers from across the political spectrum,” Sampson added.

Last year’s CIJA-sponsored trips broke down to 12 Liberal MPs, including Seamus O’Regan, Any Fillmore and Marco Mendicino; nine Conservatives including Lisa Raitt, Marilyn Gladu, Michelle Rempel, Steven Blaney and Dan Albas; and three NDP, including Garrison, Randall and Matthew Dubé.

When Conacher filed the first complaint, CEO Shimon Fogel told the Lobby Monitor it was a “legitimate question” for Democracy Watch to pose.

“I’ll confess that I’m struggling to understand the Lobbyists’ Code of Conduct,” said Fogel at the time, adding that if regulations are “so aggressive and restrictive” there is a danger of lawmakers “cocooning” themselves in a way that creates a distance between themselves and those they represent.

Fogel said in May that while CIJA doesn’t hide its positions, the travel program explicitly communicates to participants that “there are absolutely no strings attached, there are no obligations, there are no expectations.”

Fogel is registered to lobby for the group, which has filed 102 monthly communications reports in the last six months and has increased its lobbying efforts in the last number of years.

While Conacher would like to see all sponsored travel come under greater scrutiny, he said the lobbyist code has clear guidelines.

Rule 6 in the Lobbyists’ Code states “a lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest,” while Rule 10 stipulates that lobbyists should not promise or provide gifts or other benefits to public office holders they are lobbying or will lobby in the future.

“Essentially it says that ... it’s illegal for lobbyists to do anything that puts an MP or government official in even appearance of a conflict of interest and paying for an MP’s trip that costs thousands of dollars definitely crosses that line,” said Conacher.

If Shepherd rules against that reasoning, Conacher said the group will take the case to court. He pointed to the 2009 Federal Court of Appeal ruling - Democracy Watch v. Barry Campbell - which held that no conflict of interest, real or apparent, is acceptable under the code.

Breaching the code carries no monetary or legal penalties, but the commissioner can make a public report to Parliament, in effect naming and shaming lobbyists who break the rules.

In the ethics report, MP’s listed a variety of reasons for a sponsored trip, calling it an “introduction to country and its institutions,” meetings with “Israeli officials and other stakeholders to better understand geopolitical situation” and an “educational learning journey” to “better understand the “ situation in Middle East.” In some cases, MPs brought a partner or person to accompany the on trips that ranged from several days to a week.

Conacher doesn't see a problem with sponsored travel for international organizations or to present at conferences, but again called into question whether the Taiwan-based Chinese International Economic Cooperation Association should be required to register to lobby.

The Act says any group that spends 20 per cent of its organizational activities lobbying, must register.

"An entity that does seek change to international rules or Canadian rules, then yes there is a problem even if they're not lobbying within Canada," Conacher said.

The association, based in Taiwan, could not immediately be reached for comment.

In 2016 the Chinese International Economic Cooperation Association sponsored 11 MP trips totalling \$127,739 so several could attend national day celebrations, and others could meet with government officials. Eight Liberals travelled last year, including MPs Wayne Easter, Randeep Sarai and Judy Sgro, two NDP MPs, including Peter Julian and Deepak Obhrai was the lone Conservative sponsored by the group.

Sampson said most Canadian politicians don't have budgets that allow for international travel.

"We are open and transparent about our trips and we follow all the regulations," he said. "Our trips enable them to visit an important region that they otherwise would not be able to visit."

Conacher disagreed with that argument and suggested a travel fund that the auditor general would manage would be a better approach.

The report also lists Results Canada, Engineers Without Borders, and World Vision Canada - all groups that are currently registered to lobby.

Results Canada's national public engagement manager could not be reached for comment Monday.

The non-profit poverty group, which was listed in Conacher's May complaint, is registered to lobby in-house with executive director Lauren Dobson-Hughes as of June 11, 2008. Dobson-Hughes has filed 15 monthly communication reports, according to public records.

Its file says it advocates "spending priorities related to the dissemination of Canada's Official Development Assistance envelope to ensure that aid is targeted at initiatives that serve the world's poorest."

- with files from Alyssa O'Dell

Democracy Watch files complaint with Ethics Commish over Aga Khan 'gifts'

LOBBY NOTES | ALYSSA O'DELL

PUBLISHED: WEDNESDAY, 02/08/2017 4:45 PM EST

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■ Ethics group Democracy Watch has sent a letter to federal Conflict of Interest Commissioner Mary Dawson call on her to rule that Prime Minister Justin Trudeau violated the Conflict of Interest act when he “accepted the gifts of a holiday trip and helicopter ride” from the Aga Khan.

The letter, sent Jan. 31, also called for a ruling that both Trudeau and Liberal MP Seamus O'Regan, who was present for part of the holiday, violated the Conflict of Interest Code for MPs.

Democracy Watch board member Duff Conacher also called for a ruling on if Conservative Party Interim Leader Rona Ambrose violated the MP Code by accepting a gift of a trip from billionaire energy mogul and Calgary Flames co-owner Murray Edwards over the Parliamentary break.

“MPs are not also allowed to accept a gift, even a gift from friends, if it could possibly be reasonably viewed as given to influence them, and based on this standard Liberal MP Seamus O'Regan violated the MP Code by accepting the gift of the trip from the Aga Khan, as did Prime Minister Trudeau when he was an MP in December 2014,” Conacher said in a Feb. 8 press release.

“Conservative MP Rona Ambrose also violated the MP Code by accepting the gift of the trip from Murray Edwards who is registered to lobby,” he said.

Ambrose called the Ethics Commissioner to clear the travel while she was already on the yacht trip, according to media reports. Dawson's office told The Globe and Mail Monday that it had not launched an inquiry into the vacation.

Murray is actively registered to lobby federally as chair of the board of Canadian Natural Resources Ltd., although the filing lists his role as including less than 20 per cent lobby activities.

Democracy Watch has also requested that Dawson recuse herself from ruling on these issues, given the fact her contract was renewed for a six-month term in December, something the group called a “gift” from cabinet and a “financial conflict of interest.” Democracy Watch is calling for a provincial ethics commissioner to rule on all complaints about the Trudeau Cabinet.

Dawson has since indicated she will not seek further re-appointment. Her office has told The Hill Times the contract does not create a conflict of interest, as opposition party leaders are consulted on the appointment of the Ethics Commissioner.

However, Democracy Watch claims out that subsection 82(2) of the Parliament of Canada Act allows cabinet to make six-month appointments without consulting the opposition.

“It's a conflict of interest and violation of the federal ethics law for Prime Minister Trudeau and his Cabinet to choose their own ethics and lobbying watchdogs, especially when they are being investigated by those watchdogs,” Conacher said.

Lobbyists should view Trudeau's Bahamas trip as a cautionary tale: Powers

Vacation prompts comparison to sponsored travel

NEWS | SHRUTI SHEKAR

PUBLISHED: FRIDAY, 01/20/2017 4:36 PM EST

■ Prime Minister Justin Trudeau's December trip to the Bahamas with the Aga Khan should be a cautionary tale for lobbyists, said one government relations specialist, but added it shouldn't be assumed that lobbying rules were broken.

Tim Powers, vice-chairman of Summa Strategies, said in a phone interview that it wouldn't be wise to make any sort of claim of the trip breaking lobbying rules unless all the facts were reviewed, and the only person who can do that is Lobbying Commissioner Karen Shepherd.

He added that the perception of how the story is unfolding isn't casting the most favourable light on Trudeau, but it is something to which lobbyists should pay attention.

"It's a reminder to anybody who is involved in the advocacy business to make sure you know the rules," Powers said. "But more importantly is you understand the perception: if something that you were doing were to become a news story, how would it look to the outside world?"

He added that lobbyists need to be "mindful" of their advocacy work, and how it would appear to the general public.

When asked whether this case has affected lobbyists and their work, Powers said he thinks "what you find happening in the lobby business more often than not is people are being more diligent on that front, and that's a good thing."

Trudeau travelled to Nassau, Bahamas, with his family on a government Challenger aircraft during the Christmas holidays. He later confirmed at a press conference in Kingston, Ont., last week that he travelled to the private island off the coast of Nassau on a helicopter provided by the Aga Khan.

Trudeau also said during several other press conferences that the Aga Khan had known him since he was a child and was being hospitable.

After several news outlets, including The Lobby Monitor, reported that this could be a breach in the Conflict of Interest Act, and an official request from an opposition MP, Ethics Commissioner Mary Dawson indicated that she was going to investigate the trip to see if any wrongdoing was committed.

According to section 12 of the Conflict of Interest Act:

"No minister of the Crown, minister of state or parliamentary secretary, no member of his or her family and no ministerial adviser or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner."

When asked if the Prime Minister declared the trip with Dawson or if he was planning on it, Cameron Ahmed, spokesperson for the Prime Minister's office, said in an emailed statement that Trudeau "is happy to engage with the Commissioner and will answer any questions she may have."

The Aga Khan Foundation is a registered group in the federal lobbyists' registry, and some questioned whether the helicopter that Trudeau flew in — as well as the entire trip — could be considered a gift, which would breach the Lobbyists' Code of Conduct.

“Was the accommodation paid for? Was there a rental fee? I think the real danger here is not knowing all the facts and not having all the information that I assume the Lobbying Commissioner or Ethics [Commissioner] will see,” Powers said.

The Aga Khan Foundation of Canada is registered to lobby in-house with Khalil Shariff, CEO of the group, its file in the lobbyists’ registry indicated. It added that in the past six months the group has filed five monthly communication reports.

The most recent communication was to Elissa Goldberg, assistant deputy minister for Global Affairs Canada, on Dec. 21, 2016, and to Geoffroi Montpetit, chief of staff at Global Affairs Canada, on Dec. 13, 2016, its file states. Conversations were about international development.

According to its file, the group is lobbying the government to receive funds “for ongoing development programs and projects.”

The Lobby Monitor reached out the Aga Khan Foundation to ask about the number of hours Shariff’s role required him to lobby, if the foundation had internal rules regarding conflict of interest on lobbying, and if the helicopter was rented or outsourced. They did not respond by deadline.

Warren Kinsella, consultant at Daisy Consulting Group and a lawyer, posed a counterargument, asking in a blog post on his website if “Trudeau [was] supposed to swim to his destination? Hitch-hike? Canoe? Walk on water?”

“Let’s not bother debating whether the circumstances were ‘exceptional’ (although they probably were: he was going to, you know, an island). Let’s also not debate whether a Prime Minister ever stops being a ‘public office holder’ (because they probably never really do, do they?). Let’s just say this was, say, sponsored travel,” Kinsella said in his post.

According to the Members’ Code:

“Subsection 15(0.1) of the Members’ Code expressly permits Members to accept sponsored travel that arises from or relates to their positions, effectively exempting it from the rules on gifts or other benefits. Sponsored travel includes all benefits received in connection with the travel, including accommodation and, as noted above, gifts and other benefits.

Where the cost of any sponsored travel accepted by a Member exceeds \$200 and is not wholly paid from the Consolidated Revenue Fund or by the Member personally, his or her political party or any parliamentary association recognized by the House, it must be disclosed to the Commissioner and publicly declared within 60 days after the end of the trip.”

When asked how rules would change if the one giving sponsored travel to a public office holder was a lobbyist, Kinsella said in emailed responses that sponsors are “almost always a lobbyist.”

“[The Centre for Israel and Jewish Affairs], for example, sponsors a great deal of air travel — with MPs from all parties — every year. That never raises any concerns,” Kinsella said. “This case shouldn’t either. The Opposition — and some bored pundits — are attempting to manufacture hysteria because they are frustrated by Trudeau’s ongoing popularity.”

CIJA, according to its file in the lobbyists’ registry, is “the official representative organizational voice of the Jewish community of Canada.”

“In seeking to enhance Canada-Israel Friendship, the Centre liaises with government, media, business and academic sectors, often submitting briefs and providing background analysis on matters of public policy,” its file says. “It sponsors seminars, conferences and other types of educational programming in Canada, and organizes Middle East study missions as well as visits to other communities where there are specific issues relevant to the Jewish community.”

CIJA is registered to lobby in-house with Shimon Fogel, the group's CEO, as of Nov. 20, 2011, its file in the lobbyists' registry indicated. In the past six months, the group has filed 99 monthly communication reports.

CIJA declined to comment when asked how it felt that their sponsored travels were compared to that of the Prime Minister's to a private island.

In May, the Lobby Monitor wrote about sponsored travel and spoke to Fogel, who said that CIJA makes sure to abide by the rules and remain transparent.

He said in last year's story that he cannot speak to the appropriateness of sponsored travel by other groups, but is "confident that any objective assessment" of CIJA's parliamentary travel program would turn up no instances of undue influence or pressure to adopt a particular perspective.

While noting that CIJA does not try to hide its positions, Fogel said the travel program explicitly indicates to participants that "there are absolutely no strings attached, there are no obligations, there are no expectations" related to asks, other than participating in trip programming learning opportunities.

Though any comparison could be created, Powers said "the question is, does the comparison hold up to the rules and regulations that are at play and is it believable?"

"I think the challenge that the Prime Minister and the government have... is just the way [it was communicated]," Powers said. "Whenever you communicate in bits and pieces around a story that people are already raising suspicions about, you create extra suspicion and further questions are forthcoming and then you get a never-ending cycle of different explanations and versions."

According to the lobbying commissioner, if this was an instance of sponsored travel, any shop talk would have to be recorded.

In an emailed statement, Shepherd said she would "consider communication during sponsored travel to be arranged [communication]."

"Any oral communication on registrable topics must be reported in a Monthly Communication Report by the 15th of the month following the communication during a sponsored travel event," Shepherd said.

She added:

"Corporations and organizations that are not registered and offer sponsored travel must consider the time spent on organizing the event and the time during the sponsored travel as part of their significant part of duties calculation and register if it causes them to meet the 20 per cent threshold. The requirement for filing Monthly Communication Report would also apply if registration is required."

Ethics commish says Bennett contravened Conflict of Interest Act

LOBBY NOTES | SELINA CHIGNALL

■ A report released by the Ethics Commissioner has found that the former president and chief executive officer of the Royal Canadian Mint contravened the Conflict of Interest Act by accepting gifts from a client.

Ethics Commissioner Mary Dawson released The Bennett Report Thursday that reviewed an incident from February 2014 in which Brinks Canada hosted a retirement party for Ian Bennett, who was retiring from the Mint. He was presented with “a model of a ship resembling the Bluenose, which is represented on the Canadian dime,” the report said.

By accepting this gift, Bennett contravened section 11 of the Act.

“That section prohibits public office holders from accepting any gift that might reasonably be seen to have been given to influence them in the exercise of their official powers, duties or functions,” the report said.

Brinks Canada is a longtime stakeholder and supplier to the Mint, the report said. The company provides armoured car transportation and currency and coin processing services.

“In November 2013, at the time of the invitation, there were several ongoing contracts being negotiated between the two organizations, including one that Mr. Bennett signed several days after the retirement dinner,” the report said.

“Due to fact that one of the Mint’s objects is to mint coins in anticipation of profit, during the course of my examination I found that the Mint’s relationships with stakeholders as well as its governance structure have much in common with corporations in the private sector,” Dawson added.

Although the gifts might have been to recognize Bennett’s career and his retirement and solid business relationship with Brinks Canada, Dawson said

“Mr. Bennett’s acceptance of those gifts occurred in the context of an ongoing business relationship involving contracts between the Mint and Brinks Canada. I therefore found that they might reasonably be seen to have been given to influence him in the exercise of his official functions.”

She noted that Bennett might have only perceived those gifts in relation to his retirement, that was four months away. He was still obliged under the Act as a public office holder to avoid accepting gifts from stakeholder and “engaging the prohibition relating to gifts.”

“That obligation remains and must be taken into account,” the report noted.

And while Bennett said the gift could not influence his decisions to conduct businesses or sign contracts with the company, Dawson said perception does not determine whether or not it’s acceptable for a public officer to receive gifts or the person giving the present.

“Instead, it depends on whether, in the circumstances surrounding the gift, it might reasonably be seen to have been given to influence a public office holder,” the report said.

Because contract negotiations were going on between the Mint and Brinks Canada, Dawson said the gifts—of the model ship and dinner—could be seen “to have been given to influence him in the exercise of his official functions.”

She also found no evidence to suggest a friendship between Bennett with those hosting the dinner, so she concluded that the exceptions provided in subsection 11(2) of the Act did not apply.

This report comes at a time when Dawson's term as Ethics Commish is coming to end in December. The Privy Council's Office confirmed on June 30 to The Lobby Monitor that current Ethics Commissioner Mary Dawson received an extension to her term by six months.

The Lobby Monitor reached out to Dawson's office to see if she would be seeking to re-apply to her position; her office had "no comment on that."

Calls for examination of lobby group-sponsored travel cite need for Lobbyists' Code clarity

‘I think it’s a legitimate question for them to pose,’ says CIJA’s Fogel of watchdog call for ruling on lobbyist-paid travel, noting confidence in the group’s program

NEWS | ALYSSA O’DELL

PUBLISHED: THURSDAY, 05/26/2016 4:32 PM EDT

■ Ethics watchdog group Democracy Watch has filed a request for investigation with the Office of the Commissioner of Lobbying of Canada, calling for a ruling on the applicability of gifting provisions in the Lobbyists’ Code of Conduct to MPs’ and senators’ travel sponsored by registered federal lobby groups.

Democracy Watch said in a release it believes the sponsored travel violates Rule 6 (formerly Rule 8) in the recently-updated Lobbyists’ Code of Conduct, and has asked for an investigation into sponsored travel between March 2009 and the present.

The request for investigation was filed May 25, according to the document, and also calls on Lobby Commissioner Karen Shepherd to remove herself from ruling on the complaint based on the fact that Shepherd has expressed interest in being reappointed to her post following the end of her term this summer.

The organization recommends “a similar commissioner from another jurisdiction” rule on the issue.

Shepherd’s office declined to comment on the matter when reached by The Lobby Monitor.

“Neither the federal Commissioner of Lobbying nor the federal Ethics Commissioner should rule on this complaint because they are up for possible reappointment and also have a very weak enforcement record,” said Democracy Watch co-founder and visiting professor at the University of Ottawa Duff Conacher in a statement.

He confirmed in an emailed statement to The Lobby Monitor that Shepherd’s office acknowledged receipt of the complaint Thursday.

Democracy Watch joins calls for clarity on code rules

Rule 6 in the Lobbyists’ Code states that “a lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest,” while Rule 10 stipulates that lobbyists should not promise or provide gifts or other benefits to public office holders they are lobbying or will lobby in the future.

The spring 2009 Federal Court of Appeal ruling in Democracy Watch v. Barry Campbell held that no conflict of interest, real or apparent, is acceptable under the code.

Breaching the code carries no monetary or legal penalties, but the commissioner can make a public report to Parliament, in effect naming and shaming lobbyists who break the rules.

Democracy Watch’s submission asks Shepherd to make it “very clear” in any ruling if paid travel would be considered a gift under Rule 10 of the code, and the group is not alone in suggesting provisions in the Lobbyists’ Code aren’t as clear as they could be.

“I’ll confess that I’m struggling to understand the Lobbyists’ Code of Conduct,” said Shimon Fogel, CEO of the Centre for Israel and Jewish Affairs, which was named in

Democracy Watch's letter as one group registered to lobby that has sponsored travel for lawmakers.

"It seems to change often, and it's not entirely clear to me that the objective of ensuring transparency as the core mandate is what is always the focus," Fogel said in a phone interview with The Lobby Monitor, adding that if regulations are "so aggressive and restrictive" there is a danger of lawmakers "cocooning" themselves in a way that creates a distance between themselves and those they represent.

The updated code came into force in December following consultations with the GR sector.

"I think it's a legitimate question for [Democracy Watch] to pose," Fogel continued, on the general subject of calls for inquiry into sponsored travel.

"I mean it sounds very ominous when it's framed as a complaint, but I do think it's an area that merits some consideration," he said, adding it would be "perfectly appropriate" for the lobby commissioner or another arm of Parliament to evaluate whether undue influence is being exercised by certain groups sponsoring travel.

He said he cannot speak to the appropriateness of sponsored travel by other groups, but is "confident that any objective assessment" of CIJA's parliamentary travel program would turn up no instances of undue influence or pressure to adopt a particular perspective.

While noting that CIJA does not try to hide its positions, Fogel said the travel program explicitly indicates to participants that "there are absolutely no strings attached, there are no obligations, there are no expectations" related to asks, other than participating in trip programming learning opportunities.

So far CIJA, Results Canada have disclosed sponsored travel in 2016

GR consultants told The Lobby Monitor in 2013 that it can be risky for NGOs and corporate clients to sponsor travel for MPs as a way to showcase operations to the government.

Democracy Watch's complaint lists 16 businesses and lobby groups that sponsored MP travel since 2009 while registered to lobby the federal government, and six further groups that are not registered to lobby.

The Conflict of Interest Code allows for Members of the House of Commons to accept sponsored trips for themselves and a guest that may arise from their position. When travel costs exceed \$200 for a sponsored trip, MPs have 60 days to file a report to the commissioner disclosing the trip.

According to disclosures filed so far for 2016, the CIJA and non-profit poverty group Results Canada have sponsored MP travel while also registered to lobby federally, the Democracy Watch complaint notes.

Liberal MPs Seamus O'Regan, Dan Ruimy, Marco Mendicino, Andy Fillmore; Conservatives Blake Richards, Michelle Rempel and Alain Rayes; and NDP MP Randall Garrison all reported travel to Israel with funding from CIJA this year.

"This serves as a very useful opportunity for parliamentarians to learn about something that is very complex and very difficult to get their heads around from a distance of 10,000 kilometres away," Fogel said, noting that CIJA has been transparent in disclosures about the program, even before parliamentary regulations required it.

"It's a transparent process, not something that we hide," he said.

Results sponsored travel to India to visit immunization programs and attend a polio summit for Liberal MP Sonia Sidhu, according to travel disclosures for 2016 so far.

Last year, the group told The Lobby Monitor the trips help MPs see the impact of projects first-hand, but are not essential for gaining support for international development or aid initiatives. The organization did not reply to request for comment for this story before publishing deadline.

In the past, MPs have defended the practice of accepting sponsored travel, within limits, given limited budgets and the benefits of on the ground experience.

Among the groups named in Democracy Watch's letter, which the organization claims sponsored travel in 2014-2015 while registered to lobby, are the Armenian National Committee of Canada, Results Canada and Westjet.

Groups named in the letter from previous years include The Canadian Union of Public Employees, Engineers Without Borders Canada, United Steelworkers of America, Cenovus Energy, the United Food and Commercial Workers International Union, Goldcorp, World Vision and Cameco Corp., among others.

Lobbying commissioner's new directive on receptions could deprive government of lobbyists' input, says industry leader

The head of the group representing lobbyists across the country says recent directives from Lobbying Commissioner Karen Shepherd regarding lobbyist-hosted receptions could negatively affect an important source of input for government officials.

Last month, Ms. Shepherd offered some interpretation of how the Lobbyists' Code of Conduct applies to both gifts and, by extension, receptions.

In an online notice, Ms. Shepherd noted the rule of the Lobbyists' Code that prohibits lobbyists from taking "any action that would place a public office holder in a real or apparent conflict of interest."

She cited another part of the code that states: "To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder whom they are lobbying or will lobby, which the public office holder is not allowed to accept."

The Conflict of Interest Code for Members of Parliament includes a number of restrictions on MPs accepting gifts, including that they not accept benefits that could be viewed to influence their decision-making, and that MPs must disclose to the ethics commissioner if the value of gifts from any one source exceeds \$200 in value over a 12-month period.

In the context of gifts, Ms. Shepherd said "caution" needs to be exercised by lobbyists when organizing social functions for parliamentarians. She recommended that, for such occasions, lobbyists ensure that all Members of the House of Commons and Senate are invited, that the total cost of all gifts, food, and beverages for such events are "reasonable," that invitations not include information related to lobbying, and that lobbying not take place at the events.

Following these criteria would "mitigate the risk of creating a sense of obligation, or the appearance of one," she said.

André Albinati, president of the Government Relations Institute of Canada (GRIC) and a principal at Earncliffe Strategy Group, said he's advising lobbyists to follow the commissioner's directives, despite disagreeing with them.

He said these provisions from the commissioner, which are not explicit within the regulations, can cause uncertainty among lobbyists, resulting in them erring "on the side of not hosting an event, not having an event, not having a reception, not engaging in that public policy dialogue, not having a speech with a CEO, not going to a fundraiser that involves parliamentarians."

He added: "I think it possibly runs contrary to the interests of a federal government who is actually looking at increasing the consultation touch points between stakeholders and government."

Mr. Albinati said he knows of several organizations—which he would not specify—that are considering cancelling annual events that have been held for decades.

Some upcoming lobbying events include an annual showcase for parliamentarians put on by the Entertainment Software Association of Canada at the Fairmont Chateau Laurier, the annual reception for MPs put on by Consumer & Food Products of Canada that's also at the Chateau Laurier, and a reception for MPs by the Canadian Health Food Association in the Parliamentary Restaurant, all of which are scheduled for Feb. 23.

Mr. Albinati said the commissioner's directives might make lobbyists reluctant to have any contact with parliamentarians beyond bilateral meetings in their offices.

"To think that parliamentarians are chained to a desk in the House of Commons only, that they aren't out in the world and out across Canada and engaging with Canadians and [lobbyists] in a more dynamic and interactive way, I think again, does a disservice to an understanding of what the public-policy space is and how views are brought to bear," he said.

"A parliamentarian's job doesn't stop," Mr. Albinati added. "It's not a 9-5 job. It actually starts at the crack of dawn when they get out of bed and head out to their first breakfast meeting. And some of those people they might be meeting with actually might be registered lobbyists. ... As they go through their day, all of those different touch points, the more complicated you make that, the more barriers you're creating to the public-policy process."

Mr. Albinati said it's not just government-consulting firms that are being affected by this direction, but other companies and not-for-profit groups ranging from universities to those advocating for health-care recipients.

When asked about complaints that its latest directives might curtail meaningful input for policy-makers, the Lobbying Commissioner's Office said in an emailed statement: "There is nothing prohibiting lobbyists [at receptions] from arranging meetings with ministers or parliamentarians that do not take place at receptions."

Mr. Albinati said the government, at some point, will have to consider whether the directions being put out by the Lobbying Commissioner's Office are appropriate. A statutory five-year review of the Lobbying Act is due in 2017.

"Parliamentarians will want to be really be careful about allowing unaccountable, arm's-length entities like the commissioner of lobbying [to have] too many additional powers and allowing them to create these complex regimes that people have a problems figuring out," Mr. Albinati said. "You shouldn't need lawyers to figure out how to talk to a Member of Parliament."

The office of Treasury Board President Scott Brison (Kings-Hants, N.S.), the minister responsible for the Lobbying Act, did not respond to a request for comment.

Mr. Albinati said the chill the commissioner's directive creates could negatively affect the economy in Ottawa-Gatineau.

"It means there will be fewer room rentals, there will be less catering, all of that sort of stuff," Mr. Albinati said. "These decisions do have ramifications over time."

On the topic of gifts more generally, Ms. Shepherd said some acceptable examples of such, coming from lobbyists to public office holders, include refreshments and meals at events where the official "has a role to play," tickets for an MP to a community event or charitable function in their riding, or a token of appreciation following a public appearance.

The guidance said: “If a lobbyist is actively lobbying or will lobby a public office holder, gifts, including meals and tickets to events, other than the exceptions listed above, are most likely unacceptable.”

Asked about the recent directives on gifts, Mr. Albinati said: “We find this notion that a parliamentarian can be bought for a cup of coffee, for a bottle of water, for a sandwich or something, is quite insulting to [parliamentarians].”

The lobbying commissioner’s office, on the other hand, said: “Clearer rules on gifts from lobbyists is not about questioning the integrity of lobbyists nor about questioning the integrity of public office holders, rather they are intended to assure Canadians that lobbying is conducted ethically and with the highest standards. Codes of conduct for lobbyists and for public officials help to assure Canadians that this is the case.

“It is a culture change, but it reflects the increasing demand Canadians have for higher standards of both their public servants and parliamentarians. Those lobbying them must also subject to high ethical standards.”

One in-house lobbyist for a not-for-profit organization said the latest directive on receptions is “really stupid. ... Think about it; I can’t talk to you but I invite you to a reception? ... Part of the problem is I don’t think the regulators understand what’s going on in the government-relations industry.”

This lobbyist said that the giving of gifts to government officials, for the most part, is a throwback to 1950s-style lobbying. Yet, he said buying someone a coffee or a meal, or things that are “standard business courtesies,” should not be restricted.

“If I invite you for coffee and pay for the coffee, that’s just common courtesy,” he said. “No one’s going get bought off a coffee; it’s stupid.”

Another consultant lobbyist said she agrees with much of what the lobbying commissioner said in her posting last month, but said restrictions on issue-related material being given as part of a reception is heavy handed.

“I think organizations have a right to share public information with these decision-makers,” she said. “If something were secret, they wouldn’t be handing it out at a reception anyways.”

This lobbyist said this and other interpretations coming from the lobbying commissioner’s office—late last year, for example, some recommendations were issued with regard to limiting political activity by lobbyists—are confusing people in the sector and adding to their workload.

“They’re having to escalate the conversations internally, pulling together people by phone or by meeting, their in-house advisers, their external advisers, on trying to figure out, ‘What’s your interpretation? What do you think?’ How many countless meetings are taking place that wouldn’t have had to take place before if it was the status quo?”

Asked about the potential of causing uncertainty in the government-relations sector, the lobbying commissioner’s office said: “During the consultation on the Lobbyists Code of Conduct, lobbyists expressed a need for additional clarity around conflict of interest. Specifically, there was a need expressed for the rules to be more clear and explicit. ... Clearer rules will reduce the perception that actions taken by lobbyists create undue influence or that lobbyists have been granted special access because of their relationship with the public office holder.”

Careful what you share at lobby day events and parliamentary receptions, warns lobby czar in guidance update

NEWS | ALYSSA O'DELL

PUBLISHED: WEDNESDAY, 01/27/2016 3:40 PM EST

■ Lobbyists, corporations and organizations should “exercise caution” when inviting MPs and senators to receptions, according to updated written guidance from federal Lobbying Commissioner Karen Shepherd.

The guidance on Rule 10 of the Lobbyists’ Code of Conduct – which states that “ a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder whom they are lobbying or will lobby, which the public office holder is not allowed to accept” – was updated Jan. 20 with a new section detailing Shepherd’s guidance specifically relating to receptions where parliamentarians are invited.

The updated advice reminds stakeholders that “they should consider the risk posed by inviting Parliamentarians they are lobbying, or will lobby,” to a parliamentary reception event, like those regularly held on and off the Hill around Ottawa.

Groups will often hold meet-and-greet parliamentary receptions following lobby day events in Ottawa, or as standalone events.

According to Shepherd’s guidance, meeting the three separate conditions “will mitigate the risk of creating a sense of obligation,” namely that all MPs and members of the Senate be invited; the cost of any gifts at the event, including food, beverages or trinkets offered to attendees be “reasonable”; and that the invitation to the event not be accompanied “by any information related to lobbying activity.”

Further, the commissioner’s guidance states that there should be no lobbying activity at such an event.

“In determining whether to invite Parliamentarians that a lobbyist, corporation, or organization is lobbying, the Commissioner encourages lobbyists to exercise caution,” Shepherd’s guidance states, noting that lobbyists can consult with her office or parliamentarians themselves on acceptability of a reception invite under specific circumstances.

“The primary purpose [of the update] was to add specific advice regarding receptions for Parliamentarians,” said René Leblanc, deputy commissioner at the Office of the Commissioner of Lobbying, in an emailed statement to The Lobby Monitor.

“The OCL received a number of questions on this issue so the Commissioner decided to add this clarification in the guidance,” he said, adding that the revised guidance also specifies that the guidance is targeted at lobbyists rather than public office holders, who should consult their own appropriate ethical authorities with questions on gift acceptability if needed.

The standards are not new. The Office of the Commissioner of Lobbying told The Lobby Monitor in November that a similarly-worded three-part acceptability test would apply in the case of gifts offered in conjunction with lobby day events or parliamentary receptions.

However, one veteran lobbyist from Ottawa, who spoke to The Lobby Monitor on a not-for-attribution basis at the time, said they had previously been advised by Shepherd’s office that holding such receptions or lobby day activities could indeed be considered part

of a lobbying “ask,” and noted inconsistencies with advice from the OCL and Ethics and Conflict of Interest Commissioner Mary Dawson, whose office oversees the Conflict of Interest Act and Conflict of Interest Code for Members.

Shepherd’s updated guidance is very similar advice previously issued by Dawson.

An updated version of the Lobbyists’ Code, a set of rules and ethical guidelines for registered federal lobbyists to follow, came into force Dec. 1.

Early 2016 is shaping up to be a busy season on the lobby day reception front, as groups look to make introductions to lawmakers following a prolonged election season that saw a slowdown in lobbying in the capital.

For example, parliamentarians have been invited to a reception with members of Canada’s energy sector, following the annual “Energy Industry: Updates and Insights” event in Ottawa Feb. 2, and the Produce Marketing Association, which is registered to lobby federally on a number of industry-specific asks, is “hosting a reception with Members of Parliament to promote the importance of the produce industry,” at Ottawa’s Chateau Laurier with celebrity chef Michael Smith on Feb. 23, according to a recent press release from the group.

Confusion on gifting rules, ‘conflicting advice’ from watchdogs, getting ‘ridiculous,’ MPs and lobbyists say

Lobbyists say two offices still lack harmonization, worry about sponsored events

NEWS | ALYSSA O’DELL
PUBLISHED: FRIDAY, 11/27/2015 2:24 PM EST

■ Lobbyists and MPs continue to express frustration over lack of certainty on conflict of interest rules covering gifts, tickets to events and lobby days, despite recent moves to clarify gifting guidelines for GR professionals in the revised Lobbyists’ Code of Conduct, due to come into force Dec. 1.

Hill staffers who spoke to The Lobby Monitor also said it was “not very” feasible for MPs or their staff to be constantly checking in with the Conflict of Interest and Ethics Office in lieu of more concrete rules, given the number of events Members of the House regularly attend.

“I don’t think it’s [the Conflict of Interest and Ethics Commissioner’s] fault that she has to suggest we do this on a case-by-case basis,” Conservative MP Scott Reid told The Lobby Monitor in a phone interview.

“She has no ability to write rules independently for us, and she has no business interpreting the rules in a very lax manner, so that everybody can feel they’re safe,” said Reid, who was recently named the Official Opposition critic for democratic institutions and Deputy Opposition House Leader.

“There’s a lot of re-asking the same question.”

Much of the difficulty, Ottawa politicians say, stems from the fact that while lobbyists, public office holders and MPs may often brush shoulders in the capital, these three categories of professionals are covered by separate rules and regulations, administered by the Office of the Commissioner of Lobbying and Office of the Commissioner of Conflict of Interest and Ethics, respectively.

“These two offices have given completely conflicting advice,” said one GR consultant who regularly works in Ottawa and spoke with The Lobby Monitor on a not-for-attribution basis.

Lobbyists and MPs have separate codes covering conflict of interest provisions, while Ministers and their staff are also covered by the Conflict of Interest Act.

In one example, Lobbying Commissioner Karen Shepherd told The Lobby Monitor in an emailed statement that it is her understanding that food and drink offered to MPs at lobby day events would fall under the gift exception in the Conflict of Interest Code for Members, so long as it meets three conditions: the items are of “reasonable” value, offered to all Members of Parliament, and “not accompanied by a request for the Members’ support or future support.”

However, the Ottawa consultant said they had previously been advised by Shepherd’s office that lobby day activities were indeed considered part of a lobbying “ask.”

After confirming the three-part acceptability test with the Conflict of Interest and Ethics Office, The Lobby Monitor asked for further clarification, given Commissioner

Mary Dawson's advisory opinion on gifts associated with lobby days states that generally "organizations hold lobby days in order to raise awareness of various causes and gain support for them ... in short, to lobby Members of Parliament."

"We didn't express ourselves with clarity as we should have," said Marie Danielle Vachon, Director of Policy, Research and Communications, in a follow-up phone interview with The Lobby Monitor.

A statement from the office offered clarification:

"The advantages/benefits, including food and drinks offered at the event, would be acceptable under the exception to the acceptability test for gifts received as a "normal expression of courtesy or protocol, or within the customary standards that normally accompany the position" ... provided that they are reasonable in value and are offered to all public office holders or Members, as the case may be. Trinkets or favours of token value offered at the event, such as pins, pens, notepads and keychains, would generally not reasonably be seen to have been given to influence public office holders and Members and would therefore usually be acceptable."

However, Vachon admitted the rules make it hard to provide blanket guidance, saying "clearly, in all circumstances" certain small items like pens or small trinkets branded with an industry association logo, for example, are acceptable for MPs to take.

Asked about a different potential gifting situation, where an MP might be given a ticket by a charity to attend a gala put on or sponsored by a certain industry or lobby group, she said the office would have to "weigh all of those factors for that MP before we said, 'yes you can go or no you can't.'"

Lobbyists' worry about sponsored events

The revised Lobbyists' Code of Conduct contains a provision (Rule 6) that states that "a lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest," making it even more crucial for anyone who has to register with the federal lobbyists' registry to understand the rules covering MPs and other public office holders, and when they are allowed to accept invitations or gifts.

"If you get an MP in trouble because of a lobbying infraction or an ethics infraction, you're never getting into [the] House again," said Joe Jordan, a former Liberal MP turned government relations consultant, who spoke recently at a Hill Times panel on getting issues heard in the new Parliament.

"New MPs might not know the rules; you better know the rules," he emphasized.

Although GR professionals have said the Lobbying Commissioner and Conflict of Interest and Ethics Commissioners' offices lack harmonization, most say the new Lobbyists' Code does better align with rules governing other public office holders and MPs, and is a step forward in the right direction.

Other lobbyists, like Canadian Electricity Association director of GR Geoff Smith, say they aren't concerned about the updated code impacting traditional lobby day events held on or around Parliament Hill.

"Our only concern is with regard to CEA sponsored events at which we invite MPs and political staff to attend as our guests. We will review this practice in light of the revised Code of Conduct," he said in an emailed statement to The Lobby Monitor.

"The guidelines say you really have to look at the context of the scenario," said Canadian Cattlemen's Association director of government relations, adding that he

doesn't think the new code will impact that group's regular lobby day events, such as the "Canadian Beef, Canadian Beer and Canadian Whiskey," reception scheduled for Dec. 1 on Parliament Hill.

MP offices follow different practices

The Lobby Monitor spoke with several MPs about their office procedures for deciding on the acceptability of an event invitation or gift.

"Often you get these invitations on short notice," said Conservative MP Reid, adding that it can be difficult to get clarity in time to make a decision to go or not.

He has sat for a decade on the House Standing Committee on Procedure and House Affairs (PROC), which recently reviewed the Conflict of Interest Code for Members, and said with the amount of event invitations he receives (not necessarily accepts), he believes an MP could easily attend an event every night of the week while the House is sitting.

"They're doing this to influence me, does that mean that I'm actually influenced by it? That's not the test," he explained, noting that the ultimate test for gift acceptability is if the item can "reasonably be seen to have been given to influence the Member in the exercise of a duty or function."

He said this reverse onus doesn't make sense.

Liberal MP Wayne Easter said he believes the system doesn't leave enough room for common sense judgment from elected Members of Parliament.

"Attending a reception and gaining information, even attending a hockey game, is not going to influence how you vote on a certain issue," Easter told The Lobby Monitor in a phone interview.

"It gets to the point of being ridiculous, if every time I'm going to go to an event I'm going to call the Commissioner's office," said Easter, who estimates there are nights when he has three events to attend.

The guidance on gifting rules "certainly hasn't become any more clear," recently, he added.

One senior Parliament Hill staffer, familiar with events, said there hasn't been many issues getting answers back from Ethics Commissioner Dawson's office in a timely fashion for the 1-3 events per month their member attends, although other MPs admit to making the rounds at many more venues regularly.

However, having a clear policy of consultation with the Ethics Office doesn't appear to be standard among MPs' offices, and can lead to tension in stakeholder relations.

The staffer, who spoke with The Lobby Monitor on a background basis, said there have been times when their MP had declined an invitation to an event from an industry or lobby group based on advice obtained from the Ethics Commissioner's office, only to be told by the group that other MPs attended.

It's an issue for members who don't want to appear to be snubbing stakeholders, they said.

Heightened awareness of conflict of interest issues, following the Bonner Report of earlier this year, has also led to concern from charities that regularly invite MPs to events, which may include a sponsor that also lobbies the government.

That report called out a former ministerial staffer for breaching rules in the Conflict of Interest Act relating to gifts by accepting tickets to events from groups that lobbied his department.

One consultant told The Lobby Monitor on a background basis that they have heard of major corporate clients ending regular yearly charity donations worth tens of thousands of dollars, out of an abundance of caution.

Reid said he is in favour of making future adjustments to the Members' Code, which would help clear up the rules. He personally supports the idea of a maximum threshold value for gifts or tickets, under which it wouldn't be expected an MP could be improperly influenced.

The code was recently updated in October to include a lower \$200 reporting threshold for gifts that may be acceptable, although the Ethics Commissioner Dawson has reiterated that gift being of lower value doesn't necessarily make it acceptable.

Dawson's office has reiterated that, "ultimately, it is up to the public office holders or the members, in deciding whether or not to attend the event or to accept any other gifts offered to them, to ensure that they meet their obligations under the Act or the Code."

Expanded Lobbyists' Code of Conduct Gazetted, comes into force Dec. 1

Those who engage in certain political activities can't lobby candidates they helped elect for "maximum of five years"

NEWS | THE LOBBY MONITOR
PUBLISHED: SATURDAY, 11/07/2015 6:44 PM EST

■ The revised Lobbyists' Code of Conduct has been entered in the Canada Gazette, and is set to come into effect on Dec. 1, 2015, according to notice published online Saturday.

Lobbying Commissioner Karen Shepherd presented the revised code to MPs at committee in May, after stakeholder consultations started in fall 2014 about the potential need for, and shape of, revisions to the code.

"The principles and rules of the Lobbyists' Code of Conduct (2015) make it easier for lobbyists to understand the behaviour expected of them when lobbying federal public office holders," said Commissioner Shepherd in a prepared statement.

Notable changes in the new code include an added principal that require lobbyists to conduct business "in a manner that demonstrates respect for democratic institutions, including the duty of public office holders to serve the public interest," and clarification of conflict of interest rules to bring them into line with the 2009 Federal Court of Appeal decision in *Democracy Watch v. Barry Campbell*, which said that no conflict of interest is acceptable.

Shepherd also published guidance for the application of the code's new conflict of interest rules, and has a Nov. 12 information session on the changes scheduled in Ottawa for members of the Government Relations Institute of Canada and the Public Affairs Association of Canada.

That guidance covers definition of situations that may create a perception of conflict of interest, including preferential access due to a "close personal relationship," certain political activities and the provision of gifts or favours.

In the area of political activities that carry a risk of creating a "sense of obligation" and therefore a conflict of interest, working on behalf of election of a candidate – an issue that has led to a chill on political participation and criticism from some lobbyists of a squeeze on their rights to freedom of expression – Shepherd has ruled that a "maximum of five years is a sufficient period of time to wait before lobbying" a public office holder if elected, or even their staff.

"When certain political activities are carried out by lobbyists, it is reasonable to think that political staffers who serve at the pleasure of the member or minister may also feel a sense of obligation," Shepherd said at committee in May.

Political activities that carry a significant risk that Commissioner Shepherd has outlined in her guidance include working in a strategic capacity in a party's war room during an election; leading debate preparation for a party leader or providing strategic advice in the context of debate preparation; and any national-level strategic positions, whether paid or not, among other actions.

Code doesn't mention 'friends,' commissioner's guidance does

At the time of the House committee in May on Access to Information, Privacy and Ethics, it was confirmed by Commissioner Shepherd that previous mentions of the word "friend" under the preferential access rules governing conflict of interest matters had been removed, following some controversy and confusion among the lobbying community.

The revised code now states that a lobbyist shall not arrange a meeting for another person or meet themselves with a “public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.”

However, Shepherd’s published guidance on the matter states that certain relationships where a “close bond of friendship, a feeling of affection, or a special kinship that extends beyond simple association,” exist may cause this sense of obligation.

Back in May, then-Liberal open government and ethics critic Scott Simms, recently re-elected in the Oct. 19 federal election, raised concerns at committee over prohibiting lobbying if a close relationship is shared.

“This town is not that big,” Simms said of Ottawa. “We tend to see each other in social settings.”

As well, meeting or arranging a meeting for others with a lobbyist’s immediate family by blood or marriage, or any public office holders the lobbyist is a business partner with, “may create the perception of preferential access,” the Office of the Commissioner of Lobbying states.

“To be clear, this would not include members of a lobbyist’s broad social or business circle, where there is little emotional attachment,” the guidelines state.

“GRIC and PAAC are encouraged generally that the Revised Code brings a measure of clarity and consistency to some areas that were addressed by stakeholders in this process,” said The Government Relations Institute and the Public Affairs Association in a joint statement on the code when it was presented to MPs in May.

The commissioner’s guidance notes that alleged breaches of a principle or a rule within the code will trigger “powers of investigation of the Commissioner of Lobbying.”

“The Commissioner holds that a breach of a principle [i.e. openness, integrity] is as feasible as a breach of a rule,” the guidance reads. “Given the interrelationship of a rule to a principle, the powers of investigation of the Commissioner of Lobbying can be triggered in the case of both breaches of principles and rules of the Code.”

The Lobbyists’ Code of Conduct is set out in the Lobbying Act as a set of rules and ethical guidelines for registered federal lobbyists to follow, when registration is required under the act. There are no monetary or legal penalties associated with breaching the code, but the commissioner can make a public report to Parliament, naming and shaming lobbyists who break the rules.

On gifts and favours

Any provision or promise of a “gift, favour, or other benefit to a public office holder” is barred under the code’s conflict of interest rules as well.

However, Shepherd has ruled that “expressions of courtesy” or hospitality such as a token of thanks following an appearance or speech; refreshments or meals at events where public office holders have a role to play; and “[t]ickets to a public event such as a community event or charitable fundraiser given by event organizers to a Member of Parliament for events in their riding or region.”

Still, lobbyists are cautioned against providing tickets to charitable or other events at a reduced or no cost, to public office holders they lobby or may lobby in the future.

Ethics proponents see grounds for investigation into whether Hyder breached Lobbyists' Code

NEWS | YAEL BERGER, ALYSSA O'DELL
PUBLISHED: FRIDAY, 08/14/2015 4:19 PM EDT

■ Although Hill + Knowlton Strategies lobbyist Goldy Hyder maintains he was not paid by any party for providing crisis management advice and media lines to former chief of staff Nigel Wright and independent Senator Mike Duffy, he does admit he tried to help out a good friend.

"I was acting as a friend at all times and nothing more," Hyder said of his involvement with Duffy during the Senate scandal in an emailed statement to The Lobby Monitor this week.

As Wright took the stand in court Wednesday and Thursday as a witness for the Crown in Duffy's trial, emails presented as evidence show Hyder helped Wright and Duffy manage the expense scandal for the embattled senator as it was unfolding in May 2013.

"It doesn't matter if you're paid," Duff Conacher, co-founder of ethics watchdog group Democracy Watch and visiting professor at the University of Ottawa, said in a phone interview with The Lobby Monitor.

"If you're paid then you're not doing a favour."

The Federal Court of Appeal made it clear in 2009 that Rule 8 of the Lobbyists' Code of Conduct should be interpreted in a manner that reflects that any conflict of interest, or appearance of one, impairs public confidence in government decision-making.

"You can't be doing any kind of work for anyone you're lobbying," Conacher said. "You can't do anything; you can't do any favours or give any gifts to anyone you lobby."

Conacher said the guidance from the lobbying commissioner on what activities undertaken by a lobbyist could place a public office holder in a conflict isn't exhaustive and doesn't specifically refer to the kind of work Hyder did for Duffy, but that doesn't really matter.

"The guideline can't change the law, and the law is the unanimous ruling of the Federal Court of Appeal. They said anything that would create a sense of obligation — just a sense of obligation, not even a real obligation . . . All you have to do is create a sense of obligation and you've crossed the line."

"Doing a favour for Nigel Wright is crossing the line," Conacher said.

Lobbying Commissioner Karen Shepherd's office won't confirm or deny if Hyder is being investigated under the code of conduct and Hyder declined to comment on whether or not he is being investigated.

The situation in the PMO is not uncommon, one Ottawa lobbyist, who asked to remain anonymous, told The Lobby Monitor.

"Every cabinet minister in the history of time, either Liberal or Conservative . . . has a cadre of advisers that they depend on as their touchstones for advice," the lobbyist said. The lobbyist said Wright was no different from other advisers.

Since the lobbying commissioner rules on conflict of interest issues on a case-by-case basis, the question comes down to who called whom, and whether or not a line was successfully drawn between being a lobbyist and a communications person, the lobbyist said on background.

“The way the industry usually deals with it is that if you get the phone call, or if you get the email first, you consider it non-lobbying activity,” they added.

Wright’s emails suggest it was Duffy who reached out to Hyder first for help.

The situation is an illustration of the challenging grey area lobbyists must deal with while navigating Canada’s lobbying law and conflict of interest rules.

“[Ethics and lobbying commissioners] always say, ‘It’s on a case-by-case basis,’ and in order to keep [the commissioners] relevant, we have to call them,” the lobbyist said, adding that lobbyists would prefer more clarity.

“The question is, when it is a department you’re registered to lobby, how you distinguish between — when you get the call — advice and lobbying?”

What are corruption, conflict of interest and a sense of obligation?

The 2009 federal court decision determined the difference between corruption and conflict of interest for lobbyists.

“According to the Court, it is not enough that a public office holder uphold his or her public duty over a private interest. Actually choosing a private interest over the public duty is not a conflict of interest; it is corruption. The mere existence of the competing private interest is what gives rise to the conflict,” Lobbying law expert Guy Giorno, a partner at Fasken Martineau and former PMO chief of staff, said in a Fasken Martineau bulletin on Feb. 18, 2011, after Shepherd found several lobbyists in breach of the code.

New rules were introduced by Shepherd this year through a review of the Lobbyists’ Code of Conduct which prohibit lobbyists from lobbying public office holders “with whom they share a relationship that could reasonably be seen to create a sense of obligation.”

The new rules don’t come into force until after they’ve been published in the Canada Gazette, but Shepherd suggested the new rules just clarify guidance the commissioner has been giving to lobbyists for years.

The rule around creating a sense of obligation was a revised version of the rule that initially intended to prohibit lobbyists from lobbying their “friends.”

The new code “will explicitly prohibit lobbyists from lobbying members of Parliament and ministers when they have carried out political activities that could reasonably be seen to create a sense of obligation,” Shepherd told the House ethics committee in May this year.

The Lobby Monitor reached out to André Albinati, Government Relations Institute of Canada president, for comment on the topics of conflict of interest and lobbyists who do favours for public office holders while also lobbying them, but Albinati declined to comment for this story.

Hyder lobbied PMO then communicated with staffers about helping Duffy

One year before Hyder was shown to be consulting with PMO staff over a media statement for Duffy, he was actively lobbying the Prime Minister’s Office on behalf of high profile clients, communication reports filed with the federal lobbyists’ registry reveal.

In May 2012, Hyder discussed energy issues with PMO staffer Drew Campbell, who did stakeholder relations, and Virginie Bonneau, who dealt with Quebec affairs at the time, for oil firm client Talisman Energy Inc., according to filings with the federal registry.

Campbell was involved, at least from a distance, in managing the Duffy expense issue within the PMO during the unfolding of the scandal in February 2013, according to Wright’s emails submitted in court.

“If a lobbyist has lobbied a policy-maker, she or he cannot then help the policy-maker afterwards because that would amount to returning a favour that the policy-maker may have done for the lobbyist in making a favourable decision,” Conacher was said in a 2011 Hill Times article on the application of Rule 8.

On Feb. 15, 2013, Campbell emailed Chris Woodcock, then-PMO issues management director whose name appears frequently in the office’s emails about the expense scandal.

“If for some reason we want to respond, I would suggest that the Senator work closely with others to ensure that he has a clear plan and will not make the situation worse,” Campbell wrote in a discussion about the possibility of Duffy responding to media criticism later that month.

The emails don’t show Hyder being looped in and contributing media lines until the end of April, and he is not shown communicating directly with Campbell.

Nine months before helping draft Duffy’s statement and liaising with the PMO, Hyder was lobbying Harper’s office actively on behalf of Chinese state-owned oil and gas firm CNOOC International.

Hyder was registered as a consultant for CNOOC to lobby MPs, the PMO, Industry Canada and Finance Canada, among other departments, on the Canadian Environmental Assessment Act and the Investment Canada Act in relation to the acquisition of Calgary-based oil and gas company Nexen Inc.

CNOOC closed the \$15-billion deal to acquire Nexen in February 2013.

A July 22, 2012 filing with the federal lobbyists’ registry shows Hyder communicated with Dave Forestell, then staff director in the Prime Minister’s Office, about international trade, industry and the environment.

Forestell is now director of government relations for Barrick Gold Corp., according to his LinkedIn profile.

Hyder also reported discussions with several other key PMO staffers between 2009 and summer 2012 for prominent clients, but has never reported any communications with members of the Senate.

Opposition parties weigh in on status of ethics rules

Contravention of the Lobbyists Code of Conduct is not an offence and does not result in a penalty. The lobbying commissioner can investigate a possible breach and issue a public report, however, in effect “naming and shaming” the lobbyist in question.

Opposition parties have used the Duffy trial as an opportunity to lambaste the Conservative government on its ethics record, but none of the other parties has proposed a government ethics platform anywhere near as robust as Harper’s 2006 accountability plan.

Former cabinet minister John Baird introduced the Federal Accountability Act as the Harper Conservative’s first piece of legislation after coming into power.

“There’s always the presumption of innocence, and that’s where we need to be first,” said Green Party spokesperson Julian Morelli, noting that he wouldn’t want to indicate there was anything wrong with Hyder’s actions.

The situation does, however, signal a possible need to look at the transparency associated with Canada’s lobbying regime, and how well lobbyists are publicly specifying their activities with public office holders, he said.

“You don’t want to have the public feeling that something is going on that shouldn’t,” Morelli added.

He said there is always some concern when lobby firms of any sort provide advice on sensitive issues outside the realm of what they are contracted to do, and even the appearance of a conflicting interest could become an issue.

“If there’s the appearance of a conflict, that’s where the ... rules of accountability need to be corrected,” he said in a phone interview with The Lobby Monitor.

“Why are they bringing lobbyists in? It shows a very unhealthy relationship between the lobbyists and the internal workings of the Prime Minister’s Office,” NDP candidate for Timmins—James Bay, Ont. Charlie Angus told media at a press conference Thursday in front of the Ottawa courthouse where Wright has been testifying this week.

Conflict of Interest and Ethics Commissioner Mary Dawson, whose office is responsible for investigating public office holders who may have violated the Conflict of Interest Act, has had to suspend her 2013 investigation into Wright until all Crown proceedings and any appeals have been dealt with.

“We think that the role of the ethics commissioner has to be strengthened, that there has to be an ability for the ethics commissioner to bring administrative monetary penalties when people do wrong and that we think it’s really problematic that she has to suspend her investigation while the RCMP investigates,” Angus said.

“Right now the RCMP are investigating, but there’s all matter of ethical breaches where the RCMP simply don’t pick it up and the ethics commissioner doesn’t follow through,” he added.

Angus said the NDP would bring forward concerns about any lobbyists being involved in a secret agreement for cover-up and collusion to the lobbying commissioner as well.

Lobbying Commissioner Karen Shepherd’s office cannot comment on whether or not Hyder is under investigation for a breach of the code, as her office undertakes all of its investigations in private until a report is released.

Cases which are brought before the commissioner or come to her attention but which are dropped are not made public.

New Lobbyists' Code of Conduct strongly worded, more prohibitive with no mention of "friends"

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■ The new Lobbyists' Code of Conduct, which was presented to MPs at committee on Monday, will further prohibit lobbyists activities and interactions with public officials, but makes no direct mention of "friends."

Lobbying Commissioner Karen Shepherd appeared Monday at the House of Commons Standing Committee on Access to Information, Privacy and Ethics to speak on the Main Estimates 2015-16.

The commissioner used the opportunity before committee, likely her last appearance there before the House rises at the end of June, to present her new code for lobbyists.

Shepherd began consultations in 2013 to see if there was a need for changes to the Lobbyists' Code of Conduct. In 2014, her office put out a revised code and undertook more consultations to get feedback from stakeholders on the changes.

Shepherd said there are three major changes to the ethical rules for lobbyists. The code has been changed to be more consistent with the Lobbying Act and all mentions of the interaction between lobbyists and their clients have been removed, since the code is meant to govern relationships between lobbyists and public office holders; a new principle stating that lobbyists should act in a manner that shows respect for Canada's democratic institutions was added to reflect the role lobbyists play in the public policy process; and changes were made to clarify conflict of interest rules to align with the 2009 Federal Court of Appeal judgment in *Democracy Watch v. Campbell* in 2009, which said that no conflict of interest is acceptable.

New rules were added to clarify issues around preferential access, conflict of interest and obligation; political activities; and hospitality and gifts in line with the court ruling.

Regarding preferential access, Shepherd removed all references to the word "friend," which had been in an earlier version of the code. The addition of the concept of "friend" without a definition created a lot of controversy and confusion among the lobbying community.

Instead, Shepherd's new code focuses on relationships that could reasonably be seen to create a sense of obligation because of a close, personal relationship between the lobbyist and public office holder.

Relationships created through financial or business dealings, if the lobbyist is a relative of the public office holder, or if they are close, personal friends could all be seen to create a sense of obligation, Shepherd said during her appearance at committee.

Liberal MP and critic for open government and ethics Scott Simms raised concerns at committee over the prohibition on lobbying public office holders with whom the lobbyist shares a close relationship.

"This town is not that big," Simms said of Ottawa. "We tend to see each other in social settings."

Shepherd responded to Simms concerns about a chill over lobbying activities and said she agreed that she doesn't want to stop good public policy, and that nobody wants government operating in a vacuum.

Lobbying law expert Guy Giorno, a partner at Fasken Martineau and former PMO chief of staff, said in a report to clients on Tuesday on the new rules that the “sense of obligation” test is the most significant change to the code of conduct.

“The Lobbying Commissioner has embraced the Court of Appeal ruling and, through the new Code, she will prohibit any lobbying of an official whom a reasonable person believes would feel a sense of obligation to the lobbyist,” Giorno said.

The new rules also aim to clarify which political activities undertaken by lobbyists would put a public office holder in a real or apparent conflict.

“The code will explicitly prohibit lobbyists from lobbying members of Parliament and ministers when they have carried out political activities that could reasonably be seen to create a sense of obligation,” Shepherd said in her opening remarks. The ban would be for a “specified period,” according to the code, which has yet to be determined.

The political activities that Shepherd said would result in the lobbyist being prohibited from lobbying a public office holder include organizing a fundraising campaign or event, writing speeches, preparing candidates for debates, and serving on the executive of an electoral district association.

This prohibition in the new code goes a step further to restrict lobbyists from lobbying staff who work in the minister or MP’s office if the lobbyist conducted political activities to help the member get elected.

“When certain political activities are carried out by lobbyists, it is reasonable to think that political staffers who serve at the pleasure of the member or minister may also feel a sense of obligation,” Shepherd said.

Shepherd also clarified political activities that would not create a sense of obligation, such as making a donation, putting up a lawn sign, being a member of an electoral district association or attending fundraising events.

The Government Relations Institute of Canada (GRIC) and the Public Affairs Association of Canada (PAAC) jointly responded to the new code in a release on Monday.

“GRIC and PAAC are encouraged generally that the Revised Code brings a measure of clarity and consistency to some areas that were addressed by stakeholders in this process,” the release said.

“At the same time, we expect to hear concerns from our members with respect to the Revised Code’s cynical treatment of participation by public office holders in charitable and community events (suggesting that the judgment of MPs and Public Office Holders cannot be trusted if they accept a ticket to a dinner or lunch event).”

The Lobbyists’ Code of Conduct is set out in the Lobbying Act as a set of rules and ethical guidelines for registered federal lobbyists to follow. There are no monetary or legal penalties associated with breaching the code, but the commissioner can make a public report to Parliament, naming and shaming lobbyists who break the rules.

Shepherd told The Lobby Monitor after committee that even though the new code may not come into effect for several months, the 1997 version of the code is the rule that currently stands and the guidance her office has published on the website should act as a good guide for anyone with questions before the election.

“The guidance that’s out there for now for lobbyists still stands,” Shepherd said. “And really, the only thing that’s happening with the new code is there’s some new rules, but a lot of it is to clarify what’s actually in the guidance.”

Shepherd said her office will use the summer months to work on further guidance and educational tools for lobbyists to help them comply with the new code, and plans to have the new code go through the Gazetting process in late fall.

The Lobbyists' Code of Conduct has never been amended since it came into effect in 1997.

Shepherd said she will consider hosting cross-country roundtable discussions with lobbyists to further educate them about the requirements of the new code and that she may create an annotated code as part of tools and guidance her office will work on over the summer months.

"Lobbyists very much want to comply with the act and the code, so I feel that it's my job to ensure that they have the necessary guidance and tools in order to be able to do that," Shepherd said.

Lobbyist gifting banned

The new code bans all lobbyist gifting, except those gifts that are a "normal expression of courtesy or protocol."

The new rule prohibits lobbyists from giving gifts to public office holders, whether the lobbyist has lobbied that person, or not.

Shepherd said this additional rule on gifts is more for the occasional lobbyist than the professional, full-time consultants who are already familiar with what public office holders are allowed to accept.

"Rather than getting into what public office holders can accept, saying 'no gifts' makes it a lot easier," Shepherd said.

Expressions of courtesy and protocol include accepting a meal during an event that takes place over a mealtime, Shepherd said. She also said she doesn't see public office holders attending parliamentary receptions as creating a sense of obligation to that lobbyist or group who hosted the event if those events are open and all MPs are invited.

Shepherd investigating Duffy's meetings with lobbyists

At committee, Shepherd confirmed that her office is investigating the activities of the lobbyists mentioned in former Conservative senator Mike Duffy's personal diaries from his time as a senator, which were made public through the criminal trial where Duffy is facing 31 counts of fraud and breach of trust.

Duffy kept a detailed record of conversations and events in his calendar, and his private schedule between 2009 and the end of 2012. Duffy listed meetings, meals and phone calls with a wide variety of individual lobbyists who have worked or work for corporations and government relations firms.

The lobbying commissioner conducts her investigations in private and cannot discuss details publicly regarding the parties being investigated or the nature and scope of the investigation, but Shepherd said the allegations came to her attention this year through media reports and that her office takes all allegations seriously.

At committee, NDP MP Charmaine Borg asked Shepherd if there was a legislative loophole that needed closing with respect to the 20-per-cent rule that might have led lobbyists to engage in unregistered activity with Duffy.

In-house lobbyists only need to register with the federal lobbyists' registry if they meet the "significant part of duties" test. This rule permits in-house corporation or association staff to lobby without registering, so long as the activities constitute less than 20 per cent of the person's duties.

Shepherd said Monday, as she has said in past committee meetings during the review of the Lobbying Act, that this rule is difficult to calculate and enforce and she recommended it be removed.

Treasury Board President Tony Clement, whose department is responsible for changes to the act, has suggested his department is looking into the recommendation, along with others, although no action has been taken.

Shepherd said at committee that while registered lobbyists are usually not required to file a monthly communication report if the public office holder initiated the conversation, a lobbyist would still be required to file a report if there is a financial benefit to be gained by the lobbyist or the lobbyist's client.

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CORRECTION: An earlier version of this story incorrectly stated that an individual would be required to file a monthly communication report even if an initial registration is not required, if there is a financial benefit to be gained by a communication with government, regardless of who initiated the communication. This is not the case. The Lobbying Act only requires those who file an initial registration to file monthly communication reports.