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Key Changes to Close Unethical Loopholes in the federal *Conflict of Interest Act* (*COIA*), and to Make Enforcement of the *COIA* Effective

Submission to the Standing Committee of the House of Commons on Access to Information, Privacy and Ethics for its review of the *Conflict of Interest Act*

(November 18, 2025)

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NOTE: Democracy Watch files this submission to the Committee following up on the testimony of Duff Conacher, Co-founder of Democracy Watch, before the Committee on October 1, 2025, and after having reviewed all of the testimony of all witnesses at all hearings before the Committee from September 24, 2025 to November 5, 2025 listed here, and the Ethics Commissioner's testimony before the Committee on September 15, 2025. Much more detail concerning the points made in this submission can be seen in Mr. Conacher's PhD thesis, especially chapters 4, 5 and 7, which can be seen by clicking here (in English only).

I. Summary: Loopholes, Weak Enforcement and Weak Penalties Make the *Conflict of Interest Act* Almost Completely Ineffective

The federal *Conflict of Interest Act* (*COIA*) is a law containing ethics requirements for the most powerful public office holders in the federal government (the Prime Minister, Cabinet ministers, their staff and all top government officials and Cabinet appointees (except ambassadors and federal judges)).

As the Supreme Court of Canada has ruled, it is one of Canada's most important laws for ensuring democratic good government.

However, because of huge loopholes in the *COIA*, it doesn't apply to 99% of the decisions and actions of these most powerful office holders, and it allows them to secretly profit from their decisions. It really should be called the "*Almost Impossible to be in a Conflict of Interest Act*".

It is important to keep in mind that an office holder can further their own, their relatives' or their friends' interests not only through actions (by changing laws etc. in ways that help companies they are invested in increase their profits, or that benefit their private interests in some other way), but also through inaction (by not changing laws in ways that would cost companies they are invested in and reduce their profits, or that would harm their private interests in some other way).

It is also important to keep in mind that no one can ever know an office holder's reasons for making a policy decision or any other type of decision. The office holder may state their reasons for making a decision, and claim that the decision was made to protect and uphold the public interest, but no one can ever know whether the decision was actually made to further the office holder's, their relatives' or their friends' interests. Only the office holder can know what the actual reasons in their own mind were for making any decision (as Professor Andrew Stark highlighted in his opening statement before the Committee).

That is why the entire basis of any political ethics law, and the only ways to stop conflicts of interest from undermining and corrupting government decision-making processes, are to prevent conflicts of interest by removing the private interest(s) that cause the conflict or, if the conflict can't be prevented, to prohibit the office holder from participating in any discussion, decision or vote that affects the private interest(s).

As the loopholes summarized below show, the *COIA* is much weaker than the ethics requirements that apply to the least powerful federal government employees in the *Values and Ethics Code for the Public Sector* and the *Directive on Conflict of Interest*, which together require all employees to act with integrity at all times in a manner that will bear the closest public scrutiny, and prohibit them from participating in any decision or action when they have even an appearance of a conflict of interest of any kind.

It is simply perverse that the most powerful politicians and office holders in Canada's federal government have much weaker ethics requirements and standards in the *COIA* than the least powerful federal public servants.

The enforcement of the *COIA* by the Conflict of Interest and Ethics Commissioner ("Ethics Commissioner") is also weak, as: the Ethics Commissioner does not do inspections or audits of any information filed by office holders or of the activities of office holders; complaints can only be filed by politicians; the Commissioner does not issue a public ruling on most complaints or situations that raise questions compliance with the *COIA*, and; the Ethics Commissioner has also let off many clear violations. In addition there are no penalties for violating the conflict-of-interest sections in the *COIA*.

Any political party, party leader, MP or Senator who supports the *COIA* in its current form and/or opposes closing the loopholes detailed below in the *COIA*, making enforcement independent, transparent, timely, effective and accountable, and requiring significant penalties for all violations, is essentially saying that they approve of:

i. allowing office holders to secretly further their own and others' private interests instead of upholding and protecting the public interest;
ii. allowing office holders to secretly profit from their decisions;
iii. allowing conflicts of interest to undermine and corrupt federal government policy-making and decision-making processes;
iv. allowing office holders to have secret investments and to escape detection when involved in unethical activities;
v. allowing office holders to participate in unethical activities without facing any penalty;
vi. having the Ethics Commissioner chosen through a Cabinet-controlled, partisan and political process instead of an independent, non-partisan, merit-based process, and;
vii. allowing the Ethics Commissioner to fail to enforce the *COIA*, including by secretly burying and covering up wrongdoing, without any accountability to the public or the courts.

To actually prevent, prohibit and penalize conflicts of interest, as detailed below, all of the loopholes in the *COIA* must be closed, and the Ethics Commissioner must be required to take effective, timely enforcement actions, and to be fully transparent in reporting those actions after they are completed, and to impose significant penalties on anyone who violates the *COIA*, and to be accountable to the public for failing to enforce the law effectively.

The Committee should recommend in its report that all parties work together to enact a bill that makes all of these changes. If, at the end of the Committee's review of the

COIA, only opposition MPs support recommending all these changes, opposition parties should not allow the government to stall or fail to make changes, but instead should jointly sponsor and enact a private member bill that makes all of these changes.

Ongoing government inaction that, as in the past almost 20 years, fails to change the *COIA* into a law that actually prevents, prohibits and penalizes conflicts of interest would be negligently bad, but so would ongoing inaction by opposition parties which could have, during the minority governments from 2019 on, introduced and enacted a private member bill to make these changes to the *COIA*, and can still do so during the current minority government.

II. Canada Already Has Principles and Rules in the *Conflict of Interest Act* – Principles Alone Are Ineffective and Unenforceable

Daniel Greenberg, Parliamentary Commissioner for Standards, United Kingdom House of Commons, testified before the Committee on October 20, 2025. He proposed that the best model for a political ethics law is a set of general principles along with a set of specific rules in an ethics law, and that Canada does not follow this model. In fact, the *COIA* is a mix of principles and specific rules. Sections 4 to 11, 18 and 33 of the *COIA* all set out general principles, while other sections set out specific rules and enforcement processes.

The actual problems with the *COIA* are that other sections in the *COIA* (described below) create huge loopholes in the sections containing general principles, and the specific sections also contain loopholes, and the Ethics Commissioner has also created other loopholes through weak interpretations of some of the sections in the *COIA*.

General ethics principles alone are ineffective and unenforceable. They are ineffective because they are vague, and either it takes years of rulings by an enforcement entity on alleged violations before everyone understands the scope and application of the principles, or the enforcement entity sets out interpretation bulletins for each of the principles that define the principles in ways that make them into specific rules. It is much better to have a law, like the *COIA* already is, that contains general principles and specific rules. Again, the actual problem with the *COIA* is the loopholes in both its principles and specific rules.

General principles are also unenforceable because they are vague. The general ethics principle in the initial 1985 ethics code that stated that Cabinet ministers are prohibited from participating in decisions when they have a conflict of interest was found to be unenforceable by the Federal Court of Canada in the case *Stevens v. Canada (Attorney General) (F.C.)*, 2004 FC 1746 (CanLII), [2005] 2 FCR 629 because the words “conflict of interest” were not defined in the code and, therefore, Minister Stevens did not know which conflicts were prohibited.

In addition, the suggestion made by Mr. Greenberg, and another witness Lori Turnbull, that specific rules are not needed because “you can’t legislate morality” shows a complete lack of understanding of that old saying means. What it means is that

enacting laws does not change whether someone is actually inherently good or bad. But that is not the intent of any law – laws are enacted to require everyone, good and bad, to comply with social and legal standards.

III. Strict, Strong Rules, and Effective Enforcement and Penalties, Change Political Culture, Not Vague Principles

Commissioner Greenberg also suggested that ethics principles can affect the culture of politics and government and change how people actually behave better than specific rules. There is no evidence that this is true.

Canada had an ethics code made largely of 10 principles that applied to Cabinet ministers from 1985 until the *COIA* was enacted and came into force in January 2007. Through that time period, all four Prime Ministers and dozens of Cabinet ministers were involved in multiple scandals and unethical activities. However, because the Prime Minister himself enforced the code through that time period, none of the Prime Ministers, and only one minister, was found to be in violation of the code, and only one faced any penalty. As a result, there was little incentive for any minister to comply with the code, and the principles in the code did almost nothing to change the political culture.

There is extensive evidence from several studies that, while you can't "legislate morality" (meaning you can't make people inherently good just by enacting laws), the 11 key elements in any law and enforcement system that actually change people's actions, especially people in positions of power like the office holders who are covered by the *COIA*, and thereby change the culture of any institution or organization, are:

i. clear, strict rules with no loopholes that apply to everyone in the institution/organization, with no exceptions, not even for the people at the top;
ii. strict and strong requirements to disclose all activities that are covered by the law so that everyone can watch for violations of the rules;
iii. detailed interpretation bulletins that clearly define the scope and application of the rules, including with examples and case studies;
iv. regular, mandatory training for the people who are required to comply with the rules;
v. a fully independent enforcement entity that does random, unannounced, regular audits and inspections to ensure compliance with the rules;
vi. a complaint process that is easy and accessible to everyone so the enforcement entity can be made aware of violations it does not find through audits and inspections;
vii. a comprehensive, best-practice whistleblower system that fully protects anyone who report violations of the rules;
viii. a requirement that the enforcement entity review every complaint and situation that raises questions concerning compliance with the rules;
ix. a requirement that the enforcement entity issue a public ruling on every complaint and situation reviewed;
x. a requirement that the enforcement entity impose a penalty for every violation that is significant enough to discourage violations, and;

xi. a legal right that allows anyone to challenge the enforcement entity's decisions and actions in court if they ignore facts or the rules or transparency requirements or fair process principles.

The *COIA* does not include nine of these 11 key elements, and only partially contains two of the elements. One, disclosure is required of many assets and liabilities. However, incredibly, some investments in businesses are allowed to be kept secret. Second, interpretation bulletins have been issued for many of the sections in the *COIA*. However, incredibly, the Ethics Commissioner has failed since 2006 to define some of the most important sections of the *COIA*.

IV. PM Code – Strict, Strong Rules, but not Enforced

There is also the Prime Minister's Code (PM Code) and, among other strong and strict rules, it also requires the Prime Minister and Cabinet ministers to be honest, and act with integrity at all times in a manner that will bear the closest public scrutiny, and it prohibits them from participating in any decision or action when they have even an appearance of a conflict of interest of any kind (these measures essentially define what would be a violation of the *COIA* measure that prohibits "improperly" furthering one's own or others' interests (which is in ss. 4, 8 and 9)).

The Ethics Commissioner has stated several times that the PM and Cabinet ministers are required to comply with the PM Code, but usually the Commissioner has not enforced that requirement. Also, it is unclear if current Prime Minister Mark Carney is going to cancel, weaken or maintain the PM Code. Click here to see details.

The real solution, which any PM would do if they actually wanted Cabinet ministers and top government officials to be required to be ethical, is to add the ethics rules in the Code to the *COIA* so they are clearly required by law and enforceable.

V. Ethics Enforcement is Partisan, Political, Weak, Secretive, Slow and Ineffective

Although the ethics rules for federal government employees are much stronger than for top politicians and government officials, the enforcement systems for the *COIA* and the rules for federal government employees (as well as for the ethics rules for MPs and senators) are all equally partisan, political, weak, secretive, slow, ineffective overall and largely unaccountable.

As the "dirty dozen" list below details, some of the loopholes have been created through negligently bad enforcement by the federal Ethics Commissioner since 2006, including by current Commissioner Konrad von Finckenstein, who buried eight investigations and created three new loopholes in his first six months as Commissioner.

See a summary list of key enforcement changes needed set out below in Part VIII.

VI. The 12 Key Changes Needed to Prevent, Prohibit and Penalize Unethical Activities by the PM, Cabinet Ministers, their Staff and Appointees

The 12 key changes needed to close key loopholes and make the *COIA* actual effective at preventing conflicts of interest and unethical gift- and favour-trading are as follows:

1. **Add a rule to require all public office holders to tell the truth** to stop the misleading spin that regularly and fatally undermines reasonable policy debates and discussions. Canada needs political leaders, not misleaders.

2. **Close the huge loophole in the definition of "private interest" (in ss. 2(1)) to clearly prohibit participating in any decision-making process when in even an appearance of a conflict of interest, not only decisions that are specific**

   Currently, the *COIA* says that an office holder can never be in a conflict of interest when they are making a decision of "general application" or that applies to them as part of a "broad class of persons" or entities. In other words, they can *only* be in a conflict of interest when they are making a decision that applies specifically to one person, business or organization or a small group of people, businesses or other types of organizations.

   This is a huge loophole because 99% of the decisions and actions of office holders apply generally or to a broad class of people or entities. As a result, **the *COIA* currently doesn't apply to 99% of decisions and actions that office holders participate in, and that allows them to take part in decisions when they, their family or friends can profit from the decision**. This loophole is the main reason the *COIA* should be called the *Almost Impossible to be in a Conflict of Interest Act*.

   Until the "general application" and "broad class" loopholes are removed from the *COIA*, it will make no difference if the *COIA* is changed to prohibit office holders from being in an "apparent conflict of interest" as Ethics Commissioner von Finckenstein recommends on p. 8 of his *2024-2025 Annual Report*. Prohibiting apparent conflicts is an important change, but the loopholes must be closed to make that rule actually apply to all decision-making processes. The Supreme Court of Canada has ruled in *R. v. Hinchey*, 1996 CanLII 157 (SCC), at paras. 13-18, as well as in several other rulings, that ensuring the appearance of integrity in government and political processes is essential in order to be a democracy.[1] Public office holders should be prohibited from participating in *any and all* discussions, decisions and votes when they are in even an appearance of a conflict of interest.

   As well, the Committee should clearly reject the Ethics Commissioner's very bad recommendation, on p. 9 of his report, that the "broad class" loophole in the *COIA* be expanded to "harmonize" with the larger loophole in ss. 3(3) of the

[1] See similar standards expressed by the Supreme Court of Canada in its rulings in: *Fraser v. P.S.S.R.B.*, 1985 CanLII 14 (SCC), paras. 39 and 41; *Libman v. Quebec* (Attorney General), 1997 CanLII 326 (SCC), paras. 41, 52 and 84; *Harper v. Canada (Attorney General)*, 2004 SCC 33 (CanLII), paras. 23-24, 63, 79, 82-83, 91-92, 97, 99, 101-104, 108-109, 120, 122, 142 and 146; and *R. v. Carson*, 2018 SCC 12 (CanLII), paras. 38-39.

Conflict of Interest Code for Members of the House of Commons (*MP Code*). Loopholes in the *COIA* need to be closed, not expanded. The "broad class" loophole should be restricted in both the *COIA* and the *MP Code* to prohibit participation in discussions, decisions and votes that affect an office holder's or MP's investments or private interests in any particular way directly or indirectly, and to only allow participation when they share an interest with average Canadians in the most common way, such as in the area of setting income tax rates.

3. **Prohibit office holders from having investments in businesses**

The Parker Commission recommended banning investments (pages 343-361 (esp. 360-361)) in its 1987 report because it is the only effective way to actually prevent the conflicts of interest caused by investments. Politicians, public officials, governments and political parties across Canada have all ignored Justice Parker's recommendations ever since then because they all want to be allowed to secretly profit from their decisions.

Currently, the *COIA* has a loophole that allows office holders to place investments in a "not blind" trust (see details in #4 below) **and another loophole (in s. 20) that allows secret "exempt assets"** which include investments in: some mutual funds; RRSPs; RESPs; university, hospital and other public sector debt; annuities and; life insurance policies.

It's true that some of these investments are not fully "controlled" by the public office holder, but if an office holder invests in a mutual fund (or exchange-traded fund (ETF)) that is focused on a specific industry (for example, the Canadian financial industry) or on big businesses generally in Canada, they know that the fund will own shares in companies in that industry or in those big businesses, and so they have a direct financial conflict but are allowed to keep it secret from the public. This loophole should be closed by prohibiting all investments in businesses that are affected in any way by federal government decisions and actions.

In addition, the *COIA* has another loophole (in ss. 27(10)) that allows Cabinet staff and top government officials to secretly own so-called "minimal value" investments in businesses they regulate or make decisions about. Truly incredibly, last year Ethics Commissioner Konrad von Finckenstein **doubled from $30,000 to $60,000 the allowable value of these investments**, and also specifically allowed members of the Canadian Energy Regulator (CER) to invest in exchange-traded funds (ETFs) and mutual funds that own shares in energy companies, because the Commissioner believes that $60,000 of shares is a "minimal" investment (even though $60,000 is almost double what an average Canadian earns each year), and that ETFs and mutual funds do not cause financial conflicts of interest. **Click here to read** the Commissioner's bizarre definition of financial conflicts of interest (see #3 re: Doubling the minimum value exemption and #4 re: CER appointees' investments).

As well, on p. 9 of his *2024-2025 Annual Report*, Ethics Commissioner von Finckenstein has recommended the very bad idea of weakening the investment rules in the *COIA* even more to allow the PM, Cabinet ministers, their staff and top government officials to secretly own ETFs because, again, he believes that ETFs don't cause a conflict of interest,

even though they clearly do if the ETF is focused on a specific industry or generally on business sectors regulated by the federal government.

As long as the COIA allows for investments in businesses, it will allow office holders to profit from their decisions. The only way to stop financial conflicts of interest is to prohibit office holders from having financial interests like investments in businesses that cause conflicts.

Ethics Commissioner von Finckenstein, and some other commentators, claim that it would be too much to require new office holders to sell investments in businesses, as they would have to pay taxes on capital gains from selling their investments. **A simple fix for this is to allow them to sell their investments without paying tax on them** (or paying a much-reduced tax rate) in return for their public service.

What could the PM, Cabinet ministers, their staff and top government officials do after selling all their investments? They are paid well compared to most Canadians, in the top 1-5% of annual salaries, and they have among the most generous benefits and pension plans of any employees in Canada. So, instead of enriching themselves further through investing in private businesses that cause financial conflicts of interest that taint their decision-making and policy-making, **they can buy government bonds or guaranteed investment certificates or other similar financial products that are not connected to any specific business, and that offer a fixed rate of interest for the time period that they remain in office**, and then when they leave office they can again invest in shares and mutual funds and other financial products for investing in businesses.

Finally, bets placed on politics through political betting / prediction market service companies and websites should be explicitly included in the definition of "controlled assets" (in s. 20) in the *COIA* by adding a new clause (e) to the definition that says: "any other type of financial investment, product, derivative, vehicle, structure or scheme, including bets through any type of political betting or prediction market service, company or website." Click here to see more details about this issue.

4. **Ban the use of a so-called "blind" trust because they are not blind, and actually require selling investments** (which is what "divestment" means).

Putting "controlled asset" investments like stocks, mutual funds in a blind trust is currently allowed under s. 20, clause 27(1)(b) and ss. 27(4) to (7) of the *COIA*.

The 1984 Starr-Sharp Task Force on Conflict of Interest, and the 1987 Parker Commission (pages 343-361 (esp. 360-361)) both recommended against blind trusts because they are a sham façade that hide and do nothing effective to prevent or prohibit financial conflicts of interest. **A so-called "blind" trust isn't blind at all because:**

a) the office holder knows what stocks and other investments they put in the trust;
b) they chose their own trustee (ss. 27(4));
c) they are allowed to give the trustee instructions such as don't sell anything (ss. 27(5)), and;
d) the trustee is allowed to give the office-holder regular updates on the trust (clause 27(4)(g)).

5. **Ban the use of so-called “conflict of interest screens” or “ethics screens” because they are smokescreens that hide the fact that office holders participate in almost all decisions that affect their and their family’s and friends’ private interests**

The federal Ethics Commissioner's website misleads the public and the media because it says that a "conflict of interest screen" (commonly known as an “ethics screen”) includes a statement from the public office holder saying that they agree proactively "to abstain from any discussions, decisions, debate or votes concerning the matter that forms the subject of the conflict of interest." The technical legal term for this is to "recuse" oneself from a decision-making process, and is called a "recusal".

In fact, as can be seen in both Prime Minister Mark Carney's ethics screen statement and Cabinet minister Daniel LeBlanc's statement (among many other federal screen statements), their screens allow them to participate in discussions, decisions and votes "of general application" or that apply to a "broad class" (group) of people or entities, as long as the private interest affected by the decision is not “dominant” or “disproportionate” in the broad group.

As described above in point #2, this is a huge loophole in every ethics screen (and in all the ethics rules in the *COIA*) because 99% of decisions made by office holders apply generally or to a broad group. Because of this huge loophole, a so-called "ethics screen", and the *COIA* overall, are actually smokescreens because they make it seem like the office holder will not participate in decisions when they have a conflict of interest but, in fact, because of the huge loophole they continue to secretly participate in almost every decision.

The first federal Ethics Commissioner Bernard Shapiro invented “ethics screens” in 2004 because, in the ethics code that existed at that time, there was no requirement that a public office holder disclose publicly the details every time they stepped aside from a discussion, decision or vote because of a conflict of interest. Commissioner Shapiro recommended in several reports that public disclosure of every recusal be required.

When the code was enacted as the *COIA* in 2006, public disclosure of the details and reasons every time an officer holder stepped aside because of a conflict was clearly required, with no exceptions, within 60 days after each time the office holder stepped aside (an action that is called a "recusal" – ss. 21, 25(1) and clause 26(2)(b)).

However, the second Ethics Commissioner Mary Dawson ignored this requirement and continued using ethics screens – a one-time publicly issued statement by the office holder (like PM Carney and Minister LeBlanc’s statements) saying that they will step aside from discussions, decisions and votes *only* when they have a specific conflict. Ethics Commissioner Mario Dion continued to use ethics smokescreens, as has current Ethics Commissioner von Finckenstein.

The use of ethics screens, which hide whether office holders are participating in discussions, decisions and votes when they have a conflict of interest, should be banned by amending s. 30 of the *COIA* to make it clear that an ethics screen or any similar device is not one of the compliance measures that the Ethics Commissioner is allowed to use. The public, accountable recusal

process set out and required under the *COIA* (again under ss. 21, 25(1) and clause 26(2)(b)) is the only effective way to ensure that office holders do not participate in discussions, decisions and votes when they have a conflict of interest.

The Committee could call on the Ethics Commissioner to require every office holder who has an ethics screen to disclose publicly each time that they do not participate in a discussion, decision or vote under their screen, but this would be redundant given that the recusal provisions in the *COIA* already require that. The rational, reasonable and effective solution is to just ban the use of screens, and then the recusal provisions will operate to require that public disclosure.

6. **Change s. 7 of the *COIA* to prohibit office holders from giving preferential treatment to anyone**, especially anyone who has given them a gift or assisted them in any way (currently s. 7 only prohibits giving preferential treatment to someone or any entity based on the person who represents them/lobbies for them).

   This change would not mean that office holders would be prohibited from making a decision that favours one stakeholder over another (as most decisions do in one way or another), it would just mean that they would have to use a decision-making and public consultation process that gives all stakeholders an equal opportunity to communicate and meet with the office holder, and be listened to, before the office holder makes their decision.

7. **Change the gifts and benefits rule to ban the PM, Cabinet minister, their staff and top government officials from accepting anything** from anyone who is trying to influence their decisions because studies undertaken by clinical psychologists world-wide have shown clearly that even small gifts influence decisions. Currently, clause 11(2)(b) of the *COIA* allows gifts from relatives and friends even if the relative or friend is a lobbyist or has dealings with the government (clause 11(2)(b)).

   In addition, the Committee should recommend closing the huge loophole in clauses 121(1)(b) and (c) of the *Criminal Code* that allows politicians and government officials to accept gifts and benefits from people and entities that have dealings with the government if the head of the government institution that they are under approves accepting the gift or benefit. Politicians, their staff and all government officials should be prohibited from accepting any gifts or benefits from anyone who has dealings with the government.

8. **Require office holders to disclose in the Public Registry their assets and liabilities worth more than $1,000** (the current disclosure requirement is only for liabilities worth more than $10,000, which is much too high**), and to disclose details about their past five year's work before they became an office holder** to make it easy to track which organizations and issues they have ties to, and **to disclose which members of their extended family (and which friends) they have close relationships with** including being aware of their business, investments and other private interests.

9. **Extend the cooling-off period in the COIA (ss. 35-42) during which an office holder is prohibited from contacting the government from to 2 to 5 years, and longer if a conflict of interest still exists, with no exceptions**

Prohibit the Prime Minister, Cabinet ministers and their senior staff, and top government officials and Cabinet appointees from communicating with their former colleagues and government officials for a sliding-scale time period of 2 to 5 years after they leave depending on what positions and committees they served in and how close their relationships are with Cabinet ministers, officials etc. (and longer if a conflict of interest still exists), and require them to disclose their post-activities online during this time period in a searchable database (the current "cooling-off" period is only 1-2 years).

10. **Clarify the measures in the *COIA* (ss. 33-34) that prohibit passing on secret information you learned while in public office and taking advantage of your former public office** to make it clear that a former public office holder is prohibited from doing any work or taking any job where they would clearly be in a position to pass on secret information or give advice based on secret information they learned while in office.

11. **Extend the *COIA* and/or *MP Code* rules to cover federal political party leadership contestants, and MPs as soon as their election is confirmed** by Elections Canada, to prevent unethical decisions and actions even before they are appointed to Cabinet.

12. **Establish a sliding scale of mandatory, significant penalties for violating the key ethics rules in the *COIA***

There currently are no penalties for violating the key ethics rules in the *COIA*. The only penalty is a meaningless fine of up to a maximum of only $500 for failing to disclose assets and liabilities accurately and on time (ss. 52-62).

Ethics Commissioner von Finckenstein only recommends on pp. 9-10 and 36 of his *2024-2025 Annual Report* that the maximum fine be increased to $3,000, and only for violating the asset and liability reporting requirements in the *COIA*. That is still a meaningless amount for Cabinet ministers and top government officials who all make more than $200,000 annually. Ethics Commissioner von Finckenstein's recommendation is not based on any research concerning what actually discourages and deters people in powerful positions from violating the law. And it is also simply ridiculous that the Ethics Commissioner has not recommended any penalties for violating the conflict of interest and ethics provisions in the *COIA*.

Ethics Commissioner von Finckenstein's recommendation also does not show any awareness or recognition at all that the *COIA* is one of Canada's key laws for ensuring democratic good government, as the Supreme Court of Canada ruled in *R. v. Hinchey*, 1996 CanLII 157 (SCC), at paras. 13-18, nor does it take into account the penalties for violating other key democratic good government laws.

The penalty for failing to register as a lobbyist under *s. 14* of the federal *Lobbying Act* is, on summary conviction, a fine of up to $50,000 or a prison term of up six months, or both, and on indictment, a fine of up to $200,000 or a prison term of up two years, or both. By comparison, Ethics Commissioner von

Finckenstein's recommendation of a fine of up to only $3,000 for violating even the most important provisions in the *COIA* is a bad joke.

As several witnesses recommended, to discourage violations of the *COIA*, mandatory, significant fines should be established on a sliding scale depending on the seriousness of the violation and the annual income and net worth of the office holder (so better paid, wealthier office holders pay a higher fine to discourage them equally from violating the law, given they have the finances to pay a higher fine). For the most serious violations, the office holder should automatically lose their public office position and be barred from public office for a significant time period, similar to the provision in subsection 502(3) of the *Canada Elections Act* (S.C. 2000, c. 9).

It is very important that the fines be mandatory – the Ethics Commissioner must be required to impose a penalty for every violation based on the sliding scale of fines that would be established. Allowing the Ethics Commissioner discretion to let off an office holder would lead to inconsistent, unfair enforcement and send the message that violations may be tolerated, which would encourage a higher level of violations.

It is also very important that the Ethics Commissioner be empowered and required to impose the penalties. The system in several provinces of having the Commissioner only being empowered to recommend penalties, with the legislature making the final decision concerning whether to impose any penalty, is not a law enforcement system it is a political, partisan, kangaroo court system that is full of conflicts of interest. Politicians should never have the power to judge or penalize the actions of other politicians because they are biased based their party, ideology and/or their relationship with politician who is facing a possible penalty. Parliament has trusted and empowered the Ethics Commissioner to investigate and rule on violations of the *COIA*, just like police and judges are for other laws, and so just like judges the Commissioner should also be empowered to impose the penalty.

VII. Key Changes Needed to Make Enforcement of the *Conflict of Interest Act* Independent, Transparent, Timely, Effective and Accountable

The following changes are needed to ensure the enforcement of the *COIA* is independent, transparent, timely, effective and accountable. Click here to see a policy paper (in English only) that sets out details concerning these much-needed changes to the current federal enforcement system (similar changes are needed to every provincial, territorial and municipal ethics law enforcement system across Canada).

1. **Establish, by adding new provisions to the *Parliament of Canada Act* (by completely changing s. 81), a fully independent, fully non-partisan committee to conduct a public, merit-based search for short list (1-3) qualified candidates for the Conflict of Interest and Ethics Commissioner** (Ethics Commissioner), and then have that committee make the final choice and submit the choice to an all-party committee for appointment (with no possibility of re-appointment as that gives the enforcer an incentive to please office holders by letting them off when they violate the rules). This should also be the system for the appointment of all Officers of Parliament, the Commissioner and all other top

officers of the RCMP, the head of FINTRAC, the new Foreign Interference Transparency Commissioner, and all judges, all of whom need to be fully independent in order to be perceived as being capable of impartially and effectively enforcing the key democratic good government and anti-corruption laws they enforce.

2. **Add a new subsection to s. 43 of the *COIA* that requires the Ethics Commissioner to conduct regular, unannounced audits** of a randomly selected sample of office holders' financial statements, participation in discussions, decisions and votes, outside activities, gifts and benefits and other matters and activities covered by the *COIA*.
3. **Require in a new subsection of s. 43 of the *COIA* that the Ethics Commissioner publish online binding interpretations of every measure in the *COIA* with examples of real situations**, and to publish online a summary of the Commissioner's advice each time advice about a new situation is given to any person covered by the *COIA*, so everyone knows exactly what the law prohibits.
4. **Require in a new subsection of s. 28 of the *COIA* that all office holders to take a formal training course when they first start their position, and annually.**
5. **Add new provisions to the *COIA* (in ss. 44(1)) to give members of the public, who employ and pay all office holders, the right to file a complaint** with the Ethics Commissioner.
6. **Change and add new subsections to the *COIA* (in s. 45** (change ss. 45(1)**) to require the Ethics Commissioner to investigate and issue a public ruling on every complaint s/he receives and every situation** s/he becomes aware of that raises any questions about whether an office holder has complied with the *COIA*, and (as set out above in Part VI, sub-part 12)) to impose a sliding scale of penalties depending the seriousness of the violation.
7. **Add new sections to the *COIA* (by completely changing s. 66) giving any member of the public a clear right to apply in Federal Court for a judicial review of any decision made by the Ethics Commissioner under the *COIA*.**

VIII. Changes Mentioned During the *Conflict of Interest Act* Review Hearings That are Not Needed

In addition to the proposal to change the *COIA* to a set of general principles being a very bad idea and completely unnecessary, as addressed above in Parts II and III of this submission, the following changes have been proposed or mentioned during the Committee's review of the *COIA*, and they are unnecessary for a variety of reasons:

1. **Require disclosure every time an office holder does not participate under an ethics screen.** As set out above in Part VI, sub-part #5, the *COIA* already has recusal provisions (ss. 21, 25(1) and clause 26(2)(b)) that require public disclosure every time an office holder does not participate in a decision-making process because of a conflict of interest. As also explained in that sub-part, ethics screens are smokescreens that never should have been used by the Ethics Commissioner since the *COIA* was enacted. The solution is to ban the use of ethics screens and then the recusal provisions will operate and public

disclosure will be required every time an office holder does not participate in a decision-making process because of a conflict of interest.

2. **It's unnecessary to add an anti-avoidance provision to the *COIA*.** This is unnecessary because the *COIA* already has an anti-avoidance provision in section 18.

IX. Many Other Changes Needed to Prevent, Prohibit and Penalize Conflicts of Interest and to Ensure Democratic Good Government

The following changes are needed to other federal laws to prevent, prohibit and penalize conflicts of interest and to ensure democratic good government (and similar changes are needed in every province, territory and municipality across Canada):

- Closing all the loopholes in the *Conflict of Interest Code for Members of the House of Commons* that allow for secret, unethical activities by MPs, and extend key rules in that code to apply to the staff of MPs (Click here to see details (in English only));
- Closing all the loopholes in the *Ethics and Conflict of Interest Code for Senators* that allow for secret, unethical activities by Senators, and extend key rules in that code to apply to the staff of Senators (Click here to see details (in English only));
- Closing all the loopholes that allow for secret, unethical lobbying (Click here to see details (in English only));
- Decreasing the donation limit in the *Canada Elections Act* to $75 (as the current annual individual donation limit of $3,500 (which increases by $50 each year) is essentially legalized bribery for those who can afford to make a top donation) (Click here to see details (in English only));
- Closing huge excessive secrecy loopholes in the federal *Access to Information Act* and strengthening enforcement (Click here to see details (in English only));
- Preventing, prohibiting and penalizing foreign interference (Click here to see a policy paper on key needed measures (in English only));
- Strengthening the whistleblower protection law (Click here to see details (in English only)).