

**SUMMARY OF REFERENCES IN
DEMOCRACY WATCH'S WRITTEN SUBMISSION
THAT PROVIDE ANSWERS TO
OLIPHANT COMMISSION QUESTIONS FOR PANEL B**

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ETHICS RULES ISSUES

A. General Issues

What is the ultimate objective of ethics rules? Is it to shape behaviour, to communicate publicly commitment to values, or something else entirely? Do you have any views on how ethics rules should be structured to create accountability, but without imposing limitations that have the effect of deterring qualified individuals from seeking public office? Do you believe that ethics rules enhance ethics, or is political "culture" the more important ingredient to ethical behaviour? How is an ethical political "culture" created?

Democracy Watch's answers:

- See pp. 6-14 re: summary of Democracy Watch's proposed framework for establishing and maintaining an effective federal government ethics enforcement system with: loophole-free rules; fully independent, fully empowered and well-resourced enforcement agencies, and; penalties significant enough to discourage violations -- along with training programs (pp. 43-44, Rec. 61) to create an overall ethical political "culture" through the overall combination of incentives ("carrots"), penalties ("sticks") and education (in the same way standard-setting systems in other parts of society work to establish socially acceptable standards of behaviour).

Do you have any views on how ethics rules should be structured to create accountability, but without imposing limitations that have the effect of deterring qualified individuals from seeking public office? What other adverse consequences may flow from the regulating of ethical behaviour?

Democracy Watch's answers:

- As set out in the framework (pp. 6-14), the primary concern and goal should be ensuring honest, ethical and open behaviour through clear ethics and open government rules and effective enforcement systems, as this will very likely encourage qualified individuals to seek public office because they will be more assured that their reputation will not be ruined through association with other public officials exploiting loophole-filled rules and weak enforcement systems for their own advantage, and because the public service will very likely be, over time as new higher ethical standards are established (and complied with more and more), viewed in a more favourable light;
- As mentioned in many sections of Democracy Watch's submission, by using a sliding scale (of rules, restrictions and penalties) based upon the power of the public official to make/impose decisions, the limitations imposed on most officials (those with less decision-making power) will not impose an unreasonable burden, but will at the same time help ensure effective accountability

B. Specific Questions

Do you believe that the concept of “conflicts of interest” contained in federal law is adequate? In your view, is the distinction between a real and a potential or apparent conflict of interest important in affecting the scope of conflict of interest rules?

Democracy Watch’s answers:

- pp. 18-20, Rec. 10 re: need for broad definition of “conflict of interest”;
- pp. 20-21, Rec. 11 re: need for broad definition of “private interest” to establish appearance of conflict standard;
- pp. 23-24, Rec. 14 and sub-recs. re: need for general ethics rule.

Do you believe that the ethics rules that *currently* cover business and financial dealings between a sitting Prime Minister or a sitting Member of Parliament and a third party are adequate? If not, how could they be improved? Should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?

Democracy Watch’s answers:

- pp. 23-24, Rec. 14 and sub-recs. re: need for general ethics rule;
- pp. 21-23, Recs. 12-13 and sub-recs. re: need to lower disclosure threshold for assets / blind trusts, and gifts;
- p. 41, Rec. 50 re: need to require disclosure of all donations, gifts, loans by parties, riding associations and candidates in the week before each election day;
- p. 29, Rec. 22 re: need to close loopholes in disclosure requirements to end secret lobbying;
- p. 31, Recs. 26-28 re: need to require lobbyists to disclose past work anywhere in government or politics in Canada, and to require disclosure of amount spent on lobbying campaign, in fully searchable online registry;
- pp. 45-46, Recs. 63-64 re: need to close “benefits” loopholes in *MPs Code* to prohibit lobbyists from working with or doing favours for MPs;
- pp. 30-31, Rec. 24 re: need to clearly prohibit lobbyists from working with or doing favours for any federal politician or their parties or riding associations;
- pp. 39-40, Recs. 44-45 and p. 45, Rec. 62 re: need to prohibit secret donations to all types of political candidates, and secret trust funds by riding associations and political parties;
- p. 41, Rec. 49 re: need to limit loans to candidates, riding associations and parties to individuals, and to a small amount;
- pp. 24-26, Rec. 15 and sub-recs. re: need broad definition of “friend” to include all staff of all politicians, political friends, and more than just close friends;
- p. 31, Rec. 25 re: need to prohibit lobbyists who enter the public service from serving

as Cabinet ministers or senior official for a cooling-off period of time;

- p. 26, Recs. 16-17 re: strengthening disclosure of offers of, and seeking, outside employment
- p. 27, Recs. 18-19 re: need broad definitions of the phrases “improper advantage”, “employment”, and “official dealings”
- pp. 27-28, Recs. 20 and sub-recs. re: lengthening cooling-off periods on a sliding scale based upon power of public official to make/impose decisions
- p. 29, Rec. 23 re: need to require cooling-off period for “employment exchange program” participants who come from private sector to work in government;
- pp. 29, Rec. 21 re: need to require disclosure of assets and liabilities through cooling-off period

Are the current rules on the post-employment of politicians appropriate? Should they reach further in terms of the sort of post-employment activity that they regulate? Do rules currently reach the actions of former public officials directed not at Canadian governments, but at international governments and organizations? To what extent do you believe that the rules should reach the latter sorts of activities?

Democracy Watch’s answers:

- pp. 23-24, Rec. 14 and sub-recs. re: need for general ethics rule;
- p. 27, Recs. 18-19 re: need broad definitions of the phrases “improper advantage”, “employment”, and “official dealings”
- p. 27-28, Recs. 20 and sub-recs. re: lengthening cooling-off periods on a sliding scale based upon power of public official to make/impose decisions
- p. 29, Rec. 23 re: need to require cooling-off period for “employment exchange program” participants who come from private sector to work in government;
- p. 29 re: need to require disclosure of assets and liabilities through cooling-off period
- sections 33 to 35 of *Conflict of Interest Act* cover activities involving international governments and organizations because they do not explicitly exclude them, but *Act* could be changed to add explicit statement that these sections apply to both domestic governments and international governments and organizations

Are the existing enforcement and penalty regimes sufficient? Do the various sources of ethics and lobbying rules (*e.g.*, *Conflicts of Interest Act*, *Criminal Code*, *Parliament of Canada Act*, *Lobbyist Act* etc.) provide a coherent whole, or do they create overlap or leave gaps?

Democracy Watch’s answers:

- pp. 16-17, Recs. 1-8 re: *Criminal Code* enforcement needs strengthening;

- p. 32, Recs. 29, and p. 38, Rec. 38 re: need to strengthen independence of appointment process for all ethics and lobbying enforcement agency heads;
- p. 32-33, Rec. 30 re: need to strengthen independence and enforcement powers of Senate Ethics Officer;
- pp. 33-34, Rec. 31 and p. 38, Rec. 39 re: need to require ethics and lobbying enforcement agencies to investigate and rule on every complaint no matter who files the complaint;
- p. 34, Rec. 32 and p. 38, Rec. 40, and p. 41, Rec. 50 re: need to require ethics and lobbying and political finance enforcement agencies to conduct random audits/inspections to ensure compliance;
- pp. 34-35, Rec. 33 and pp. 38-39, Rec. 41 re: need to ensure ethics and lobbying enforcement agencies have adequate annual funding;
- pp. 35-36, Rec. 34 and p. 39, Rec. 42 re: need to prohibit secret advice from ethics and lobbying enforcement agencies to public officials, and to require disclosure of all rulings and opinions made;
- pp. 36-37, Rec. 35 and sub-recs. re: need to increase penalties in ethics rules to match penalties in *Lobbying Act*;
- p. 37, Rec. 36 re: need to turn codes into laws so that their enforceability is clear, and so that changes cannot be made without a full public review;
- pp. 37-38, Rec. 37 and p. 39, Rec. 43 re: need to make clear in ethics and lobbying laws and codes that all decisions of enforcement agencies can be judicially reviewed;
- pp. 39-40, Rec. 46 re: need to increase penalty to a significant level for violation of ban on taking secret donations or maintaining secret trust fund
- pp. 40-41, Rec. 47 re: need to require tracking of public officials bank accounts for suspicious transactions to comply with *UN Convention Against Corruption*;
- p. 43, Rec. 60 re: need to ensure all whistleblowers are effectively protected from retaliation, and are adequately compensated if penalized for reporting government wrongdoing.

PRIME MINISTERIAL CORRESPONDENCE HANDLING PROCEDURES

Do you believe that the federal government's current prime ministerial correspondence handling policies are appropriate? Are there recommendations for improvement that you would make? Are you aware of any other models and precedents that might improve on this system?

Democracy Watch's answers:

- p. 42, Recs. 52-59 re: need to close loopholes in open government rules, and increase enforcement agency powers, to ensure all documents are properly created, tracked and maintained