

Ethics and Government: the Canadian Experience*

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I want to begin my remarks by thanking Harry Evans, the Clerk of the Senate, for inviting me to speak today. During my past week in Australia, I have enjoyed meeting many people who share the same interests in ethics and governance as I do. It has been rewarding to debate the questions that challenge us as we move forward on these issues.

In fact, I think that we are part of a growing international movement. Many trends have come together in the push for stronger ethics structures in governments. It is part of the interest in good governance in countries around the world. The introduction and enforcement of higher ethical standards is linked to strengthening democratic institutions—and ultimately expanded human rights. Ethical systems mean a more level playing field for businesses in their dealing with governments. They mean better services and wiser public spending for citizens.

When I speak about my role and the larger issues of ethics and governance, I often address them in fairly broad, even theoretical terms. However, I don't think this audience needs to be convinced of the value of ethical behaviour in government.

The real challenge is how best to proceed. There are different models for setting and monitoring ethics in government. I happen to have a strong preference for the system that we have built within the government of Canada. I don't say that we have gotten it entirely right and more remains to be done.

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For example, we are not as advanced as Australia in introducing strong ethical systems into the public service. And our Parliament has yet to introduce a conflict of interest regime applying to backbench MPs and senators—but we have done well so far.

So, today, after introducing the topic with some comments on how ethics came to be a priority of the government of Canada, I will spend most of my time describing how our system of preventing and addressing possible conflicts of interest works in practice. That should provide plenty of grist for the question mill that will follow my remarks.

Along the way, I want to address a couple of common questions about our system, perhaps anticipating some that you may have. One is why we have a system that focuses relatively more on what I call the integrity end of the spectrum, as opposed to the compliance and enforcement end. Another is the reporting structure that we have, namely why I report to the Prime Minister and not to Parliament. Finally, I want to talk about the issue of the minister's role as a constituency representative.

Overall, I hope to leave you with the sense that we have constructed a system that works. Works from the point of view of Canadians. Works from the point of view of the people in political life and in the public service whom the system covers. Works from the point of view of enhancing integrity and ethics in government.

First, let me describe our system and the context in which it came into being.

The call for a higher standard of ethics

In most advanced democracies, the past couple of decades saw a general decline in citizens' trust of governments. Analysts have suggested many, many reasons for this turn of events. One was most certainly the gap between the ethical standards that citizens expected of people in public life, and what those citizens believed they saw in practice.

It wasn't that we lacked for laws. Canada has a full complement of laws to remedy corrupt practices related to government. For example, bribery and influence peddling have been illegal under our criminal code for a very long time.

Moreover, Canada is updating its law on the bribery of public officials even further. In December, our Parliament passed a bill that would make it illegal for Canadians and Canadian businesses to bribe public officials in foreign countries. That was part of Canada's commitment to sign and ratify the OECD Convention on Bribery.

But, despite those laws and whether justified or not, the public malaise reflected more than law alone could ever address.

For example, there was a growing sense among Canadians that private interests were crowding out the public interest in decision-making. There was a sense that a new generation of lobbyists, and the people who could afford their services, had become far too influential in the halls of government.

The role of the Ethics Counsellor

That climate encouraged the current government in Canada to include a number of ethics commitments in its platform for the 1993 election. Once in office, it began to

implement them. In June 1994, the Prime Minister created the position of Ethics Counsellor and appointed me, a public servant, to that role.

My office deals with potential conflicts of interest and other ethical issues for the people most likely to be able to influence critical decisions in our federal government. My office is also responsible for the *Lobbyists Registration Act* and the *Lobbyists' Code of Conduct*. Those are designed to bring a level of openness to lobbying activities and to the people involved in that work. While I do not have the time to discuss lobbying issues in my presentation, I would be happy to take your questions on them later.

I should point out that my office does not replace the role of the police, crown attorneys and judges when it comes to suspected breaches of the criminal code. I do not address bribery or influence peddling cases that are properly dealt with by the police and judicial process.

Rather, I deal with the grey areas of potential or real conflict of interest. In practice, these are issues that may seem broadly wrong in the eyes of citizens, without ever actually being illegal.

How our system works

Having set out the areas that I cover in my work, I want to describe how our system of avoiding conflict of interest issues works in some detail.

The Conflict of Interest Code covers all members of the federal Cabinet, including the Prime Minister. It covers their spouses and dependent children. It covers members of those ministers' political staff. And, unlike the case in many other jurisdictions, it also covers senior officials in the federal public service, about 1200 to 1300 individuals.

We arrived at the basis of our Code of Conduct after some serious consideration. There are two broad views on how to pursue higher ethical standards. One school holds that you need an exacting set of rules, up to the point of legislation. You need to support that with a strong enforcement mechanism.

The other school holds that you can inspire integrity, rather than force compliance to it. You can encourage people to be ethical. You can get them to make morally sound judgements and to take intelligent steps to avoid the potential for conflict—real or imagined.

There is a continuum between both schools, and in Canada we have chosen to build our system at the integrity, rather than the compliance, end of the scale. I will come back to this debate, and our perspective on it, a little later.

But the point I want to make is that the government of Canada's approach to an ethics structure centres on avoiding possibilities for conflict of interest well before they even become possible. It is based on a clear set of principles. In turn, those principles are the basis for a select few rules and procedures.

Together these principles, rules and procedures clearly spell out reasonable expectations of people in public life. They offer those people the guidance they need to make intelligent decisions on organizing both their personal and public lives.

The principles of the Code

Our first principle states that:

‘public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.’

The second principle expands on the first. It states that:

‘public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.’

A third principle says that:

‘on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interest of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.’

There are a few other principles that the Code sets out but you can clearly see that we have anchored the Code on the basis of integrity. People in public life know that they are expected to take action with ethics in mind at all times.

The rules and procedures

To make these general prescriptions more concrete and consistent in application, we have a limited set of rules and procedures.

Some cover the disclosure and management of assets, liabilities and outside interests. In general, this information is kept confidential, but some of it is available to the public.

When a public office holder who is covered by the Code is appointed, he or she has to provide a report to my office. The report lists assets, liabilities and outside activities, for himself or herself, for his or her spouse and for dependent children. I review that information and recommend what the office holder, spouse or children should do to comply with the Code.

In the case of activities, the rules are straightforward. The Code prohibits ministers from engaging in a profession, actively managing or operating a business or serving as a corporate director. The Code also rules out holding office in a union or professional association, or acting as a paid consultant.

In the case of assets, those can fall into one of three groups under our Code. Each group is treated differently, because each offers a different potential for conflict.

The first group, ‘exempt assets’ do not normally trigger further controls because they do not realistically present a possibility for future conflict of interest. Most personal assets,

including homes, vacation properties, bank accounts and fixed income investments fall into this category. Mutual funds are also included in this category because the actual content of them is not under the office holder's control.

A second group are what we call 'declarable assets'. These have to be declared publicly, but the office holder is still free to deal with them. Examples of declarable assets are ownership of family or local businesses. Other declarable assets are land-oriented. They include farms under commercial operation, rental properties, vacant land and, in one recent case involving the Prime Minister, ownership interests in a golf course. Since our federal government has no significant constitutional or regulatory authority over land use, these kinds of land ownership are unlikely to present a possibility of conflict. However, by putting that ownership on the public record, whatever chance of conflict might exist is reduced even further.

The third and final group are called 'controlled assets'. These are assets that could be directly or indirectly affected by government decisions or policies. The most common example of these assets is publicly traded securities, such as shares on a stock exchange. The policy on these is simple. In a nutshell, you can be a personally active investor or you can be a Cabinet minister. You cannot be both. Our Code says that office holders have to divest themselves of these controlled assets.

They have three basic options when it comes to the required divestment. The first is simply to sell those assets at arm's length.

The second is to shift them into a blind trust. This works well with a stock portfolio, where the trustees have the full authority to do whatever they deem appropriate with those assets. The office holder is permitted to get periodic information on the overall value of the holdings and enough information for income tax purposes. However, that office holder cannot have information on the actual composition of the trust.

The third choice is to create a blind management agreement. This would usually apply to a case where the assets are illiquid or not publicly traded, such as shares in a private company that might do business with the federal government. The office holder is prevented from making any decisions on the management of these assets. Those decisions rest with the supervisors of the agreement.

In the case of an office holder's interests in a private company, it may not be sufficient just to place it in a blind management agreement. After all, the company may have dealings with the government. It may be directly affected by government policies that apply to a specific sector of the economy. In response, we have differentiated between policies that generally apply to all companies, and those that are of particular interest to the companies covered by the blind management agreement.

For example, let me talk about the situation of Canada's Minister of Finance. He came into Cabinet after a successful career in business. He is the controlling shareholder in a private company that, in turn, owns shipping, bus and other companies. What did he do on his appointment?

First, he put those shares into a blind management agreement. Second, he instructed his deputy minister and his staff to isolate him from any direct dealings between his

company and his department. Third, he does not participate in any policy discussions or Cabinet decisions which directly affect his private interests. That would include discussions on marine transportation policy or shipbuilding.

Still, someone has to take responsibility for the department in those cases. And so, those dealings or issues are directed to another minister, most commonly the Secretary of State for Financial Institutions, the junior minister in the portfolio. The Secretary of State handles the interests of the department in those cases, as if he were the minister.

That was one case. There are others and what we do differs from case to case, simply because the circumstances differ too. Our goal is quite simple and consistent in all cases. That is to remain faithful to principles of integrity that the Code embodies.

We are often asked why our rules on shares are so sweeping. Why can't a minister invest personally in the shares of companies which are not affected by the activities of his or her department? There are two reasons. First, there is bound to be a disagreement about whether or not a particular company is affected. Further, in large departments, it is always possible that some part of the department is busy dealing with a company without the Minister being aware. In my view this is an accident waiting to happen.

But second, in Canada, as in Australia, the Cabinet takes decisions collectively. Thus a minister responsible for, say, cultural policy will know about and participate in decisions to privatise the state airline or railroad company, both of which happened several years ago in Canada.

Even with those rules and processes, in practice, we operate in an area of 'what ifs'. Each office holder's financial affairs are different. So there are regular and substantial amounts of contact between my office and people covered by the Code. They routinely come to us with questions about how a given asset or interest should be treated and we offer advice. They have a deep and abiding interest in being on the right side of these decisions and we find them most cooperative.

I should point out that all this is the pro-active side of our work. That is by far the bulk of our activity, but I should also point out that the Prime Minister also asks me to investigate and comment on specific issues that arise from time to time.

Now, having outlined the principles, procedures and processes that are part of our Conflict of Interest Code, let me move on to discuss some specific issues that often arise in forums like this one.

Compliance or integrity

The first is the balance between the two poles on an ethics continuum that I referred to a few minutes ago.

As I said, there are broadly two major approaches. The first consists of rigidly codifying ethical behaviour, usually through a series of 'Thou Shalt Nots.' This approach began to take hold in the 1970s, particularly in the United States.

I could go on at length about its pros and cons. But let me simply ask this question: does that legalistic model produce results?

Just as people seldom feel like calling the police to ask if something is illegal or not, I don't think people in public life would be comfortable baring their personal financial information to someone who could easily use it to punish them. More than that, too many rules and too legalistic an approach seem to make people look for loopholes rather than apply basic ethical principles and make sound judgements. It begins to follow the law of unintended consequences, where you get outcomes that you did not expect or want.

Our goal is to promote an attitude of integrity and compliance, not beat that cooperation out of people. Our experience says that goal is achievable. Over the past five years, we have seen that if you set a high, principled standard that seeks to prevent even the possibility for conflict, office holders do rise to it. People come forward with questions because they know they will get advice that should keep them out of trouble.

Above all, an integrity-based approach responds to a basic reality of political life. These people know that appearances count. They know that the media and their constituents will judge them by the old saying, 'Where there's smoke, there's fire.' That is an occupational hazard of political life and more so in times like these.

And so, I have found that they recognize a sound ethics approach to be both fire insurance and smoke insurance. They recognize that this is a very small price to pay for the privilege of being a minister, a privilege that, on most days, they enjoy deeply.

Why report to the Prime Minister?

The next issue I want to raise is linked to the previous one. I report to the Prime Minister, not to Parliament. Some have asked why, especially academics, some journalists and the opposition parties.

There are two main reasons. The first, and most important, is constitutional. In Westminster democracies, the Prime Minister is responsible to Parliament for the performance of his ministers and the government. He can appoint, shuffle and fire them at will.

Since we are dealing with a set of issues that concern the integrity of ministers, the Prime Minister decided that he wanted consistent help in dealing with an issue that has created serious problems in the past. And he decided that was best provided by delegating the responsibility to an independent voice reporting to him—as is his constitutional prerogative.

The second reason is based on a contrast between my role and that of the offices who do report to Parliament. I am thinking of people such as our Auditor General and the Commissioners of Information, of Privacy and of Official Languages.

The role of the Auditor General is clear and traditional; to ensure that government expenditures are legal and effective. But in ethics we are dealing with many grey areas. We are dealing with the appearance of conflict. We are dealing with issues that go beyond what the law requires. What would be the result of having a non-elected official, with full investigatory powers, responsible only to Parliament?

Let me simply reply with a two word answer: Ken Starr.

In my experience, I think our reporting system has worked well in practice. It has helped office holders make decisions that have removed any real possibility of conflict. It has helped them clarify matters rapidly and factually when allegations have been made. Since our system was created, no Minister has had to resign because of a conflict between his or her personal interests and his or her ministerial responsibilities. I think that says a lot right there.

The Minister as a constituency representative

That is not to say that we have had no resignations, and that brings me to my next point—the role of a minister as a representative of his constituents.

As a general rule in Canada's federal government, almost all ministers are Members of the House of Commons. The only exception is the Leader of the Government in the Senate, which in Canada is an unelected chamber.

As MPs, ministers each have ridings with upwards of 80 to 100,000 constituents. They face the normal range of requests from constituents for help with various issues. Among those issues can easily be matters that are before one of our many quasi-judicial tribunals.

For example, a constituent with a refugee claim will be heard by the Immigration and Refugee Board. A constituent with a dispute about Canada Pension Plan benefits can take it to the Pension Appeals Board. A constituent who owns an interprovincial trucking company may deal with the Canada Labour Relations Board.

Then there are the boards that authorize specific licenses. If someone wants a license for a 50 watt community radio station, they have to apply to the Canada Radio-Television and Telecommunications Commission.

Constituents expect their MPs to help them deal with these agencies. As they should. But what about ministers?

Initially the Prime Minister had his own guidelines on these issues but a specific case about a year into his first mandate showed that these were not clear enough to be workable. So, he asked me to set up rules on dealings between ministers and these quasi-judicial tribunals.

Ultimately, the question was, 'To what extent can a minister also carry out the normal work of a Member of Parliament in making representations on behalf of constituents before these tribunals?' We have arrived at a simple answer that has removed all doubt on these cases. In one word, that answer is 'never'. Just as ministers cannot attempt to communicate with judges about cases, they cannot do so with quasi-judicial tribunals either.

The basic principle now is:

Ministers shall not intervene, or appear to intervene, on behalf of any person or entity, with federal quasi-judicial tribunals on any matter before them that

requires a decision in their quasi-judicial capacity, unless otherwise authorized by law.

My office makes that clear in our regular dealings with ministers and their staffs. In fact, we provide an annual seminar for staff in the riding offices of ministers to reinforce this position. The seminar also gives those people a chance to ask questions about real or potential examples.

They know the price of error on this. It can mean resignation.

The reasons for this policy are quite simple. The first comes back to public perception. Cabinet ministers cannot magically transform themselves into humble backbench MPs, at least not in the eyes of citizens. So, their interventions before tribunals have a ministerial aura to them, with all that entails.

And legally, as with courts, the government has created a series of bodies that make decisions at arms-length from it. Ministers have to let the processes unfold.

Courts in Canada and elsewhere have routinely overturned the decisions of tribunals under administrative law if they found an apprehension of bias on the part of a tribunal member. Recent Canadian jurisprudence extended this scrutiny to ministers.

In August 1996, the Court of Appeal of our province of New Brunswick unanimously rejected a decision of the Appeals Tribunal of the Workplace Health, Safety and Compensation Commission. The reason? The province's Minister of Agriculture and Rural Development represented a constituent before that tribunal.

The court recognized that the provincial Cabinet had the power to appoint or reappoint tribunal members and the power to set their pay. Given all that, it found that a fair hearing was not guaranteed when a minister represented a party before the tribunal. An apprehension of bias existed.

But perhaps more fundamentally, this view is also backed up by a basic convention of Cabinet government. Ministers are not to become involved in the affairs of another department unless they have the agreement of the responsible minister.

Since public servants are accountable to their ministers, a minister in one department cannot direct officials in another department without presenting those public servants with an impossible conflict of interest.

Conclusion

Let me sum up my remarks by saying that as that last issue shows, this business of ethics is evolving rapidly. Our citizens expect the highest standards. And their expectations are growing, not shrinking. Our media and the opposition parties in Parliament are poised to make the most of cases where those standards might not have been met. They play an important role.

This rising standard of ethics is part of a sea change in governance, a sea change that I have witnessed around the world. Fifty years ago, Canada had a senior minister who

was well-known for spending part of his Fridays reviewing his stock portfolio. He assessed his holdings on the basis of the week's decisions in Ottawa. In those days, no one ever thought that he would ever take a decision, as Minister, that was not in the public interest. In these days, no one in Canada would be quite so charitable. Back then, as long as there was no out and out corrupt behaviour, that was business as usual. Today, it would be unthinkable. Public standards have moved that quickly and decisively.

Our job has been to reflect those standards in a way that works for everyone involved. I feel very strongly that we have done that. We have achieved the results we wanted through a system that focuses on prevention and avoidance. It is a system based on encouraging people to think and take actions based on integrity.

We have avoided the negative fallout of systems that obsess on compliance with rigid rules that never seem to encompass all possible problems; systems that assume that all public office holders are either crooks or are too dumb to know what is proper, no matter how senior they are, or how much money they make.

We have created a system that enables us to address the appearance as well as the reality of a conflict.

Everyone benefits when we attain those standards and when we do so through an integrity-based system. People in public life gain a greater degree of public approval. Citizens gain an enhanced sense that their public officials are making decisions that stand up to ethical scrutiny. They may not agree with the decisions, but at least they can feel assured that the decisions were not tinged with the scent of private gain.

But we are not done. As I suggested, issues keep evolving and so do public expectations. There is much we can work on, and an increasingly broad network of people around the globe are doing just that.



Question — I think your approach is very interesting, particularly as it seems to encourage avoidance of loopholes and unintended consequences, which is very difficult in any review process. One thing that does interest me is your reporting to the Prime Minister. Does this allow a loophole, if by some unusual circumstance there's an unethical prime minister?

Howard Wilson — Then Canada's got a very serious problem, which would not just be in this area. There is no doubt that this system only works if it has the strong, unequivocal support of the Prime Minister. It has to have that support. When it was indicated that there was to be a Code of Conduct and an Ethics Counsellor would be applying and administering it, the Prime Minister in effect said that he didn't want to hear from his ministers if they were disagreeing with recommendations that I was making. That certainly helped at the beginning, in fact it was absolutely essential. If

there was any hesitation on the part of ministers at the beginning, they didn't reveal that to me, again because of the importance that the Prime Minister had placed on this.

I think now, with almost five years' experience, the argument would be that indeed it does work well, and it is in the ministers' and Prime Minister's interests to support it. It's not in the interests of a government for very competent ministers to have to resign because they're not in compliance with a particular code that's been established. In the Canadian experience, it has moved debate to the area of differences in public policies, differences of view on policy issues between ministers, differences of view as to whether a minister is a competent minister—are they in fact running their department with any degree of skill. These, while not ethical issues, are very, very important.

One of the consequences of this has been that if a minister has taken my advice (and they all have) and if allegations are made that the minister's interests are constituting a conflict, then it is expected that I would stand publicly and explain and defend the decision. Ministers are very hard-pressed in a real world to defend themselves; you can't be a judge in your own case. Our Prime Minister would find it difficult to have to delve into the details of the private affairs of his ministers, and then have to stand himself and defend them. The system has evolved so that I would be expected to publicly defend them. I have had to do so. Often it is by way of interviews with the press, or appearing before a parliamentary committee, and I have discovered since I arrived here that I have to appear before a parliamentary committee on my return, to explain the Prime Minister's interests in a golf course. He has an avid interest in playing golf, and his past interest in the golf course creates no difficulties with our code, but the Opposition wanted a clear explanation in a public forum, and that's what I will have to do on return.

Question — In view of the fact that ministers and other people in high public office are party to confidential information and information at a very high level, is there anything in your code of ethics which might place a constraint on them actually using that information to their own benefit within a certain period of time of leaving office, or to prevent the phenomenon of double-dipping or insider trading, as you might call it?

Howard Wilson — As long as they are in public life, the fact that they cannot trade directly on shares on the stock exchange deals with the issue of insider trading. We do have post-employment rules. The rules that we apply say that you cannot take a job or a contract with any organisation with which you had direct and significant official dealings in your last year in office. Nor can you be appointed to the board of directors of such an organisation. The cooling-off period is one year for most public officials and two years for ministers. There are also restrictions placed on making representations back, that is, lobbying their old agencies. You can't make representations back on behalf of a third person to your old department, or your Cabinet colleagues, for a period of time after leaving office. The cooling off period, again, is one year for most officials, two years for ministers.

With respect to insider information, we have said that you cannot provide advice to third parties on information that is not in the public domain. All members of Cabinet are Privy Councillors—I think your expression here is Executive Councillor—and they are bound by the oath of office to respect the Cabinet secrecy. I have not had any suggestion that that has not been respected. In interpreting what is 'in the public

domain' I have said that this is not merely information a government department has published, but also what a person in the private sector knows about the activities of the department. We don't want to prevent people who have come into public life from being able to use their experience in their subsequent life. I could give an example which comes up frequently regarding former members of our Immigration and Refugee Board. They have been dealing with adjudicating on refugee claims. They are often appointed because that happens to be the area in which they worked. Now what are they going to do after their appointment of say five years is up? Well, they can't make representations for a year back to that Board. They can't deal with people who have appeared before them. But they can provide advice, and that advice should be no different than the advice that a private practitioner in this field would be offering to their clients. So it provides a fairly reasonable scope, and I think it does protect the public interest. If you make it impossible for people to come into public life and then subsequently use experience gained, then it just makes public life less attractive.

There is a high degree of sensitivity, particularly for ministers who have formerly been in government, who often don't organise their departures quite as professionally as senior public servants. Public servants organise their retirements, whereas often ministers find themselves retired quite unexpectedly, as part of political life. In the last election a very senior minister was defeated, and within twenty-four hours he called me, and forty-eight hours after the election he was in my office. We sat down and went through all of the restrictions. He was intending to continue to work in Ottawa, and was very conscious of the fact that he would be exposed to intense scrutiny and wanted to ensure that his subsequent activities fully met his obligations under the Code.

Question — It's all very well for somebody who owns a fairly considerable share portfolio to pass it over to a blind trust, but in most cases that share portfolio is not going to track the stock exchange directly, it's going to be stronger in certain areas than others. And unless the trust immediately sets about reshuffling the total shareholding, the minister—or public servant for that matter—is going to have a pretty fair idea of what is in the blind trust. Another thing is, in the Australian case (and I presume this is the situation in Canada, too) we do have a capital gains tax, and immediately shares are sold they become subject to capital gains. It may not be desirable that they be sold and subject to capital gains, because they may be required later on for income purposes. So I'd like to hear your views on the blind trust situation.

Howard Wilson — Those are very key questions. We were trying to create a system in which people who chose to continue to be active in the stock market would not be prevented from doing so. I think, from discussing it, that who they have as their investment adviser or broker then becomes very important. The reality is, that if your holdings tend to be fairly small, most people think that setting all of these things up doesn't really make a great deal of sense and so they generally have been happy just to put those affairs into mutual funds. But what we have argued is that if you do have a broker or an investment adviser—truly at arm's length—and you set up these legal requirements, and an individual is empowered to seek your best investment interests within the framework of the risks that you are prepared to undertake, there will, over time, be sufficient trades to go on, to start to distance the minister or other public official from precise knowledge of where those interests lie.

If, at the time of coming into compliance with the Code, there were particular shares that were directly connected with the minister's interests, then we would require that those be divested, generally by sale. The reason for this is that the minister would then be prevented, in fact, from carrying out his or her responsibilities. It is a question of how one manages it at the beginning, when we would make a judgment whether there was anything in the individual's particular holdings at this moment that would create a problem under the Code. If there is, then we ask that they be divested. This is why it becomes quite labour-intensive, because the issues that you raise are in fact important and the financial press in Canada, other members of the media and the Opposition parties are quite intensely interested in that point. What we're trying to do is to say that if you are interested in the market, we can find an accommodation for that, but we don't want it to be used as the basis for allegations that the minister has shares affected by his or her portfolio and, if of any value, he or she may well be influenced by them. It is a question of quite intense management, but Canadians have been willing to believe and accept that the system is safe enough to allow these kinds of investments to take place.

Question — How do you select the blind trustee? For example, is he likely to be the broker who has traditionally handled the minister's affairs in the past?

Howard Wilson — That is often the case. What we are concerned about is when the relationship is less than an arm's length relationship. I think that a person in a large investment company, a broker, would meet our test, provided that the particular relationship has not become so close as to raise questions as to that distancing. The normal thing—at least in Canada—is that if you have an investment adviser, that person is continually making suggestions as to how your portfolio should be reorganised in order for you to get a better return. And most of these brokers actually welcome the opportunity to no longer have to have these negotiations with these individuals.

Question — My question is about jurisdiction. How far does your work extend to the holdings of immediate family members, such as spouses, children and parents of ministers?

Howard Wilson — Within the scope of the Code would fall the spouse and dependant children—that is, in terms of the disclosure of interests requirements. The notion of other family members gets caught up a bit in terms of the transference of assets and the question of employment issues. In other words, for the family members of ministers there are restrictions on the kind of contracts or employment that they can have with the government of Canada, to ensure that there's not a ministerial involvement in it. They would be prevented—this is the family cast widely—from having a contract or employment with a government department over which the minister *is* minister. But they are not prevented from having contracts or employment with any other government department, provided that a minister was not involved in that selection process—which is the normal way in Canada. Most employment decisions—and all employment decisions in the public service—but also most contracts, are not ones that engage ministers. We don't permit the transference of assets to family members to avoid the obligations of the Code, and again, that's cast fairly widely. For disclosure requirements, it's the immediate family—that is, spouse and dependant children—but other aspects of the code tend to look at such issues as arm's length relationships.

Question — My question relates to the terms of your role and where it fits into public policy type issues. For example, I read that there's a reasonably high degree of concern about the privatisation of public assets. In the sense that you're seen to be objective, I wonder if you could identify the source of people's cynicism and then perhaps have an input into public policy, for example where privatisation fits in, or commenting on ethical issues in a broad public policy role. Could it be, or is it, part of your role?

Howard Wilson — That particular issue has not arisen, but my office is heavily engaged in working with the development of codes of conduct, for example, that may apply to particular tribunals and providing advice more broadly on a range of issues. Privatisation is not the sort of thing which has raised any particular political concern at this time. It's largely all done; there are hardly any crown corporations around any longer.

Question — Who appoints the Ethics Counsellor?

Howard Wilson — The Prime Minister. My career had been cast in trade policy—I was in the foreign service—and I was between assignments when the Cabinet Secretary, who is a permanent public servant, asked me if I would do the Cabinet Office a favour by taking over the position for one year. I didn't feel like telling the head of the public service that I was not prepared to do him a favour, and it was only for a year. This was in 1993 under a previous Prime Minister, Prime Minister Mulroney. There followed a short term under his Conservative successor, and then there was the election of October 1993, won by the Liberals. In the Spring of 1994, the Prime Minister called me and asked me to be Ethics Counsellor. So I come back again to the point that I made at the beginning, that these are the Prime Minister's rules. They apply to his government, and he's chosen a mechanism which he would like to have operated on his behalf, by me. My name was actually put forward to the two Opposition leaders by the Prime Minister. Both of them agreed, but at the end it's the Prime Minister's rules that I'm administering—I'm not a person of Parliament.

Question — Do you have an educative role, or do you make a heroic assumption that all ministers are basically ethical people? And do you have an investigative role, when that assumption is shown to be flawed? Concerning the code of conduct, in the foreign service here in 1996, there were a series of allegations of child sex offences involving serving diplomats overseas. The foreign service formed an inquiry, which was held entirely in camera, which produced a code of conduct, which was then re-drafted by the foreign service department bureaucrats, to remove any reference at all to child sex offences—the prime purpose of its generation. The foreign service itself is the recipient of all complaints. It decides which should be investigated. They are all done in camera, and it audits that process itself. I note that you said you had a role in developing codes of conduct for Canadian departments, and presumably you also have a role in ensuring that they are inherently, and in reality, ethical?

Howard Wilson — On the question of investigations, I tend not to use the word 'investigation' which conjures up, at least in the Canadian mind, subpoena powers and so on. I do have these powers relative to the code of conduct for lobbyists that I developed, and which was tabled in Parliament. If there's a breach of one of these rules then I acquire all the powers of a superior court of record, subpoena powers and so on, to deal with that matter. With respect to the Conflict of Interest Code itself, if there is

any evidence that comes to my attention that somebody is not in compliance with it, then I will look into it—using the ordinary English word ‘investigate’, but not with that legal sense—and come to a conclusion. If somebody were not in compliance, then it would be my responsibility to report that to the Prime Minister. These matters then tend to become quite public, and have usually been arrived at in a public process anyway, so there then has to be a public response.

The work that I have done on codes of conduct has not tended to focus on the kind of difficult issue that you were relating about the Department of Foreign Affairs here. What we have been trying to do is to set codes of conduct for a range of tribunals so that there is a sense of public confidence that individuals within those tribunals are going to be able to have a framework by which they can come to the proper conclusions. I don’t think I can go any further than that, but these kinds of codes do have value, and they answer a lot of concerns that people have, not just at the political level, but also at the organisational level.

Question — Are you sacked when the general election is called, and do you have to finish up all your inquiries before the general election?

Howard Wilson — I was in office in the sense that I was operating the Conflict of Interest Code when the current Liberal government came in, and had been working with the Conservatives, and obviously applying post-employment rules to their ministers who were no longer there. I expect that if there were to be another election right now—and there isn’t one due to take place until 2001—the tendency would be, because I am a public servant, that I would certainly be kept in at least for an initial period. Whether I would want to stay, or whether the Prime Minister would want me there, is an issue that could always be addressed at that point in time. But it’s kind of hypothetical, and in the distance.

I think the important thing here is that everyone would recognise that the system has been working reasonably well, that there have been explanations, that I have had to appear publicly before parliamentary committees, and that has been an improvement on the process. It introduces a degree of transparency. But these things evolve, and there are perhaps better ways of doing it. I don’t think, however, that any government would ever think of appointing a partisan supporter to the position, because they would instantly lose any public credibility that the job has.