

CHASING A PHANTOM?
A COMPARATIVE ANALYSIS OF CODES OF ETHICAL CONDUCT FOR
LEGISLATORS

by

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ABSTRACT

Since the 1960s, the Canadian government has used written codes of conduct to respond to allegations of political corruption. Governments that use codes of ethics for politicians do so with at least the following two goals in mind: to encourage politicians to adhere to high ethical standards and to facilitate public trust in the government's integrity. Until recently, written codes in Canada applied only to cabinet ministers and public servants. In 2004, a code was written to monitor the ethical behaviour of ordinary parliamentarians. This is not surprising, given the international trend toward formal ethics regulation. For instance, both the United States and the United Kingdom have written ethics codes for legislators.

Governments all over the world rely on formal ethics regimes, despite the lack of empirical evidence that they have an effect on politicians' behavior or the public's perception of it. After studying the written codes of conduct in use in the United States, the United Kingdom, and Canada, I have found little evidence to indicate that written codes are effective at meeting their stated goals. In fact, my research shows that formal ethics rules might carry unintended negative consequences.

My findings might lead some observers to conclude that written codes should be repealed. However, if a government were to do so, it would appear to be neglecting its responsibility to encourage high ethical standards. Therefore, to improve ethics rules' effectiveness, I recommend that the Canadian government engage both parliamentarians and the public in discussions on the current ethics regime and on proposals for reform. Consultations with MPs are not necessary to convince them to avoid corruption, as the vast majority of them do so already. However, if MPs were to discuss the importance of ethical principles such as honesty and integrity, they might change their attitudes toward each other and think twice before resorting to political mudslinging. A citizens' assembly to recommend changes to the ethics regime would help to repair the public's ignorance of the current political ethics rules. Further, meaningful public involvement might encourage a deeper faith in the system's ability to facilitate high ethical standards among politicians.

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Chapter One: Introduction

In recent years, public and media attention to government ethics has intensified. The reason for this phenomenon is not known with any certainty or precision. Langford and Tupper acknowledge that while the contemporary rising interest in ethics is undeniable, there is no concrete evidence to prove that corruption is becoming more common. They admit that data on political corruption are not easily gathered, given that politicians are unlikely to be forthcoming about their past misdeeds if they have not already been caught.¹ Despite the absence of proof that corruption is becoming more frequent or more severe, public opinion polls indicate that the majority of citizens believe that their political leaders are not trustworthy. In a survey taken by the Centre for Research and Information on Canada (CRIC) in 2002, 73% of respondents agreed with the statement: "Leaders don't tell the truth or keep promises." 77% of the respondents in this survey claimed that the ethical standards of political leaders are either "low" or "very low."² In a 2004 survey conducted by Transparency International, Canadians ranked political parties and parliament as the most corrupt institutions, placing them higher on the corruption barometer than the media and the business sector. Four out of ten respondents said that corruption affected their lives to a moderate or large extent.³

One possible conclusion to draw from these data is that the ethical standards of Canadian governments are slipping, and that the public and the media have noticed.

However, this is not the only possible explanation for the public's growing frustration

¹ Langford, John, and Allan Tupper. "The good, the bad, and the ugly: Thinking about the conduct of public officials," Eds. J. Langford and A. Tupper. Corruption, Character and Conduct: Essays on Canadian government ethics. Toronto: Oxford University Press, 1994. 4-7.

² "Citizen Participation and Canadian Democracy: An Overview." August 2003. Centre for Research and Information on Canada. <www.cric.ca>.

³ "Global Corruption Barometer 2004." July 2004. Transparency International. 15 July 2005. <www.transparency.org>.

with politicians. It might be that governments' ethical standards and behaviour have not changed drastically over the decades, but that public standards of political ethics have risen. If that is the case, behaviours that were tolerated 25 years ago, or even 10 years ago, are not acceptable to Canadians today. For instance, patronage was once accepted by the public as an inevitable part of Canadian politics, but it is now seen as an indulgence by governments that should be avoided. A 1998 survey of Canadians' attitudes on political ethics found that Canadians had little patience with high-profile patronage appointments.⁴

Arguably, the decline in tolerance of unethical behaviour is part of a larger shift in the country's political culture. This change in Canadian values is evidenced by a number of phenomena, including: a rise in rights consciousness, which is often argued to be a result of the entrenchment of the Canadian Charter of Rights and Freedoms;⁵ support for populist measures, such as direct democracy and referenda; a rise in anti-party sentiment and a corresponding decline in party membership and activity;⁶ and a decline in voter turnout, particularly among young Canadians.⁷ Neil Nevitte explores this cultural change in *The Decline of Deference*.⁸ Changing attitudes regarding government and ethics are, most likely, a part of it. What is more, the mass media play a major part in cultivating

⁴ Mancuso, Maureen, Michael Atkinson, Andre Blais, Ian Greene, and Neil Nevitte. A Question of Ethics: Canadians Speak Out. Toronto: Oxford University Press, 1998. 147-8.

⁵ Langford and Tupper. 1993.

⁶ Gidengil, Elisabeth, Andre Blais, Richard Nadeau, and Neil Nevitte. "Changes in the party system and anti-party sentiment." Ed. William Cross. Political Parties, Representation, and Electoral Democracy in Canada. Don Mills, Ontario: Oxford University Press, 2002.

⁷ LeDuc, Lawrence, and Jon Pammett. "Elections and Participation: the Meanings of the Turnout Decline." Prepared for the Canadian Political Science Association annual meeting at Dalhousie University, June 2003.

⁸ Nevitte, Neil. The Decline of Deference: Canadian Value Change in Cross National Perspective. Peterborough: Broadview Press, 1996.

Canada's new political culture by encouraging cynicism toward politicians and emphasizing politicians' personal shortcomings instead of probing policy issues.⁹

It is often suggested that wherever there are politics, there is political corruption. Those who believe corruption to be inevitable argue that while systems may vary in terms of the frequency and severity of corruption, it exists in every system nonetheless. When scandals do occur, governments find themselves under immense pressure to respond quickly and effectively. Since the 1960s, written codes of conduct have been part of Canadian governments' response to corruption and to the public outcry that these episodes stimulate. The first of these written codes in Canada, an informal letter that Prime Minister Lester Pearson sent to his cabinet in 1964, was brief and ambiguous. Until that point, not much thought had been given to the idea of a code of conduct either for cabinet ministers or Members of Parliament. Over the years, his guidelines were reformed and expanded by other Prime Ministers. Today, while Canada does not have a *legislated* code of conduct for cabinet ministers or parliamentarians, there are written guidelines to which they can refer, as well as an independent Ethics Commissioner to provide guidance in interpreting the codes.

It seems to be the case that once a government endorses the idea of a written code of conduct, whether it is a statute or a less formal document, there is no going back. Written codes of conduct have come to be seen as a necessity in both preventing and punishing corruption. However, there seems to be no evidence to prove that codes of conduct are any more effective at curtailing political corruption than are unwritten rules. Political ethics experts have attested to the absence of a clearly established link between

⁹ Nadeau, Richard, and Thierry Giasson,. "Canada's Democratic Malaise: Are the Media to Blame?" *Choices*. 9.1 (2003)

written ethics rules and high standards of political ethics. Calvin Mackenzie, Goldfarb Family Distinguished Professor of American Government at Colby College, studies ethics regulation in the United States. He explains that it is very difficult to find a connection between ethics regulations on the one hand and politicians' ethical standards on the other. Regarding ethics' rules affect on public trust, Mackenzie maintains that the expansion of ethics regulations and enforcement agencies in the United States has not produced a corresponding increase in public confidence in government integrity.¹⁰ I comment more extensively on his research in the next chapter.

Maureen Mancuso studies ethical standards in the British House of Commons, which has traditionally relied on unwritten ethics rules. From 1986 to 1988, she conducted personal interviews with over 100 British MPs. The purpose of her study was to examine the interviewees' ethical attitudes. She found a wide range of opinions on what constitutes "ethical behaviour" and concluded that the British informal system of ethics regulation had failed to create a consensus among MPs on this question. Therefore, there was no agreed-upon set of ethics rules that could be relied upon to discourage corruption and to nurture high ethical standards. However, despite this weakness in the informal system of regulation, Mancuso does not go as far as to recommend adopting a written code of conduct for British MPs. She refers to the American regime, where written ethics rules are the norm but corruption still occurs, as proof that "formal regulatory machinery is no cure-all for legislative impropriety."¹¹

¹⁰ Mackenzie, G. Calvin, and Michael Hafken. Scandal Proof: Do Ethics Laws Make Government Ethical? Washington D.C.: Brookings Institution Press, 2002.

¹¹ Mancuso, Maureen. The Ethical World of British MPs. Montreal: McGill-Queen's University Press, 1995. 206-7.

Michael Atkinson and Maureen Mancuso point out that for many years, the British House of Commons was “particularly successful” in regulating conflicts of interest *without* using written codes. British parliamentarians trusted each other to behave in an honorable fashion in order to preserve the integrity of their system.¹² It is only within the last decade that the United Kingdom adopted written codes of ethical conduct for MPs. This was done in response to public pressure for a stronger government commitment to ethics, not because of any known causal connection between written ethics rules and low levels of corruption.

Atkinson and Mancuso contrast the British and American systems. They assert that cultural factors account to a large extent for the United States’ use of written rules for conduct. In the United States, Members of Congress do not enjoy the type of “collegial setting” in which British colleagues trust each other’s moral judgment.¹³ Atkinson and Mancuso argue that the formal ethics system that has evolved in the United States reflects public “suspicion and fear” that Members will abuse their authority. Foundational to the American ethics regime is its cynical political culture, not empirical proof of its effectiveness. As Mancuso points out, corruption continues to occur in the United States despite its historical reliance on written ethics rules.

If a government were to repeal its written codes of conduct, given the lack of proof that this measure is an effective one, it would be seen as neglecting its responsibility to enforce the highest ethical standards, thus making itself an easy target for opposition parties and the media. The problem with this from the perspective of good governance is that once a government embarks on the path of the written code of conduct,

¹² Atkinson, Michael, and Maureen Mancuso. “Conflict of Interest in Britain and the United States: An Institutional Argument.” Legislative Studies Quarterly. XVI (1991): 476.

¹³ Ibid 477.

it must follow through, even if written codes do not prove to be useful. It is often taken for granted that written guidelines facilitate ethical behaviour by setting out clear rules for conduct and punishing those who violate them, but some scholars question whether or not this is the case. In fact, written ethics rules might have unintended negative consequences for the development of a high standard of ethical conduct in government.

Many countries, including Canada, the United States, Germany, and Australia, have adopted written codes as part of their political ethics regimes. However, codes of conduct are not the only means used to deter and punish unethical behavior. Blatant acts of corruption, such as bribery, are prohibited by the criminal law in most countries. The argument that written codes of ethical conduct are necessary to maintain high ethical standards among politicians assumes that the criminal law is not enough to deter political corruption. Also, it assumes that the realm of “political corruption” extends beyond those behaviours that are prohibited by criminal law. In other words, while some behaviours, such as patronage, are not illegal, they are considered by many to be unethical. Written codes of conduct are often designed to deal with actions that offend public ethical standards without actually breaking the law.

While some codes of ethics are statutory, many are not. In the United States, the *Ethics in Government Act* came into effect in 1978 as a formal statute governing the conduct of federal government employees and elected officials. In Canada, the *Conflict of Interest Code for Members of the House of Commons* is a written code but is not a statute. Proponents of statutory codes argue that they have more “teeth” than less formal documents and are a stronger deterrent of corruption. The basic argument against statutory codes is that any written code is based on the ethical standards of a given time

period. As public standards change, the statute will become outdated. Less formal documents are far easier to revise, thus making it easier for public and government ethical standards to grow and change together.

The central question that guides my research is the following: Are written codes of conduct effective at meeting their goals? Most codes of conduct have two explicit goals: to encourage high ethical standards among politicians and to enhance public trust in the integrity of the political system. In the next chapter, I outline the arguments for and against the use of written codes of conduct for politicians. Also, I set out the criteria that I use to determine whether or not the codes of conduct that are in place in Canada, the United States, and the United Kingdom are effective public policies. By exploring these three cases, I can comment on the effectiveness of codes of ethical conduct in general. The countries' ethics regimes are very similar in terms of the contents of the codes, but are different in terms of how the codes came into existence. This reflects the differences between the countries in terms of their political cultures and the public demands on governments to use written ethical guidelines.

In the third chapter, I review some of the definitions and concepts that appear in political ethics literature. For instance, I discuss in detail the definitions of "corruption", "conflict of interest", "undue influence", and "patronage". Also, I explore briefly some of the major scholarly arguments regarding the factors that often incite corruption.

The fourth chapter is devoted to the American ethics regime, which has relied on written ethical guidelines for decades. I discuss the evolution of the U.S. political ethics regime and outline the rules that are currently in place. In the fifth chapter, I discuss the evolution of the British political ethics system. While the U.S. system has relied

historically on written rules for elected representatives, the United Kingdom government decided only recently to subject MPs to written guidelines for conduct. In the sixth chapter, I discuss the development of the Canadian ethics regime, from the first written guidelines for cabinet ministers in 1964 up to the system in place currently. The benefit to discussing the American and British systems first is that while the American system has historically been based on written rules, the British system has traditionally relied on less formal ethical rules and norms to regulate MPs' behaviour. A discussion of the two systems invites a consideration of their contrasting approaches to ethics regulation.

In the seventh chapter, I analyze and compare the effectiveness of the three ethics regimes using the criteria set out in the first chapter. Once the case studies are analyzed, I use this information to assess the effectiveness of codes of conduct in general. In the eighth and final chapter, I put forward my conclusions regarding the ways in which ethics regimes can be improved. I refer to the ethics regimes in operation in other countries to provide examples of how my recommendations would improve the Canadian, American, and British systems.

My research has led me to conclude that written codes of conduct are not particularly effective at meeting either of their main goals. Like others who have probed the impact of ethics codes, I have found no clear evidence to suggest that they have any effect on either the behavior of legislators or levels of public trust. That being said, there are measures that governments could take to increase the likelihood that codes of conduct would achieve their desired effects. Ethics education programs and reforms to the substance of current ethics rules, if implemented, would be steps in this direction.

Chapter Two: The Pros and Cons of Codes of Conduct

In this chapter, I review a number of the arguments made by leading political ethics scholars regarding the pros and cons of written ethics codes. While there is a wealth of literature on political corruption, some of which is explored in the next chapter, relatively few experts comment on the effectiveness of formal ethics regimes. In preparation for the comparison of the codes in use in Canada, the United States, and the United Kingdom, I set out the criteria that I use to measure the codes' potential effectiveness. All codes of conduct are not created equal – some are superior to others and are more likely to achieve their goals. While there is no guarantee that a code will be successful, there are some components that must be present in order for it to have a chance at having a positive impact. The comparison of the three countries' ethics regimes allows for the identification of the best approach to constructing and enforcing a written code of conduct.

The Benefits of Written Codes of Conduct

As I mentioned in the previous chapter, many codes of conduct in politics state the following two general objectives: to encourage high ethical standards among politicians and to facilitate public trust in politicians' integrity. The written codes of conduct in Canada, the United States, and the United Kingdom make reference to these goals. In the following pages, I explore what I take to be the strongest arguments made in favor of their use.

First, written codes help to clarify what is meant by “appropriate” and “inappropriate” behaviour for public officials. If the rules are spelled out in a document,

officials are left with little discretion with which to derive different interpretations of ethical mores. Maureen Mancuso's research in Canada and the United Kingdom illustrates that MPs tend to disagree on what constitutes ethical behaviour.¹⁴ Ideally, the use of written codes helps to ensure that all officials are following the same rules. American scholars Robert N. Roberts and Marion Doss agree that a major benefit of rules-driven ethics is that expectations can be written down and explained and that ambiguity can be eliminated.¹⁵ Also, as long as the rules are written clearly and comprehensively, officials who are caught violating them cannot plead ignorance.¹⁶

In *A Question of Ethics*, Mancuso, Atkinson, Blais, Greene, and Nevitte recognize that political ethics is not an easy subject to wade through. Although some argue that ethics is a matter of common sense, the answers to the unique ethical questions that arise in politics are not always obvious. Ethics rules can help politicians to decide what to do in confusing situations. These authors note that it is not only politicians who need help in deciphering ethical quandaries. Their research shows that many Canadians are confused about the meaning of "conflict-of-interest". If Canadians are unclear about such concepts, it becomes more difficult for them to hold politicians to account for their behaviour. Potentially, ethics rules have an educational effect for politicians and the public.¹⁷

These authors argue that the existence of a comprehensive ethical code is superior to a "crazy quilt of regulations patched together over the years."¹⁸ Prior to the

¹⁴ Mancuso 18.

¹⁵ Roberts, Robert N., and Marion Doss. From Watergate to Whitewater: The Public Integrity War. Westport, Connecticut: Praeger, 1997. 49.

¹⁶ Mancuso 18.

¹⁷ Mancuso, et al. 193.

¹⁸ Ibid 26.

establishment of ethics codes for Canadian MPs and cabinet ministers, ethics rules were scattered among several documents, including the *Criminal Code* and the Standing Orders of the House of Commons. An ethics code that includes all ethics rules is easier for politicians to follow.

The second argument in favour of written codes is that they often specify the punishment that can be expected if an official violates the rules. Kenneth Kernaghan maintains that the possibility of disciplinary action for ethical infractions can be an effective deterrent to unethical behaviour.¹⁹ Conservative MP John Williams agrees. He believes that any politician contemplating corruption is forced to weigh the benefits he might incur from the corrupt act against the likelihood of being caught and the severity of the punishment. If Williams is correct, the existence of an effective enforcement mechanism is of fundamental importance in reducing corruption in politics. Mackenzie and Hafken express doubts about the deterrent effects of ethics rules. They argue that in areas of criminal law, the rate of deterrence is never as high as policymakers hope it will be.²⁰

Third, written codes are accessible to the public, which means that both elected representatives and their constituents are aware of the ethical rules in place for the former. This encourages congruity between public and government standards of ethics. Also, it equips the public with a standard against which to measure the politicians' behaviour, which reinforces officials' accountability to the public.

¹⁹ Kernaghan, Kenneth. "Rules are not enough: Ethics, politics, and public service in Ontario." Eds. J. Langford and A. Tupper. Corruption, Character and Conduct. Toronto: Oxford University Press, 1994. 192.

²⁰ Mackenzie and Hafken 103.

Unlike informal ethics norms that are difficult for the public to detect, written ethics codes serve as tangible evidence of a government's commitment to ethics. This is important especially after a scandal has occurred, when a government is attempting to convince the public that it is determined to raise ethical standards. Kernaghan notes that media coverage of political scandals increases the public's concern with ethics.²¹ Unfortunately, much of this coverage consists more of smoke than of fire. Press stories on corruption are often based on unverified charges, yet they create the image that ethical standards in politics are declining.²² Therefore, governments tend to waste no time in responding to public pressure with more elaborate ethics regimes.

What's wrong with using written codes of conduct?

Despite their prominence in many democracies, written rules are not necessarily a solution to the problem of political corruption. In Scandal Proof: Do Ethics Laws Make Governments Ethical?, Mackenzie and Hafken question the logic of governments' willingness to employ written ethics regimes despite the fact that there is no proof that they facilitate high ethical standards. They contend:

No compelling evidence indicates that levels of government integrity were substantially lower before the flood of new ethics regulations began than they are now. ... (I)t is very difficult to establish an empirical connection between ethics levels and ethics regulation."²³

Even those who express support for formal ethics regimes, such as the authors of A Question of Ethics, do not offer empirical evidence of written codes' effects.

²¹ Ibid 183-184.

²² Ibid 101.

²³ Ibid 113-114.

Mackenzie and Hafken argue that most ethics policies have been borne not out of a careful process of policy evaluation, but out of a government's desire to offer "a dramatic response to the scandal of the moment".²⁴ The objective is to win political credit by demonstrating a commitment to ethics, not to actually change politicians' behaviour. Therefore, there has been little in the way of critical analysis of the effectiveness of ethics rules. In theory, it is the role of opposition parties to criticize government policies. However, Mackenzie and Hafken acknowledge the political consequences of opposing ethics regulation. No political party would want to be seen as "anti-ethics".²⁵

Mackenzie and Hafken acknowledge the difficulty in gathering evidence to prove the effectiveness of written ethics codes. They contend that it is impossible to determine with precision whether or not ethics regulations have raised ethical standards. Although it seems logical to assume that an increase or decrease in the frequency of scandals would indicate lower or higher ethical standards respectively, this type of evidence can be misleading. Given that ethics regimes have become more elaborate in terms of regulations and number of personnel, it might be the case that a larger percentage of ethical infractions are detected and prosecuted now than was the case previously, even if the overall occurrence of corruption has remained constant or has decreased.²⁶ As stated earlier, media reports are not reliable indicators of levels of political corruption, since media reports are often based on speculation and allegations of corruption rather than proven facts. Although there is an absence of proof of written codes' effectiveness in curtailing corruption, perhaps the most significant piece of evidence to the contrary is that

²⁴ Ibid 53.

²⁵ Ibid 5.

²⁶ Ibid 96.

corruption continues to exist even after written rules are employed. Kernaghan concedes: “Rules are certainly not a cure-all for unethical behaviour.”²⁷

Several scholars have noted that even if written codes are a positive thing, they are certainly not sufficient to facilitate high ethical standards on their own. Kernaghan recommends ethics training programs to accompany written rules so that politicians come to understand the difference between right and wrong in the pursuit of the public interest.²⁸ It is important for politicians to develop their own sense of propriety because written ethics rules, no matter how extensive, can never cover every possible ethical dilemma. At one time or another, politicians will be forced to rely on their own good judgment.

The following factors undermine written rules’ ability to facilitate high ethical standards.

1. *A minimal standard of ethics*

Ideally, written codes of conduct set out clear standards for officials to follow when making decisions with an ethical component. A potential problem is that some officials might be inclined to do only the minimum that is necessary to satisfy the law. In other words, as long as an action does not violate the code, it is considered to be “ethical.” In this way, written codes present ethical matters in black and white terms: either an action violates the code and is therefore unethical, or it obeys the code and is therefore ethical. There is no acknowledgement of the “grey zone” of ethics into which many behaviours fall. Actions within this “grey zone” are not such obvious

²⁷ Kernaghan 192.

²⁸ Ibid 175.

transgressions as bribery, but they might be offensive to public ethical standards. It is conceivable that a Member of Parliament who is accused of an ethical transgression that falls into this “grey zone” might use the code to defend his actions, even though they offend public standards. The result could be lower ethical standards rather than higher ones.

Mackenzie and Hafken acknowledge the difference between “rules-driven ethics” and “character-focused ethics.”²⁹ The use of written codes encourages strict compliance with specific rules, but does not encourage politicians to develop personal ethical standards. Written rules allow politicians to decline the responsibility to decide between right and wrong. Amy Comstock, director of the United States Office of Government Ethics, agrees that ethics rules keep people from “having to determine to do the right thing. ... In fact, they prohibit the employee from participating (in ethical decisions) at all.”³⁰ Presumably, she made these comments in support of ethics rules, but they serve as a critique of them as well. Those who are suspicious of politicians’ intentions are comforted by the fact that written rules curb their discretion. However, if politicians do not learn to work through ethical problems on their own, they will not develop a sense of loyalty to the high ethical standards that Canadians expect them to adhere to.

2. Invasion of Privacy

Most codes of conduct require that elected officials disclose their own financial interests as well as those of their dependent relatives. Further, many codes of conduct require that high-ranking officials place their financial interests in a blind trust for the

²⁹ Ibid 23.

³⁰ “Interview with Amy Comstock.” 22 August 2001. Endowment for the Business of Government. <www.endowment.pwcglobal.com/radio/comstock_frt.asp#full>.

duration of their political career. The purpose of disclosure and blind trust requirements is to identify the potential for a conflict of interest to occur. Over the years, governments' revisions to ethics codes have resulted in more invasive disclosure requirements. For instance, when Joe Clark became Prime Minister of Canada in 1979, he broadened disclosure requirements to apply to the spouses and children of ministers. Before he took office, cabinet ministers were required to disclose only their own financial interests.

While disclosure and blind trust requirements might seem to be a logical way to prevent conflicts of interest from occurring, Mackenzie and Hafken argue that these requirements can have a negative effect of deterring some citizens from running for office.³¹ If the privacy of elected officials is disregarded in the quest for effective ethics rules, the rules will become an obstacle in recruiting political candidates. Further, it is very likely that potential candidates of considerable wealth would object to placing their businesses in blind trusts. If a code of conduct forces potential candidates to choose between entering politics and protecting their financial interests, the harm it causes in terms of creating obstacles to political recruitment might outweigh any potential benefit in the way of facilitating high ethical standards.

In an interview for this project, a Canadian MP echoed Mackenzie and Hafken's concerns. In 2004, the Canadian Ethics Commissioner revised disclosure requirements for Members of Parliament and their spouses to make them more detailed and invasive. She argued that many MPs find the new rules to be an unjustified invasion of their families' privacy and are deterred from re-offering for public office.³²

³¹ Mackenzie and Hafken 42.

³² Interview with a Member of Parliament. October 28, 2004.

3. *Immeasurable Objectives*

If a code of conduct is to be effective, it must meet the objectives for which it was designed. As stated previously, written ethics codes aim to encourage high standards of ethics and strengthen the public's confidence in the integrity of the system. The problem with using these objectives to measure the success of written ethics rules is that progress is not easily measured by these barometers. It is difficult to know whether or not a code is successful in deterring corruption. This cannot be known by simply calculating the frequency of political corruption before and after the code's existence. As I mentioned earlier, if a code is to act as a "net" designed to catch all ethical transgressions, then the likelihood is that more transgressions will be revealed once the code comes into effect, even if instances of political corruption have not actually increased in frequency.

With regard to using ethical codes to facilitate public trust in government, it is very difficult to know whether or not codes are effective in meeting this goal. Many factors have contributed to the apparent decline in public trust in government, which would make it very difficult to isolate the effect of written codes of conduct on levels of public trust.

While violations of codes of ethical conduct might incite public distrust of politicians, it might be that actions and behaviours in politics that are not covered by written codes play a significant role in fuelling public cynicism. Mancuso argues: "While major scandals attract most public attention, it is the day-to-day behavior, and the relative propriety of that behavior, that sets the ethical tone for the legislative environment."³³ Constant bickering between politicians during Question Period tends to cast politics in a

³³ Mancuso 29.

negative light. Debate during this segment strikes many citizens as shallow and petty, and, as a result, citizens might feel a lack of trust in politicians' ability to formulate good public policy. Another factor that is a likely contributor to the perception of impropriety in politics is the existence of political patronage in appointment processes for judges and public servants.

Although instances of corruption certainly affect levels of public trust in the politicians of the day and in the political system in general, this effect is often temporary. For instance, John A. Macdonald's Conservative government lost the federal election immediately following the Pacific Railway scandal, but was re-elected the next time around. Enduring public distrust of politics and politicians is likely the result of factors other than instances of corruption, which means that ethical codes of conduct would have very little effect on feelings of public trust in government in the long term.

4. *Are politicians knowledgeable of the rules?*

In order for written rules to be effective in cultivating high ethical standards and practices in government, it is necessary for elected officials to be aware of what the rules are and what they require. It is possible that many MPs in Canada are ignorant about the provisions in the *Conflict of Interest Code for Members of the House of Commons*.

Kenneth Kernaghan reports that studies have indicated that civil servants in Canada have little or no knowledge of the contents of the government's conflict of interest policy. It is reasonable to assume that if civil servants are unclear about the contents of the ethics rules that govern them, politicians are as well. Kernaghan concludes that written ethics rules, whether or not they have the potential to facilitate high ethical standards in politics,

are not sufficient on their own to reach this goal. Ethics education is necessary to make politicians aware of the requirements of the code of conduct and to help them to follow it.³⁴

The Canadian government has not taken the appropriate steps to ensure that Members of Parliament understand the requirements of the code of conduct, but this is not surprising. In Canada, as well as in other countries, written codes of conduct tend to be part of a government's response to a spike in public concern over political ethics, usually due to a political scandal. In order to appease the public, and to demonstrate a commitment to ethical governance and transparency, governments often rush to codify ethics rules in a written, tangible document. The reality is that when a code of conduct comes into effect in this way, the government has not given enough thought to the steps that must be taken in order for the code to be truly effective.

5. *Muddied Waters*

Written codes of conduct are meant to provide officials with a clear set of ethical guidelines to follow. However, no code can possibly contain a solution for every conceivable ethical quandary. As circumstances change, new dilemmas present themselves, and politicians must apply old rules to new problems. Most governments that rely on written codes to enforce ethical standards have put into place an official interpreter of those rules. For instance, in Canada, the Ethics Commissioner is charged with providing advice to Members of Parliament on the interpretation of the *Conflict of Interest Code*. If, for any reason, the Commissioner is not seen by the House of

³⁴ Kernaghan, Kenneth. "The Ethics Era in Canadian Public Administration." Ottawa: Canadian Centre for Management Development, June 1996. 13-14.

Commons, and by the public and the media, to be a capable and trustworthy interpreter of ethics rules, then the effectiveness of the ethics regime will be compromised.

The appointment of Canadian Ethics Commissioner Bernard Shapiro raised eyebrows in the political ethics community for three reasons. First, as Shapiro himself points out, he does not have a background in political ethics and does not seem to be comfortable in his role as ethics watchdog. While appearing before the House of Commons ethics committee in June of 2005, Dr. Shapiro conceded that he's "still learning his job".³⁵ His lack of expertise in matters of ethics is a concern to MPs who serve on the committee. New Democrat MP Ed Broadbent, a former party leader and an experienced parliamentarian, brought forward a motion to suggest that the committee has lost confidence in Shapiro.

Second, the Prime Minister alone selected Dr. Shapiro for the job of Ethics Commissioner and gave virtually no explanation for his choice. If MPs and the public are to trust the Ethics Commissioner as the guardian of ethical standards in politics, they must be provided with information as to why this trust is warranted. It seems that no one, including Dr. Shapiro himself, is able to provide a logical explanation for his appointment.

Third, although members of the parliamentary committee on Procedure and House Affairs questioned Dr. Shapiro before his appointment became final, this process was a "rubber stamp" more than it was an inquiry into the candidate's qualifications. The committee questioned the candidate for 3 hours prior to his official appointment. Committee members did not ask probing questions that would reveal whether or not he was capable of performing competently as Ethics Commissioner. Also, it should be

³⁵ "NDP files ethics complaint against Martin." Canadian Press. 9 June 2005. <www.ctv.ca>.

pointed out that Dr. Shapiro's appearance before the committee occurred during the federal election campaign in June of 2004. In an interview, an MP admitted that the committee members were too pre-occupied with the campaign at the time of Shapiro's appointment.³⁶

Before the position of the Ethics Commissioner was created, the Canadian House of Commons relied on an Ethics Counsellor to interpret ethics rules and to respond to complaints of ethical violations. The Ethics Counsellor, Howard Wilson, reported directly to the Prime Minister as opposed to the House, and, as a result, was seen as a pawn of the government rather than an effective monitor of ethics in government.

Because written codes require an interpreter, the effectiveness of the system in nurturing high ethical standards is vulnerable to the decisions of this interpreter. If the Ethics Commissioner in Canada was seen to be taking only a "minimalist" approach to the rules, so that behaviours that would strike many people as questionable are said to be legitimate according to the *Conflict of Interest Code*, then the written code will lose its effectiveness in the eyes of the public as a guarantor of high ethical standards in the House of Commons.

As I mentioned in the first chapter, written ethics rules have come to be accepted as a logical part of the solution to the occurrence of political corruption despite the absence of proof that this is the case. A critical approach to the adoption of ethical codes is necessary in order to understand the possible implications, both positive and negative, of written ethics regimes. To this end, my research explores the contents of the written codes of ethical conduct used in America, the United Kingdom, and Canada and then

³⁶ Interview with a Canadian Member of Parliament. October 28, 2004.

assesses their effectiveness as public policy tools. In the following section, I outline the criteria that I use in evaluating the codes' effectiveness in meeting their stated objectives.

Evaluating Codes of Ethical Conduct

Once a government establishes goals, it must select a method to achieve it. Governments in America, the United Kingdom, and Canada have decided that written codes of conduct are the best way to meet their goal of high ethical standards among legislators and to preserve and enhance public confidence in the integrity of the political system. The policy evaluation exercise aims to determine whether a policy is doing what it was intended to do and whether or not it is a worthwhile expenditure of public efforts and resources.³⁷

To evaluate ethical codes of conduct, I use the following criteria to assess their “potential” rate of success because even if all of the criteria are met, there is no guarantee that a code of conduct will have the intended effect, positive or negative, on politicians' ethical standards or the public's perception of them. There is no “cure” that will alleviate political corruption or the public's distrust in the government in every circumstance. That being said, there are some components that make a code more likely to achieve its objectives. I use these as criteria in evaluating and comparing the codes of conduct in Canada, the United States, and the United Kingdom.

Policy evaluation is not as simple an exercise as it might seem. There are a number of obstacles in the attempt to determine the effectiveness of government policies. First, in terms of the evaluation of public policies, there are no standard criteria that are

³⁷ Leslie A. Pal, Public Policy Analysis: An Introduction. Ontario: Methuen Publications, 1987, 43.

used universally by policy evaluators in all circumstances.³⁸ Every policy is different, and the methods used for evaluating policy effectiveness must be tailored to the unique features of the policy in question. Second, the task of determining policy effectiveness is difficult when these objectives are stated in an ambiguous way. If the government's true objectives are unclear, it is difficult to know whether or not they are being met.³⁹ A third problem is that the terms "success" and "failure" are relative. Their meaning depends on the policy evaluator's interests and opinions. "Success" in one person's eyes might be failure in another person's depending on how the policy's implications affect his interests. Therefore, policy evaluation is always subject to interpretation.⁴⁰ Fourth, policy evaluation is an unpopular exercise among policy elites, who might not always be forthcoming with information that indicates a policy's failure.⁴¹

Despite these challenges, policy evaluation remains a worthwhile exercise. The fact that others might not agree with a particular assessment does not undermine its validity. It means simply that for any given policy, there is more than one possible interpretation of its effectiveness. The best option for effective policy evaluation is a broad discussion that brings together divergent interests so that all of the policy's implications are brought to light during its evaluation.

The two basic objectives of written codes of ethical conduct are not necessarily achieved using the same methods. In other words, measures that might facilitate high ethical standards among public officials might be ineffective in terms of encouraging public trust in the system. To determine whether or not a code of conduct meets its stated

³⁸ Howlett, Michael, and M. Ramesh. Studying Public Policy: Policy Cycles and Policy Subsystems. Don Mills, Ontario: Oxford University Press. 208.

³⁹ Ibid.

⁴⁰ Ibid 209.

⁴¹ Pal 43.

objectives, each objective must be considered separately. Different criteria must be used for each objective in evaluating a policy's success at meeting it.

(a) Codes of conduct and politicians' standards of ethics

To determine the potential effectiveness of codes of ethical conduct in America, the United Kingdom, and Canada in terms of facilitating high ethical standards among elected officials, I apply the following three criteria to each case. First, is the code of conduct enforceable? Is there a mechanism for punishing noncompliance with the code's rules? If not, the code is unlikely to be effective in encouraging elected officials to adhere to high ethical standards. In an interview, a Canadian MP argued that in order for MPs to be deterred from engaging in inappropriate behaviour, the cost of doing so must be greater than the perceived benefit.⁴² Otherwise, opportunities for private gain from public office would be too rewarding to pass up.

Second, does the code contain a guarantee that its contents will be reviewed and, when necessary, reformed? Over time, change is inevitable in terms of public standards of ethics and the practical circumstances regarding politicians' financial holdings and the like. Therefore, to be effective, codes of conduct must be reviewed regularly and perhaps updated to reflect external changes.

Third, does the code include broad ethical principles as well as specific rules for conduct? This two-pronged approach to ethics regulation not only sets out normative rules for elected officials to follow, but it also facilitates adherence to ideal standards of ethics by referring to such concepts as "honesty", "integrity", and "transparency". These

⁴² Interview with Canadian Member of Parliament. October 28, 2004.

broad concepts encourage a climate or “spirit” of ethics that can encourage obedience to rules of conduct.

In evaluating codes of ethical conduct, it is tempting to take a results-based approach. The assumption here is that codes of conduct are effective if the frequency and severity of corruption in a given country decrease after the code has been implemented. The problem with this approach is that the results might be misleading. As previously stated, codes of conduct are likely to uncover instances of corruption and inappropriate behaviour that otherwise went undetected. For instance, suppose that a new code of conduct introduces a rule prohibiting paid advocacy in the legislature. This behaviour might have been considered inappropriate all along, but there was no punishment mechanism until the code was created. If even some of the legislators who had become accustomed to accepting payment for advocacy continue to do so despite the change in the rules, the implementation of the code might result in a surge of *reported* or *acknowledged* cases of paid advocacy. The rise in reported cases would occur even if the actual number of cases of paid advocacy decreased.

(b) Codes of conduct and public trust

The task of determining whether or not codes of conduct facilitate public trust in the political system is daunting. Public trust in politics and political institutions is affected by many things, from the actions of the government of the day to broad demographic shifts. Nevertheless, an attempt must be made at determining ethics codes’ effect on this phenomenon. To this end, I use the following methods.

The first question I ask is: does the code have “teeth”, or a method of punishing noncompliance? If not, the public is likely to conclude that the code will not be an effective deterrent of inappropriate behaviour. It must be kept in mind that in all likelihood, the general public of any country is unaware of the finer points of its ethics regime and are likely to know only those details which are reported by the media. If any clause in a code of ethics were to grab the media’s attention, it would likely be its enforcement mechanism. If a government were to adopt a code that did not include punishments for noncompliance, the media would likely criticize the government for being too soft on the issue of political ethics. If this were to happen, this would likely compromise the code’s ability to facilitate public confidence in the integrity of the political system.

While this first test is aimed at the contents of the code, the second test is results-based. To determine whether or not existing codes have had an effect on levels of public trust, I consult the public opinion polls and survey data that report levels of public trust in politics and levels of perceived corruption. Major polling organizations, such as Angus Reid and Ekos, conduct regular inquiries into levels of public trust in politics and government. This information is useful in assessing ethical codes’ effect on public trust in government, as it can be argued that if codes of conduct are effective, levels of public trust will be higher after a code is introduced and given time to have an effect. However, these data do not yield conclusive results. Many factors influence levels of public trust and it is difficult to isolate each variable and assess its relative effect.

If written codes of conduct are successful in achieving their first goal, namely high standards of ethics among politicians, this might lead to success in achieving the

second objective, the enhancement of public trust in government. If politicians are seen to be behaving more “ethically”, then it is logical to assume that levels of public trust in politics will grow. This is the expected outcome of written codes of conduct, but it is not a foregone conclusion. Jeffrey Simpson points out that Canada’s is a “dysfunctional political culture in which assumptions of wrongdoing are pervasive, cynicism abounds, negativity prevails, and few, if any breaks, are given anyone who serves in public life.”⁴³ Simpson acknowledges the role of a “robust media” in criticizing politicians on ethical grounds and the lack of a corresponding critique of the media’s actions in this regard. The act of hurling allegations of corruption has taken on a life of its own and might be too insidious for any code of conduct to overcome. Even as politicians make reparations to their behaviour, their efforts are in vain to a large extent if the media and, by extension, the public are demanding perfection.

The dilemma here is that there is not necessarily a link between instances of political corruption and levels of public trust. If the public perception of corruption is not linked to its actual occurrence, then efforts taken to reduce unethical behaviour, such as written codes of conduct, will not facilitate public trust in government. This means that the problem of public cynicism or the public’s perception of corruption is altogether different than the problem of corruption itself. In this case, solutions to the cynicism problem become all the more elusive because the cause of cynical attitudes is not clear.

⁴³ Simpson, Jeffrey. “Shame on the media for the Punch and Judy Sgro show.” The Globe and Mail. 5 February 2005: A19.

Chapter Three: Concepts in Political Ethics Literature

Allegations of political corruption, whether true or false, stimulate the public's interest in politics, at least in the short term. Whether the alleged corruption is rooted in illicit sex, money, or nepotism, the idea that public office is being used for private gain tends to draw wide attention. It is traditional in political competition for politicians to accusing their opponents of patronage, pork barreling, and the like. Neither the occurrence of corruption, nor the allegation of it, is a new phenomenon. In any representative democracy, past or present, in which a small group of citizens is elected to distribute public resources, there is the ever-present possibility that an official will abandon the public interest in pursuit of personal goals. In this chapter, I explore the meaning of the term "political corruption," its causes and consequences, and the various behaviours that it is held to comprise.

What is "political corruption"?

Definitions of corruption depend to a large degree on socio-cultural ethical standards. Activities that are considered to be unethical in one culture might be tolerated in another. It is difficult to point to behaviours that are condemned universally. By extension, even if it were possible to reach a cross-cultural consensus that particular acts are always unethical, it is probable that disagreement would persist regarding the degree of seriousness attached to each act. To take this one step further, it is often the case that while there is general agreement that a type or category of behaviour is unethical, there is disagreement over which actions in particular fall into this category. For instance, while

there is widespread agreement that conflicts of interest are unethical, there is disagreement over what qualifies as a conflict of interest.

In Canada, there is a political culture of ethics that draws the boundaries of acceptable behaviour for public actors. A society's political culture both shapes and is shaped by individuals' knowledge, beliefs, and judgments about political behaviour and ethics. That being said, political culture is only one determinant of a person's ethical standards. Age, sex, occupation, and ethnicity also play a role.

The fact that discrepancies exist between understandings of "unethical behaviour" is often cited as an argument against having legislated codes of conduct for public office holders. Legislation that is too rigid and detailed, it is said, risks the effect of defining unethical behaviour too narrowly. As stated earlier, to prohibit via legislation a list of acts that is considered unethical is to adopt the ethical standards of an arbitrary time period. Over time, ethical standards are bound to change and could become more stringent, which means that any set of ethical standards captured in a statute will eventually become passé.⁴⁴ As a result, the legislation will not be an effective instrument in identifying and punishing behaviour that offends Canadian ethical standards.

Mark Warren asserts that in the broadest terms, "political corruption" is defined as the inappropriate use of common power and/or authority for the purpose of individual or group gain at the expense of the common interest. Simply put, political corruption is the abuse of public office for private gain. Warren argues that all definitions of political corruption, despite minor differences, share the following characteristics: 1. There is an individual or group with the power to make collective decisions. 2. Common norms

⁴⁴ Atkinson, Michael, and Maureen Mancuso. "Do We Need a Code of Conduct for Politicians? The Search for an Elite Political Culture of Corruption in Canada." Canadian Journal of Political Science XVIII: 3 (1985): 464.

exist to regulate the ways in which individuals and groups can use their power to make collective decisions. 3. The individuals or group empowered to make collective decisions break with established rules or norms. 4. Breaking with norms usually benefits the empowered individual or group and harms the public.⁴⁵

Warren's definition is focused on the broadest considerations. More specifically, there is a general consensus among political ethics scholars that definitions of political corruption fall into one of three approaches: legality, public interest, and public opinion. Those who take a legalistic approach hold that acts of corruption are those that violate the formal rules or standards of appropriate conduct for public officials.⁴⁶ Nye's definition of corrupt behaviour illustrates the legalistic approach. He argued that behaviour is corrupt if it "deviates from the normal duties of a public role (elective or appointive) because of private—regarding (personal, close family, private clique) wealth or status gains."⁴⁷ The benefit of using a legalistic definition of political corruption is that it is clear and direct, which makes it easy to determine whether a specific act is corrupt or not. All that is necessary to identify an act as "corrupt" is to decide whether or not it observes the relevant formal rules of conduct. The legalistic approach is useful for comparative purposes. Formal rules of behaviour can be used as points of comparison between different ethics regimes of countries, or to compare how one country's regime has changed over time. A disadvantage of the legalistic approach is that it might not capture all of the activities that are considered to be unethical by the public. If this is the case,

⁴⁵ Warren, Mark. "What Does Corruption Mean in a Democracy?," American Journal of Political Science 48.2 (2004): 332.

⁴⁶ Peters, John G., and Susan Welch. "Political Corruption in America: A Search for Definitions and a Theory." American Journal of Political Science. 72.3 (1978): 974.

⁴⁷ Nye, J.S. "Corruption and Political Development: A Cost-Benefit Analysis." American Political Science Review. LXI.2 (1967): 966.

the legalistic approach is an incomplete one that is out of sync with the public's expectations of politicians.⁴⁸ Legalistic definitions tend to set a minimum standard of acceptable behaviour, but do not go far enough to embrace the public's evolving ethical standards.

Public interest-centered approaches, which tend to encompass a broader scope of activities than legalistic ones, are focused on the consequences of political corruption for the public interest. This approach is useful because it recognizes the unique responsibility that public officials have to protect the public interest. To be corrupt is to abandon that responsibility intentionally, or to favor private gains and interests over those of the public. A "private interest" in this context might be of a personal nature, such as financial gain. However, the term "private interest" could also mean a partisan interest. "Private" interests are not limited to "personal" interests when defining acts of corruption. This point is made clear by the example of the impropriety that allegedly was common in the Canadian sponsorship program. Liberal Party organizers in Quebec have been accused of accepting large donations from advertising agencies in exchange for government contracts. If this is true, the motivations of party organizers were partisan more so than personal. Party coffers gained from the organizers' illegitimate actions.⁴⁹

Although this approach does not have the problem of being too narrow in scope, there is ambiguity that undermines its utility as a tool to identify and analyze corruption. Conceivably, the public interest approach could define *any* act that violates the public interest as corrupt, no matter what the circumstances. It makes no distinction between an

⁴⁸ Gillespie, Kate, and Gwenn Okruhlik. "The Political Dimensions of Corruption Cleanups: A Framework for Analysis." Comparative Politics. 24 (1991): 77.

⁴⁹ "Liberal fundraiser denies 'taking party hostage'." CBC News. 20 May 2005.
<<http://www.cbc.ca/story/canada/national/2005/05/20/morselli-gomery050520.html>>.

intentional violation of the public interest and an unintentional one; the latter might be the result of incompetence or an honest error rather than greed or partisanship. While incompetence might be a punishable offence for a public official, surely it is significantly different from a deliberate betrayal of the public trust. The public interest approach, to be a useful one, must be more specific about the necessary conditions of corruption.

Welch and Peters point out that an additional problem with the public-interest approach is that it is up to the researcher to determine what the “public interest” is.⁵⁰ This is a subjective exercise, depending on the priorities and preferences of the researcher. Because there is no objective definition of the “public interest,” this approach cannot yield a concrete definition of corruption. Let us consider the following scenario: a politician violates conflict of interest guidelines in awarding a government contract to a personal friend. However, as a result of this contract, the employment rate of an economically depressed region is given a tremendous boost. It would be possible to argue that even though the action violates the formal guidelines of behaviour, it is not corrupt because it delivers tangible benefits that will help the public in the long term. The counter to this argument is that any time an official ignores conflict-of-interest guidelines, he is betraying the public trust and therefore harms the public interest, even if the outcome is positive for the public. In this case, the issue is not whether the friend would make a useful public contribution, but whether favoritism led to the awarding of the contract. Both sides of this argument are interesting, but the public interest approach does not offer an obvious resolution of the issue.

Finally, public opinion-centered approaches rely on public opinion alone to define political corruption. Simply put, an action is corrupt if public opinion deems it to

⁵⁰ Welch and Peters 975.

be so. The strength of this approach is in its recognition that there is no universally agreed-upon definition of corruption; that what is corrupt in one society might be tolerated, or even invited or expected, in another. The problem of the approach is the difficulty of using it to establish even a bare-bones definition of corruption. It avoids making any concrete statement about the consequences of impropriety and dishonesty on the part of public officials. Surely, if an elected official sacrifices the public interest to achieve personal goals, this is not a defensible action in a representative democracy, even if public opinion is not deeply offended by it. Another problem is that the term “public opinion” gives the false impression that the public is united in a position on a given subject, when the reality is that public opinion is most often divided.⁵¹ The idea that there is one “public opinion” with which all citizens identify is a myth. Therefore, to use “public opinion” as the sole indicator of political corruption is not a useful exercise.

In addition to these three approaches that appear frequently in the literature on ethics and government, some students of political ethics refer to a “democratic approach” that focuses on the consequences of political corruption for the health of democracies. Mark Warren argues that political corruption violates the vital link in democracies between citizens and their representatives. If wealthy groups or individuals are able to exert tremendous influence over the policy process, to the point that policy outcomes or government expenditures are the result of undue influence by these groups, then the policy process becomes practically inaccessible to ordinary citizens who do not have the resources to compete against wealthy individuals or organizations. Further, instances of corruption undermine the culture of a democracy by making it difficult for citizens to

⁵¹ Ibid.

trust their representatives.⁵² J. Patrick Dobel, an accomplished American scholar of political ethics, echoes Warren's concerns. He argues that trust between citizens and their representative is essential in a democracy, and that corruption undermines that trust.⁵³

None of the approaches, by itself, is sufficient to study comprehensively the meaning of political corruption. Each of the three factors that is covered by the approaches, namely formal rules, the public interest, and public opinion, are important indicators of what qualifies as corrupt behaviour. To rely on any one approach exclusively is to ignore the importance of the other indicators.

What factors incite corruption?

It is a stated truism that corruption in politics cannot be eliminated entirely. As long as there are ethics rules, someone will attempt to bend or break them for his own benefit. Nas, Price, and Weber contend that the various explanations of why political corruption occurs can be grouped into two categories: individualistic explanations and structural-level explanations.⁵⁴ According to the former, political corruption is the result of personal greed, the desire for power, or loyalty to family, friends, and political party members.⁵⁵ Klitgaard argues that a public official who is considering corruption will weigh its benefits against the costs of getting caught.⁵⁶ If the benefits are greater, the official is likely to proceed with the action. While some political corruption can be

⁵² Warren 328.

⁵³ Dobel, J. Patrick. "The Corruption of a State." The American Political Science Review. September (1978): 958.

⁵⁴ Nas, Teyfik, et al. "A Policy-Oriented Theory of Corruption." American Political Science Review. 80.1. (1986): 109.

⁵⁵ Thompson, Dennis. Political Ethics and Public Office. Cambridge, Massachusetts: Harvard University Press, 1987. 11.

⁵⁶ Klitgaard, Robert. Controlling Corruption. Berkeley: University of California Press, 1988. 70.

attributed to self-interest, individualistic explanations do not account for the *extent* of political corruption that exists. There are particular factors and circumstances, both institutional and cultural, which tend to encourage or enable corruption. In this section, I address some of the factors that have been found to increase the likelihood of corruption in a political system. These factors include: modernization, the lack of citizen involvement in politics, poor organization in government, and little or no anti-corruption regulations.

a) Modernization

Samuel P. Huntington argues that modernization breeds corruption in at least four ways. In the first two, modernization does not encourage corrupt behaviour, but it encourages its detection. First, Huntington contends that modernization involves a transition in the value system of a society in which the old value system is replaced with a new one. As countries modernize and citizens become more educated and wealthy, democratic values tend to take hold. Citizens come to expect their politicians to be honest and accountable, not corrupt. Certain behaviours that were accepted in the traditional value system will not be tolerated in the new value system. As a result, even if politicians' behaviour does not change, it will seem as though corruption is on the rise because societal standards of political conduct are becoming more stringent.

Second, with the modernization of societies comes the separation of the private and public spheres of the lives of public officials. At one time, politicians were expected to use their public role to reward friends, family members, and partisan supporters with employment opportunities. However, modernization invites a distinction between an official's private and public lives. It is seen as unfair for a public official to bestow on

family or friends benefits that are not available to ordinary citizens. As societies become more democratic, it is expected that government employment opportunities be awarded on the basis of merit, not friendship, partisanship, or blood relationship. By focusing on the separation of the public and private interests of public officials, modernization sets the scene for detecting corruption. Although the behaviour of politicians might not change, some political actions that were once acceptable are, post-modernization, considered corrupt. Therefore, the occurrence of corruption will appear to be on the rise.

Third, the modernization of a society often involves the growth of civil society, including interest groups that are engaged in politics. As society becomes wealthier, these groups are more able to amass significant resources, especially the ones representing the capitalist class. As a result of their wealth, these groups are able to bypass legitimate democratic methods of political influence in favor of illegitimate ones, such as bribery, that tend to produce immediate results. Modernization invites corruption because it distributes wealth in such a way that interest groups have leverage in dealing with public officials; each party to a corrupt transaction, both the public official and the interest group, has something to give as well as something to gain.

In addition to providing interest groups with new sources of wealth, modernization creates new opportunities for *individual* wealth in the private sector. It is interesting to note that while accumulated wealth among interest groups tends to *increase* the likelihood of corruption, individual wealth via the private sector might have the opposite effect. If citizens are able to become wealthy in the private sector, it becomes less likely that citizens will see public office - and the opportunities it holds for personal gain via corruption – as a “road to wealth.” The private sector in modernized societies

provides plenty of opportunities to acquire personal wealth so that citizens are not be drawn to public office for the wrong reasons.

Fourth, modernization involves a growth in government, in terms of both the size of the public service and the scope of government activity. Huntington contends that because government is larger, there simply are more opportunities for corrupt behaviour. There are more public benefits to distribute in the form of jobs, contracts, and the like. Also, it is conceivable that as government becomes larger, it becomes more difficult to manage, and opportunities for undetected corruption become more frequent as a result. On the other hand, government departments that are managed effectively would be able to avoid this problem.

b) Lack of citizen involvement in politics

Susan Rose-Ackerman argues that as citizens' interest and participation in politics increases, the occurrence of political corruption decreases. Her theory is that the possibility of electoral retribution deters politicians from considering corruption; they do not want to lose an election on account of allegations of corruption. Therefore, to keep politicians from becoming corrupt, it is important for the voting public to be actively interested in politics and in the ethical character of candidates, and to take seriously the task of choosing their representatives.⁵⁷

From Rose-Ackerman's perspective, the declining voter turnout in Canada, as well as other democracies, is worrisome from the perspective of political ethics. Popular participation is a vital component of a functioning democracy, as it confers legitimacy on the political system and its actors and it keeps politicians in check. Representative

⁵⁷ Rose-Ackerman, Susan. Corruption: A Study in Political Economy. New York: Academic Press, 1978.

democracy forces public officials, if they wish to be re-elected, to rise above self-interest and to act with integrity in serving the public interest. Without sufficient citizen participation in politics, the democratic system of checks and balances is thin.

c) Poor organization in government

Huntington suggests that weak political organization and vague policy procedures provide opportunities for corruption. This is a logical conclusion to reach. If there is confusion in terms of who is authorized to make certain decisions, who is accountable to whom, and how public money is to be allocated, then it is easier for an official to “skim off the top” without getting caught.

Not only is internal organization important in preventing corruption, but the manner in which government is structured plays a role also. Susan Rose-Ackerman argues that the separation of powers in the United States among judicial, legislative, and executive branches is helpful in minimizing corruption, as it prevents any official or group of officials from holding unchecked power over public resources. The same argument could be made in favor of federal systems of government as opposed to unitary regimes, as many policy fields in multi-level systems require inter-governmental cooperation in policymaking. If there are a number of officials involved in making a decision, it becomes very difficult for one official with corrupt intentions to determine the overall outcome.

Rose-Ackerman acknowledges the possibility of the reverse scenario to the one discussed above. She warns that a fragmented or decentralized political system that is subject to multiple decision points might be even more susceptible to corrupt influences

than other systems.⁵⁸ One could argue that the more decision-makers there are, the more opportunities there are to find one that is “corruptible”. While this might be true, as I argued above, the involvement of a number of officials in any decision-making process will prevent the corrupt official from realizing their intentions. Therefore, the fact that some individuals are vulnerable to undue influence will have little effect on policy outcomes so long as there are checks on their authority.

d) Little or no anti-corruption regulations

Michael Johnston contends that anti-corruption regulations affect the occurrence of corruption. They influence the kinds of behaviour that will come to be legally and socially labeled as “corrupt”, as well as the frequency of corruption and the popular and official responses to it.⁵⁹ Anti-corruption regulations, or ethical codes of conduct, can help public officials to be clear about the boundaries of acceptable behaviour. These regulations also spell out the punitive response that can be expected in the event that the rules are broken. These rules might help to deter corruption by forcing officials to confront the possibility that they will be caught and punished if they violate the rules.

Johnston uses the above factors to argue in favour of anti-corruption regulations, but he does not offer proof to substantiate his claim that ethics codes discourage corruption. Further, he does not acknowledge the possibility that ethics codes might have negative consequences. Instead of deterring corruption, ethics packages might simply provide officials with the information they need to avoid getting caught. Also, as rules

⁵⁸ Rose-Ackerman, Susan. Corruption and Government: Causes, Consequences, and Reform. Cambridge, UK: Cambridge University Press, 1999. 143.

⁵⁹ Johnston, Michael. “The Political Consequences of Corruption: A Reassessment.” Comparative Politics, City University of New York, 1986. 463.

become more stringent, politicians might find that they are more burdensome than they are beneficial and might resist compliance with them.

As mentioned earlier in the chapter, political corruption takes several forms. Although there is some disagreement among scholars over what behaviours are truly corrupt, there are four specific types of behaviours that are identified frequently as acts of corruption. They are: conflict of interest, undue influence, patronage, and lying. I discuss each one in the following section.

Types of Unethical Behaviour

a) Conflict-of-interest

Justice William Parker, who presided over an inquiry into conflict-of-interest allegations against Sinclair Stevens, a cabinet minister in the Mulroney government, defined a conflict of interest as “a situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities.”⁶⁰ A public official’s “private interest” includes benefits incurred not only by the public official in particular, but also by his or her family, friends, and party.

Greene and Shugarman argue that within the category of “conflict of interest,” there is a hierarchy of ethical violations. At the top are conflicts of interest that involve a financial benefit. The *Criminal Code* prohibits public officials from benefiting from a conflict of interest in this way. Next are “potential” conflicts of interest. In these situations, there is no actual financial benefit for the public official, but there is the

⁶⁰ Parker, Mr. Justice W.D. “Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honorable Sinclair M. Stevens.” Ottawa: Supply and Services Canada, 1987. 29.

potential that the official could benefit privately from the knowledge or power that he holds as a result of his public office. For example, if a cabinet minister's family owns a farm, and he is asked to sit on a parliamentary committee that will decide whether or not to award relief to financially distressed farmers, his family would stand to benefit from his role as a public official. If the official fails to remedy the situation by removing himself from the circumstances that present the potential conflict of interest, then the official is guilty of a real conflict of interest, even if no benefits are incurred.

The third type of transgression in the conflict-of-interest category is a situation in which conflict-of-interest codes are violated without a conflict of interest having actually occurred. An example would be the failure of a politician to make full financial disclosure, which is required under conflict-of-interest guidelines. Even if the officials' circumstances do not create a conflict of interest, the failure to make full disclosure constitutes a violation of ethical guidelines on its own.

The fourth type of offense is an "apparent" conflict of interest. In such a situation, although a real conflict of interest has not occurred, a reasonable person could conclude that it has. Public officials have a duty to avoid even the appearance of impropriety in an attempt to preserve the integrity of the political system.⁶¹

The *Criminal Code* has always prohibited public officials from accepting bribery and granting benefits in exchange for favors. In other words, "real" conflicts of interest, meaning those that involve a financial benefit for the public official and his or her associates, are crimes. In December of 2003, the federal government released a new set of ethical guidelines, the *Conflict of Interest and Post-Employment Code for Public*

⁶¹ Greene, Ian and David Shugarman. Honest Politics: Seeking Integrity in Canadian Public Life. Toronto: James Lorimer and Company, 1997. 47-48.

Office Holders. In order to pursue the goal of enhancing public confidence in the “integrity, objectivity and impartiality of government”⁶², the government designed the code to prohibit real, potential, and apparent conflicts of interest.

b) Patronage

Political patronage is the process of dispensing favors to political supporters in recognition of past services.⁶³ Such “favors” take the form of government appointments, jobs, grants, and contracts. Colwell and Thomas draw a useful distinction between “political patronage” and “political appointments.” *Political patronage* is the appointment of a partisan to a public position as a reward for past loyalty without due regard for the appointee’s qualifications and competence. *Political appointments*, on the other hand, take into account both the credentials and the partisan stripe of the appointee. Political appointments are made not only to reward loyalty, but also to ensure that the individuals who hold positions of authority in the policy sphere share the government’s priorities.⁶⁴ Political patronage is considered to be unethical because it is at odds with the notion of merit. Patronage allows partisan loyalty to trump competence in the contest for a government job, appointment, or contract.

In situations of political patronage, the relationship between the political party and its supporters is one of mutual dependence. The political party relies on the fidelity of its supporters in order to maintain power, and is willing to dole out benefits in order to ensure their continued loyalty. In turn, party supporters often think that they should be

⁶² “Conflict of interest and Post-Employment Code for Public Office Holders.” December 2003. Industry Canada. <<http://strategis.ic.gc.ca>>.

⁶³ Mancuso, et al. 121.

⁶⁴ Colwell, Randy, and Paul Thomas. “Parliament and the Patronage Issue.” *Journal of Canadian Studies*. 22.2 (1987):163.

given first crack at government contracts, appointments, and jobs as a reward for their fidelity. This mutual dependence can influence the decisions taken by both parties in the patronage relationship. If governments feel obliged to accommodate their supporters in order to continue to govern, they might assign a higher priority to party loyalists' interests than to the public interest. Conversely, if a public official feels that she owes her job to the governing party, she might feel obliged to place the governing party's interests before those of the public. Neither scenario is conducive to good governance.⁶⁵ Further, the idea that governments are vulnerable to their supporters in a way that could threaten the public interest undermines the public's confidence in the integrity of the political system.

Although many are offended by the idea that governments use tax dollars to recognize and reward partisan loyalty, it is possible to offer a defense of political patronage. In some situations, patronage is functional. Let us consider the use of patronage by political leaders immediately after Confederation. In order to draw people into the political process and to build strong political parties, leaders used patronage as an incentive for people to participate in the new political system. Political parties used their resources to reach out to potential supporters, to mobilize voters behind a common cause, and to build a civic culture. In this light, the use of patronage was understandable and even justified.

In his article "Despoiling the Public Sector: The case of Nova Scotia", Ian Stewart considers the argument that not all patronage appointments are harmful to the public

⁶⁵ Mancuso et al. 121-123.

interest.⁶⁶ For instance, if a position becomes available in a government department, and there are two qualified candidates interested in the position, does it harm the public interest if the candidate chosen happens to be the one who has been loyal to the governing party? It depends on who is doing the hiring and whether or not the process is seen as open, transparent, and guided by the merit principle. There would be no harm to the integrity of the system if an independent bureaucrat hires a partisan for a public service position. The independence of the bureaucrat would prevent accusations of favoritism. However, if a political appointee hires a fellow partisan, allegations of patronage, which would undermine the integrity of the system in the public's eyes, would be inevitable even if the candidate was qualified for the position.

S. J. R. Noel argues that because patronage is no longer an effective instrument for party-building, it is now employed for other purposes. He explains:

In Canada there has been a shift from the use of patronage to sustain the party machines to the use of patronage to sustain personal entourages and supra-party instruments which have as their function the management of leadership and election campaigns and the measurement and manipulation of public opinion.⁶⁷

Noel notes that the expansion in the size of government at both the federal and provincial levels has produced plenty of opportunities for patronage in the form of appointments, contracts, and grants. Some sources of patronage, such as judicial and senatorial appointments, have existed for decades. However, the growth of government has borne new sources of patronage in the form of consulting fees, untendered contracts, advertising and polling contracts, and appointments to the boards of Crown corporations.⁶⁸ It used to

⁶⁶ Stewart, Ian. "Despoiling the public sector? The Case of Nova Scotia." Eds. J. Langford and A. Tupper. Corruption, Character and Conduct: Essays on Canadian government ethics. Toronto: Oxford University Press, 1993. 92-93.

⁶⁷ Noel, S.J.R. "Dividing the Spoils: The Old and New Rules of Patronage in Canadian Politics." Journal of Canadian Studies. 22.2 (1987): 72.

⁶⁸ Ibid 82-83.

be the case that governments relied on the party faithful for insight into the public's political sentiments, particularly at the local level. Over the last 30 years, polling firms and consultants have taken over this role and are able to use their resources and expertise to tap into the public's opinions and interests. As a result, governing parties are more indebted to consulting firms, experts, and strategists for electoral wins than they are to grassroots party organizations. The use of patronage in Canada has changed to reflect this development in electoral politics. This is not to say that party supporters no longer receive patronage. The point is that patronage has evolved.

c) Undue Influence

Undue influence is “an attempt by a citizen or group of citizens to influence a policy decision by taking advantage of privileges, information, or resources not available to the general public.”⁶⁹ For instance, if an individual or group develops a friendship with a politician in order to influence the awarding of a government contract, this qualifies as an exercise in undue influence. If an individual or group offers bribes to public officials in attempt to secure a political outcome, this constitutes an attempt at undue influence. The problem with undue influence is that it allows certain individuals to use the profit personally from the political process, at the expense of the public interest.⁷⁰

Attempts at undue influence often take place in the realm of political party financing and in campaign contributions to individuals and parties. In cases of undue influence, campaign contributions, whether financial or in the form of free advertising or

⁶⁹ Greene and Shugarman, 54-55.

⁷⁰ Ibid 54-55, 97.

consulting, are exchanged for political favors. If a citizen or group makes a significant contribution to the campaign of a party or individual, a conflict of interest can arise, whether it is real, potential, or apparent. The politician or party that accepts the contribution might feel obliged to give special attention to the policy preferences of the donor.⁷¹ Small political donations tend not to give rise to conflict of interest situations, as it is understood that politicians are not likely to feel the same obligation to the contributors of insignificant amounts.

In Canada, there are two types of regulations used to prevent the occurrence of undue influence: disclosure and limits on campaign contributions. Disclosure rules require that all candidates and parties reveal the names of the donors to their campaigns as well as the amounts donated for all donations above \$200. Before the retirement of Prime Minister Jean Chretien in December of 2003, Parliament passed amendments to the *Canada Elections Act* to limit contributions. These amendments limit individual campaign contributions to \$5000 in total per year to a political party (including nomination contests, associations, and candidates), \$5000 in total to contestants in a leadership contest, and \$5000 in total to election candidates who are not registered with a political party. Corporations' and trade unions' contributions are limited to \$1000 in total per year to registered associations, nomination contestants, and candidates of registered political parties, and \$1000 in total to a candidate not registered with a political party. Donations from unions and corporations to political parties themselves are banned. These new regulations are intended to prevent the occurrence of undue influence and to

⁷¹ Ibid 103-104.

combat public cynicism toward the political process based on the assumption that undue influence occurs.⁷²

Mancuso, Atkinson, Blais, Greene, and Nevitte acknowledge that attempts at undue influence are not restricted to campaign contributions. Personal gifts to politicians, if they are of considerable value, can create a conflict of interest situation in which a politician might feel pressured to give special treatment to the interests and preferences of the gift-giver. If a politician accepts a gift in exchange for a political favor, this constitutes bribery, which is a criminal offence. The difficulty, though, is in attempting to define the point at which a gift becomes an attempt at bribery. Gifts of little value tend not to arouse public suspicion because they are not substantial enough to influence the judgment of the receiver or to create feelings of indebtedness or obligation. However, when gifts are of considerable value, there is cause for suspicion. The key questions in distinguishing a harmless token from a bribe are: Why is the gift being offered? What is the motivation of the gift-giver? What is expected in return for the gift?

In order to preserve the public's trust in the political system and its actors, even the perception that undue influence could occur must be avoided. This was the rationale behind Prime Minister Chretien's campaign finance reforms. In regards to personal gifts, the *Conflict of Interest and Post-employment Code for Public Office Holders (2003)* states: "gifts, hospitality, or other benefits ... that could influence public office holders in their judgment and performance of official duties and responsibilities shall be declined." The code requires that gifts or benefits valued at more than \$200 be disclosed to the Ethics Commissioner, and that such gifts are acceptable only under one the following circumstances: a) the gift is within the normal bounds of propriety, such as a gift of

⁷² "Election Financing." 31 December 2003. Elections Canada. <www.elections.ca>.

courtesy or appreciation; b) the gift will not bring suspicion on the office holder's objectivity and impartiality; c) the gift would not compromise the integrity of government. The requirements of the code illustrate that both the appearance and the actual occurrence of undue influence must be avoided in order to protect the integrity of the government.⁷³

d) Lying

“Lying” includes all methods of intentional deception, including giving false information, failing to tell the entire truth, evasion, and, to a lesser degree, breaking promises.⁷⁴ Campaign promises are often based on incomplete information due to the fact that the candidate might not be fully informed on a policy area. When their are not fulfilled, this might not be an outright lie, but is still a form of misinformation. Lying is a form of unethical behaviour because in doing so, politicians manipulate the public trust for personal reasons. Friedrich maintained that at the core of all acts of corruption is the desire to seek private gain at the expense of the public interest. Most of the time, it is assumed that the private gain is financial in nature. However, it is often the case that if a politician lies to the public, whether by giving false information or by not revealing the entire truth, the politician's gain is not strictly financial. For instance, a politician might, in order to secure his re-election, make an election campaign promise that he has no intention of keeping.

There are all sorts of reasons why a public office holder might lie to the public, and not all of them are completely self-serving. For instance, cabinet ministers might

⁷³ Conflict of Interest and Post-employment code for Public Office Holders. 2003.

⁷⁴ Mancuso et al. 152.

withhold sensitive information if its release into the public domain could threaten national security. Or, a government might keep information from the public if its release could result in a situation of national chaos or panic. In these situations, one could argue that the politicians' "lies" are justified and that the decision to withhold information would help, not harm, the public interest. In the context of such circumstances, public officials who withheld information from the public would not be "corrupt," since they would have nothing to gain personally or privately from lying.

A more complicated situation is when a politician lies in order to protect the privacy of either himself or his family. For instance, a politician who has been diagnosed with an illness might wish to keep his condition private. It is not clear whether the public interest would be harmed by not knowing about his illness. On the one hand, it seems logical to assume that a person's medical information is not the concern of the public. However, if the illness could affect an official's ability to do his job, then the public interest is at stake.

When a person decides to seek public office, it is generally assumed that she forfeits a degree of privacy. If she wants citizens to trust her as their representative, she must be willing to divulge information regarding her health, lifestyle, and choices. However, while citizens might have a right to information about their representatives, there must be a limit on this right. A balance must be struck between citizens' right to information and politicians' right to privacy. Otherwise, strong candidates might be deterred from seeking public office, for fear of losing all privacy.⁷⁵

⁷⁵ Ibid 152-161.

Political corruption has many consequences for a political system, some of which have been discussed in this chapter. Perhaps the most serious is that it frays the trust between citizens and their elected representatives, and hence undermines the integrity of the political system and the actors within it. While the negative consequences of corruption cannot be disputed, some argue that there can be positive consequences as well. As mentioned earlier, in the years immediately following Confederation in Canada, political parties used patronage as an instrument of political mobilization and social integration. Parties offered rewards for citizens' loyalty to the party and for their participation in the political system. Another positive outcome of political corruption is that it can highlight problems that exist in the current system. According to the legalistic approach, political corruption is the violation by a public official of formal guidelines of behaviour. In some cases, public officials might break the rules because the rules are out of date or dysfunctional. The violation of the rules might bring about their redrafting. Also, it is possible that in some cases of undue influence, citizens are using illegitimate means of influence because legitimate ones have proven ineffective. Bureaucratic "red tape" tends to contribute to this problem; if the public sector is too slow in responding to citizens, the use of undue influence might highlight problems in the system and encourage reform.⁷⁶

The negative effects of corruption on public trust in political actors and institutions outweigh any positive consequences. If corruption is an inevitable part of politics, however, systems could benefit from analyzing carefully the factors that lead to or encourage corruption and the most effective means of dealing with it.

⁷⁶ Gillespie and Ohrulik 79.

In the following chapters, I examine the ways in which governments attempt to discourage and punish corruption on the part of legislators. I analyze the historical development of the codes of conduct for legislators in each country and analyze their content. A comparison between the three countries provides for an understanding of each country's ethics regime and the similarities and differences between them. Upon completing this comparative analysis, I use the information to draw conclusions about the effectiveness of codes of conduct at encouraging ethical behaviour and enhancing public trust in political actors.

Chapter Four

The American Political Ethics Regime

Many components of the Canadian political system have developed in the images of the American and British systems. The Canadian ethics regime is no exception. The United States embraced the use of written codes of conduct much earlier than Canada did. Today, the American federal ethics regime is quite elaborate. It comprises a number of written documents and statutes, and a large number of personnel are employed to administer it. In this chapter, I trace the development of the policies from their origins in the early 1800s up to the present regime. A brief examination of the history of American political ethics reveals that as governments accumulated more wealth in the form of cash, land acquisitions, and other things, opportunities for the abuse of public office for private gain multiplied. Politicians held discretion over an increasingly large public purse, which meant that private attempts to influence politicians in the allocation of resources became more frequent. Politicians came under pressure to award jobs and contracts to friends and acquaintances.

Several prominent students of American political ethics today maintain that despite perceptions to the contrary, the allegations of scandal that have made national headlines have not been the most important catalysts for the growing concern over political ethics. Rather, this public concern has been a “gathering storm” that has its roots in ideological battles between political movements in the United States.⁷⁷ If this argument is correct, a major implication might be that the media have had a lesser role in shaping public attitudes towards politicians and ethics than people assume.

⁷⁷ Roberts and Doss 1.

A comparison between the evolution of the Canadian and American ethics regimes is important because, in addition to the other similarities between them, both countries have experienced increasing public pressure for politicians to behave according to stricter ethical and moral standards. This is to say that Canada's experience in this regard is not unique; it is part of a larger phenomenon that is sweeping "democratized" nations. Some observers have suggested that in countries with a strong, educated, middle class, it is no surprise that citizens have come to expect more from their elected representatives. Perhaps it is part of the democratization process for public standards of political ethics to become more strict. Notions of what is "just" and "democratic" are not static; they are constantly under construction. As citizens become more powerful in terms of their wealth and education, they demand a greater role for themselves in the political process and tend to reject politicians' attempts to circumvent the public when making decisions. Therefore, tolerance is declining for decision-making processes that intentionally evade public scrutiny.

My discussion of the American ethics regime is not confined to rules for legislators. I refer extensively to the development of ethics rules for the federal public service as well. I do this because it is difficult and not very useful to treat as separate the development of ethics rules for Members of Congress and for federal employees, particularly in the American case. The rules created for federal employees had a significant impact on the development of ethics rules for Members of Congress, and vice versa. Also, a discussion of lawmakers' mindsets and intentions while they created ethics rules for federal employees sheds a great deal of light on their attitudes toward ethical

standards for all public officials, whether elected or appointed. A discussion that refers to both sets of rules produces the most accurate portrait of the ethics regime for legislators.

The American Political Ethics Regime: 1787-1961

For the first several decades of America's existence, politicians often used government jobs to reward friends and supporters. However, the rate of turnover of these appointments stayed low, even when politicians were defeated and replaced. Therefore, patronage did not undermine the stability of the public service. With the Louisiana Purchase of 1803 and the U.S. government's acquisition of new land, demands intensified for infrastructure, development, and the distribution of land to citizens. Those who worked in the areas of infrastructure and development learned that it was in their interest to make friends with politicians in Washington so that lucrative contracts would be sure to come their way. In turn, policymakers found that lending a hand to contract bidders could result in personal benefits for them. Thus, the practice of using public office for private gain was born in America.⁷⁸

Over time, government officials and employees came under increasing pressure to use their public positions to yield private benefits for their friends and supporters. To curtail this problem, Congress passed a law in 1853 prohibiting all federal employees from representing any private client in a claim before the government. This was Congress' first statutory attempt at defining the boundaries of ethical conduct for government officials and employees. The objective of this law was to prevent the occurrence of conflicts of interest. The assumption was that a federal employee would be

⁷⁸ Mackenzie and Hafken 8-9.

in a conflict of interest if he lobbied his employer on behalf of a friend or acquaintance. Due to his relationship with the claimant, he would stand to benefit from the government's decision.

Despite Congress' efforts, conflict of interest problems ensued as government officials accepted kickbacks for helping friends to secure government contracts. In 1864, Congress passed new legislation prohibiting all federal government officers and employees, this time including Members of Congress, from receiving compensation for providing assistance to someone involved in a matter before the government. It is important to note that the offense being targeted here is the acceptance of a payoff for assisting a citizen who is lobbying the government. It was not and is not considered an offense for a Member of Congress to help a citizen to lobby the government; in fact, this is part of a representative's job. However, given that the role of an elected representative encompasses helping citizens to lobby the government, it is inappropriate for a representative to receive extra payment for doing so.

The presidency of Ulysses S. Grant, which began in 1868, is notable due to the frequency of political scandals during his tenure. The Whiskey Ring scandal was the most notorious. Four whiskey distilleries operating primarily in St. Louis, Milwaukee, and Chicago were involved in defrauding the United States Treasury of tax money. The distilleries bribed Internal Revenue officials in Washington, D.C. When the scandal broke, President Grant demanded that all guilty parties be punished. However, once it was discovered that the President's private secretary, Gen. Orville E. Babcock, was likely guilty of accepting bribes in the scandal, the president intervened on his behalf. In the

legal proceedings that resulted from the Whiskey Ring scandal, 238 men were indicted and 110 were convicted. Babcock was acquitted on Grant's testimony.⁷⁹

Politicians in the middle of the 19th century frequently used the resources at their disposal to reward their supporters. For instance, in exchange for loyalty, voters "earned" food, housing, and jobs. As well, politicians received rewards for their loyalty to their friends and business associates in the form of lucrative gifts and business opportunities. The exploitation of public office continued despite the efforts of Congress to control the problem through legislation.

The Credit Mobilier scandal of 1872 provides an example of how relations between government and the business sector had taken on a dishonest flavor. The Union Pacific Railway Company wanted to bribe Members of Congress for their support for construction contracts. They set up a corporation, Credit Mobilier, to build a railroad. Credit Mobilier sought contracts from Congress and frequently exaggerated construction costs. To guarantee Congress members' support for the project, Credit Mobilier sold stock in the company to them. As the corporation got richer, so did cooperative Members of Congress.⁸⁰

As public awareness of government corruption grew, citizens began to mobilize behind efforts to "clean up" the American government. In the 1870s, support swelled for the notion of removing hiring decisions from the hands of elected officials and creating a civil service commission to establish hiring rules. President Grant reluctantly appointed such a commission and in 1883, the *Pendleton Act* was passed to establish rules to

⁷⁹ "Whiskey Ring." *Encyclopedia Britannica Online*. 21 March 2005. <<http://www.britannica.com/>>.

⁸⁰ "Credit Mobilier Scandal." *Encyclopedia Britannica Online*. 21 March 2005. <http://www.britannica.com/>.

guarantee merit-based hiring practices. The statute covered only 12% of federal employees at the time.

Despite support for the elimination of government corruption, significant events on the world stage create serious obstacles to efforts in this regard. The outbreak of World War One focused government attention on ensuring that American troops were properly armed. Companies with ties to Washington received contracts to provide arms as well as consultations. It became commonplace for employees of private companies to be sent to work for the government while continuing to receive a salary from their employer. In 1917, Congress passed legislation prohibiting federal employees from accepting salaries from non-governmental sources. Another problem stemming from the war was that federal employees who left the government were often recruited by arms suppliers who were looking for information on the types of weapons that the government sought. Congress then prohibited former federal employees from representing outside interests before their former agencies for a period of two years after leaving their government job. This law was limited in its application and many people managed to escape it.

Despite Congress' efforts via legislation, World War Two brought with it many of the same challenges to political ethics as did the previous war. This time, however, people were less tolerant of conflict-of-interest situations. When consultants came to work for the government from private organizations, efforts were made to ensure that they would be placed in areas in which their decisions would not affect their respective companies.

There is a general agreement among scholars of political ethics that as government grows larger, the enforcement of ethical standards becomes more challenging. After Truman's scandalous presidency, Congress investigated the occurrence of ethical violations at the executive level. Paul Douglas, a Democratic Senator from Illinois, tabled a report in 1951 in which he argued that the growth in the size and complexity of government accounted for many of the ethical problems that had come to the surface. After the Eisenhower presidency ended in 1960 amidst allegations of scandal, it was apparent that the American political system faced a serious crisis in ethical conduct and that efforts made to rectify problems of corruption had fallen short of achieving their goals. The legislative effort at ethics regulation had been haphazard and incomplete. Most employees could seek whatever employment they chose upon leaving the government, background checks of incoming employees were minimal, and employees' and elected officials' finances were seen as private matters to be kept out of the public domain. In 1961, the Kennedy administration led a renewed effort to deal with political corruption in the American political system.⁸¹

Creating a Rules-Based Ethics Regime: The Kennedy and Johnson Administrations

Throughout the 1960 presidential campaign, Democratic contender John F. Kennedy pledged to revamp the American political ethics regime so that opportunities for the abuse of public office would be eliminated. Once he became president, he delivered on his promise to create a new executive branch ethics management system. He appointed a three-member Advisory Panel on Ethics and Conflict of Interest in Government, which found that there was considerable confusion among federal officials

⁸¹ Mackenzie and Hafken 6-21.

regarding the scope of the existing ethics rules. To address this problem, the panel recommended the adoption of *uniform* ethics rules to supplement the existing criminal prohibitions. President Kennedy acted on the panel's findings by issuing a message to Congress in April 1961 entitled "Ethical Conduct in Government."⁸² In it, he outlined temporary rules for federal employees on the acceptance of gifts, the use of information for private purposes, outside employment, and financial conflicts of interest. One month later, President Kennedy issued an executive order entitled "To Provide a Guide on Ethical Standards of Government Officials."⁸³ This document established conflict-of-interest rules for presidential nominees and appointees and other high-level federal officials. It prohibited public officials from engaging in the following activities: holding outside employment inconsistent with their public duties, accepting gifts for the performance of their public duties, and accepting gifts from non-public sources if doing so created the appearance of or resulted in a conflict of interest for the official.⁸⁴

In October of 1962, under pressure from the Kennedy administration, Congress enacted P.L. 87-849, a uniform set of conflict-of-interest and public-corruption statutes. The main objective of this new legislation was to consolidate existing rules on ethics and to eliminate inconsistencies between them.

The exchange between President Kennedy and the American Congress during this time reveals that the development of the ethics regime in the United States has been a rather complex affair with more than one player. To facilitate high ethical standards for both federal employees and elected officials, actions by both the President and the

⁸² Kennedy, John F.. "Message from the president to the Congress relative to ethical conduct in government," 27 April 1961. House Document No. 145, 87th Congress, 1st session.

⁸³ "To Provide a Guide on Ethical Standards of Government Officials." Executive Order 10939. May 1961.

⁸⁴ Robert and Doss 47-49.

Congress were necessary. For that reason, President Kennedy needed to make concessions to Congress so that they would cooperate with his plan to establish a rules-based system of ethics management. To ensure Congress' cooperation, Kennedy agreed to establish an ethics management program in each federal department.⁸⁵

The rationale behind Kennedy's approach to ethics regulation was that written rules would eliminate any confusion regarding what the rules meant and what would constitute a violation of them. This clarity would make it easier to punish rule-breakers, as offenders could not try to defend themselves by claiming that the rules were unclear or open to interpretation. According to Roberts and Doss, Kennedy's approach to ethics rested on seven basic principles. First, public servants must not accept gifts from private sources for the performance of official responsibilities or from sources having an interest in the official's actions. Second, public officials must not take actions or decisions in areas in which they have a private interest. Third, public officials' outside employment must not interfere with their public duties. This rule would require an official to give up a private position that placed him in a conflict of interest in his role as a public official. Fourth, officials must not use information that they learn in their public role for private gain. Fifth, officials must not use their government contacts to obtain preferential treatment for friends or private clients. Sixth, public officials must not represent private parties in their negotiations with the government. Seventh, public officials must avoid even the appearance of bias or partiality.⁸⁶

These seven principles indicate the standard of political ethics that the Kennedy administration was attempting to facilitate. His messages to Congress made it clear that

⁸⁵ Ibid 49.

⁸⁶ Ibid 49-50.

he felt that the appearance of a conflict of interest could be just as damaging to the integrity of the political system as an actual conflict. An interesting point to note is that President Kennedy took a leadership role in the creation of the rules-based ethics regime in the United States, but his presidency was not a scandal-ridden one by any measure. Often, ethics rules are created in response to a political scandal when politicians want to demonstrate publicly their commitment to ethics by revamping codes of conduct. President Kennedy was not trying to redeem himself after falling from grace, but he might have felt the need to act on ethics reform after the Truman and Eisenhower presidencies had seen frequent allegations of corruption.

President Lyndon Johnson followed Kennedy's lead by making ethics a priority for his administration. In May of 1965, he issued Executive Order 11222, which restated existing principles of ethics and reinforced the idea that federal officials must avoid even the appearance of a conflict of interest. In addition to enforcing the "appearance standard", Johnson's directive called for the heads of federal agencies and full-time presidential appointees to disclose the details of their personal finances. These financial reports were not made available to the general public, but were subject to review by the Civil Service Commission.⁸⁷

Like Kennedy before him, Johnson managed to avoid allegations of scandal during his presidency. When political leaders attempt to save face after scandals erupt by implementing ethics reforms, an unfortunate result that often occurs is that ethics rules are often developed hastily and with little analysis of their likely implications. The effort to "repair" codes of ethical conduct gives the impression that corruption is the result of loopholes in the rules. However, that is not always the case. Sound rules can still be

⁸⁷ Johnson, Lyndon B. "Executive Order 11222." 8 May 1965.

broken, and in this case the appropriate response is to punish the offender, not to change the rules. Neither Kennedy nor Johnson was forced to strengthen the ethics regime in an attempt to redeem himself after a revelation of corruption. This afforded each president the opportunity to implement his strategies carefully and, in Kennedy's case, to appoint an advisory panel to make recommendations before executive action was taken. It is a matter for debate as to whether or not their efforts resulted in higher standards of ethics in government.

It is logical to assume that when a scandal of serious proportions is revealed, it will have a negative impact on public attitudes toward politics and politicians. While it tends to be the case in both Canada and the United States that governments accused of corruption lose some public support in the short term, it is not clear that political scandals have a lasting effect on public attitudes toward politics and government. It seems to be true that governments can "ride out" scandals, whether actual or alleged. The length of time required for a government to put a scandal firmly behind it depends on the severity and scope of the scandal, the political strategy that the government uses to diffuse the scandal's importance, and the strategies that the media and opposition parties use to keep the scandal alive. While the long term effect of political corruption on public attitudes remains open to debate, it has become the norm for scandals to act as catalysts for the reform of ethics rules. The Watergate scandal of the Nixon presidency is a prime example of how scandals create pressure on governments to revise ethics statutes and regulations.

Watergate: The Effect of Scandal on the American Ethics Regime

On June 17, 1972, five men were arrested at 2:30 am while trying to bug the Democratic National Committee headquarters at the Watergate hotel and office complex. Two days later, the Washington Post reported that one of the men arrested at the Watergate was James W. McCord Jr., the salaried security coordinator for President Nixon's re-election committee. At that point, there was no explanation for why the men had attempted to bug the DNC headquarters. On August 1, it was discovered that a \$25,000 cashier's cheque meant for the Nixon re-election campaign had ended up in the bank account of one of the men arrested in the Watergate burglary. On September 29, Washington Post reporters Carl Bernstein and Bob Woodward reported that John N. Mitchell, while serving as the United States Attorney General under President Nixon, controlled a secret Republican fund that was used to gather information about the Democratic Party. Since the spring of 1971, Mitchell had been approving withdrawals from the fund. Two other high-level officials in Nixon's campaign team, Jeb Stuart and Maurice H. Stans, were later given authorization to approve withdrawals from the fund, which, at any given time, held between \$350,000 and \$700,000.⁸⁸

On October 10, Woodward and Bernstein reported that the Watergate arrests stemmed from a complex system of Republican spying on the Democratic Party that was conducted on behalf of Nixon's re-election team. It was found that hundreds of thousands of dollars that had been donated to Nixon's re-election campaign had been used to pay for this undertaking. Some of the activities that comprised the Watergate scandal included: forging and distributing letters on Democratic candidates' letterhead;

⁸⁸ Bernstein, Carl, and Bob Woodward. "Bug Suspect Got Campaign Funds." Washington Post. 1 August 1972: A01.

interfering with Democratic campaign schedules; investigating the private lives of Democratic campaign workers; and planting “provocateurs” at campaign events.⁸⁹ Despite the prominence of this information in the American media, Nixon was re-elected as President of the United States in November of 1972 by a considerable margin.

In January of 1973, G. Gordon Liddy and James W. McCord, Jr., ex-officials of Nixon’s re-election team, were convicted of conspiracy, burglary, and bugging the DNC’s headquarters at Watergate. Five other men had been convicted already on related charges.⁹⁰

In June of 1973, the Watergate investigations took an interesting turn. While testifying before the Senate Committee set up to probe the events of Watergate, former presidential counsel John Dean said that he had discussed the Watergate cover up with President Nixon at least 35 times. This was the first substantial piece of evidence that the president was involved directly in the Watergate affair. Dean maintained that Nixon had been aware of payments made to buy the silence of Watergate conspirators who had been arrested in the Watergate burglary and that offers of clemency were made on his behalf in order to protect high-level officials who were implicated in the scandal. He told the Senate committee that in some instances, Nixon “gave him direct orders to carry out aspects of the cover up.”⁹¹ Days later, the committee revealed a letter addressed to White House domestic affairs adviser John D. Ehrlichman from two former White House aides

⁸⁹ Bernstein, Carl, and Bob Woodward. “FBI Finds Nixon Aides Sabotaged Democrats.” Washington Post. 10 October 1972: A01.

⁹⁰ Meyer, Lawrence. “Last Two Guilty in Watergate Plot.” Washington Post. 31 January 1973: A01.

⁹¹ Woodward, Bob, and Carl Bernstein. “Dean Alleges Nixon Knew of Cover-up Plan.” Washington Post. 3 June 1973: A1.

that outlined the plan to burglarize the DNC headquarters at Watergate. The letter was dated before the break-in occurred.⁹²

In July, the committee heard that President Nixon had been recording all meetings and conversations that had taken place in the Oval Office and the White House cabinet room since the spring of 1971. Alexander P. Butterfield, a former White House aide, told the committee that President Nixon had set up the recording equipment for the purpose of “posterity”. Most of the people who visited the president did not know that they were being recorded. The obvious implication of the discovery of these recordings was that the White House might have in its possession the necessary material to prove whether or not Nixon had known about and/or took part in the Watergate cover up.⁹³ Nixon refused to release the tapes to the Senate Committee.

In July of 1974, the United States Supreme Court, led by Chief Justice Warren Burger, ruled unanimously that Nixon must turn some of the tapes over to the Watergate special prosecutor. On July 27, the House Judiciary Committee took the step of recommending that the president be impeached on account of his attempt to obstruct justice in the Watergate investigation, as well as other unlawful activities. On August 8, 1974, Richard Nixon resigned as president of the United States. Gerald Ford took over, and eventually pardoned Nixon of all charges related to Watergate.⁹⁴

⁹² Woodward, Bob, and Carl Bernstein. “Break-In Memo Sent to Ehrlichman.” Washington Post. 17 June 1973: A1.

⁹³ Meyer, Lawrence. “President Taped Talks, Phone Calls; Lawyer Ties Ehrlichman to Payments.” Washington Post. 17 July 1973: A1.

⁹⁴ Kilpatrick, Carroll. “Nixon Resigns.” Washington Post. 9 August 1973: A1.

How did the President and Members of Congress respond to the scandal?

President Richard Nixon maintained his innocence throughout the Watergate investigations and seemed content to allow his staff and inferiors to take the fall for the affair. In May of 1973, Nixon accepted resignations from four of his top aides over the Watergate scandal. He told the American people that he “accepted full responsibility” for the actions of his subordinates in the Watergate incident and that he planned to take steps to prevent future abuses of the system.⁹⁵ However, he maintained that the resignations were the result of the aides’ connections with individuals involved in the Watergate affair and should not be interpreted as evidence of wrongdoing on the aides’ parts.

As public and media attention became fixed on the investigations into the scandal, and as it became evident that high-ranking officials in the Nixon administration had been involved, President Nixon began to take measures to “clean up” the executive branch. He fired his counsel, John W. Dean III, who had been hired in the first place to investigate the alleged scandal, and replaced him with Leonard Garment as the attorney to represent the government in any proceedings relating to Watergate. Nixon embarked on a shuffling of his administrative officials, including charging Defense Secretary Elliott Richardson with the task of sorting out the truth behind the Watergate affair. For as long as he could, he maintained his innocence and insisted that he knew nothing about the Watergate burglaries and that he was not part of the attempt to cover them up.

Once the Senate Watergate Committee discovered the existence of Nixon’s Oval Office recordings, he was forced to drastic measures. In October of 1973, in a desperate move after his refusal to produce the tape recordings, he abolished the office of the

⁹⁵ Stem, Laurence, and Haynes Johnson. “3 Top Nixon Aides, Kleindienst Out; President Accepts Full Responsibility; Richardson Will Conduct New Probe.” Washington Post. 1 May 1973: A1.

special prosecutor and assigned to the Justice Department the entire responsibility for investigating the Watergate affair.⁹⁶ In November, during a televised interview with 400 Associated Press managing editors, he declared: "I am not a crook. ... I earned every cent. And in all my years of public life I have never obstructed justice." He acknowledged that he had failed in keeping a close eye on his subordinates during campaign activities.⁹⁷

In the end, his decision to resign was a result of public pressure. He did not admit to criminal or corrupt activity. Because he left office, he did not have the opportunity that other politicians have had to attempt to redeem himself in the eyes of the public after the novelty of the scandal dissipated. For instance, President Grant, in an effort to make amends with the public after corruption had surfaced during his presidency, agreed to the adoption of statutory ethics rules. Nixon's premature resignation did not leave him with enough time to devise an institutional response to the events that tarred his presidency.

Both Democrat and Republican representatives in the United States Congress deplored the events of Watergate. The House Judiciary Committee recommended that President Nixon be impeached and removed from office on the grounds that he obstructed the investigation of the Watergate break-in and attempted to hide other illegal activities. This was the first such impeachment recommendation in the United States in more than a century. Although there was some support for Nixon among Republicans, 6

⁹⁶ Kilpatrick, Carroll. "Nixon Forces Firing of Cox; Richardson, Ruckelshaus Quit." Washington Post. 21 October 1973: A1.

⁹⁷ Kilpatrick, Carroll. "Nixon Tells Editors, 'I'm Not a Crook.'" Washington Post. 18 November 1973.

of the 17 Republican members on the Judiciary Committee recommended Nixon's impeachment.⁹⁸

The Watergate affair was one of epic proportions. The activities that comprised it are not typical of political actors in the United States, and Democrats and Republicans alike were outraged as the scandal unfolded. Therefore, although the Watergate affair is infamous, and has had enormous implications for the development of the American ethical regime, it is not a reliable indicator of American politicians' ethical standards. It should not be assumed that the actions of those implicated in Watergate were condoned by politicians and therefore "allowed" to occur. While the severity of the incident was considerable, and its reach extended into the highest levels of the American government, it was "contained" in the sense that the behaviours it encompassed were not common on the political scene.

How did the public respond to the scandal?

It seems logical to assume that the Watergate scandal would have had a deep and lasting effect on public attitudes toward both the Nixon administration in particular and government and politics in general. Certainly, the scandal's effect on the Nixon administration was undeniable. Its popularity declined as the Watergate investigations continued. As the public became more informed about high-ranking officials' involvement in the Watergate scandal, public opinion polls began to indicate a drop in support for the Nixon administration.⁹⁹ When Nixon announced his resignation in August of 1974, Americans were generally united in agreeing that this was a necessary

⁹⁸ Lyons, Richard, and William Chapman. "Judiciary Committee Approves Article to Impeach President Nixon, 27 to 11." Washington Post. 28 July 1974.

⁹⁹ Stem and Johnson 1.

measure. There was a widespread consensus among Americans that Nixon was guilty of obstructing justice in the Watergate affair.¹⁰⁰

The task of evaluating the effect of political scandal on levels of public trust in general, as opposed to a specific politician or government, is especially daunting. If levels of public trust are slipping, it is very difficult to isolate political corruption as an independent variable, and therefore, to know if changes in voters' attitudes and voting behaviour are a result of a scandal or of other factors. Neither Canada nor the United Kingdom has had a scandal of Watergate proportions, but levels of public trust in government are declining in these countries as well as in the United States. However, this is not to say that corruption, or the perception of it, has no significant effect on levels of public trust.

American political scientist Arthur Miller explains that because very few researchers have tackled this issue, there is a serious void in the scholarship on the repercussions of politicians' immoral behaviour. In his own research on the effect of the Bill Clinton/Monica Lewinsky scandal, he found that while the episode tarnished the Clinton presidency, it did not undermine public confidence in the government in a general sense.¹⁰¹ In terms of the Watergate scandal in particular, there is evidence to suggest that it resonated with the American public in a more profound way than other scandals did. MacKenzie and Hafken argue that the Watergate episode intensified feelings of public distrust that had been fermenting for years. The result was a "post-Watergate" mentality comprised of cynicism and suspicion toward politicians.

¹⁰⁰ Lang, G.E., and Kurt Lang. "Polling on Watergate: The Battle for Public Opinion." The Public Opinion Quarterly. 44 (1980): 530-531.

¹⁰¹ Miller, Arthur. "Sex, Politics, and Public Opinion: What Political Scientists Really Learned from the Clinton-Lewinsky Scandal." Political Science and Politics, 32.4 (1999): 728.

What was the role of the media in shaping public opinion?

Newspaper, radio, and television media brought the Watergate scandal to the American people and played a part in shaping their interpretation of it. According to Lang and Lang, each of these media performed a different function during Watergate. Television gave political actors the opportunity to communicate directly with the public at large and to exchange barbs amongst each other with the knowledge that the public was listening. Lang and Lang contend that television is most effective at drawing attention to an issue rather than providing significant factual information about it.¹⁰² The print media picked up where television left off in this regard, as both *The New York Times* and the *Washington Post* ran edited transcripts of the Oval Office recordings. Not to be shut out of the coverage of Nixon's recordings, CBS televised a special in which its top reporters read from the transcripts of the tapes. The effect of the media was to keep the scandal alive, to keep the public informed, and to prevent Nixon from putting his own spin on the events that comprised Watergate. Further, Lang and Lang argue that through extensive coverage of the Watergate scandal and by raising the possibility of impeachment, the media "conditioned" the public for Nixon's eventual fate. Through this exposure, people came to accept and support the idea that Nixon could be impeached from presidential office.¹⁰³

¹⁰² Ibid 533.

¹⁰³ Ibid 532.

Watergate's Implications for the American Ethics Regime

As Mackenzie and Hafken point out, “Watergate” consisted of a number of ethical transgressions, including campaign finance law violations, theft, and obstruction of justice. In the aftermath of the scandal, politicians, journalists, and citizens turned their attention to devising a scheme of government ethics that would prevent the recurrence of political corruption. Mackenzie and Hafken describe the “post-Watergate mentality” that existed following Nixon’s resignation in 1974. This paradigm was based on several basic assumptions. First, public officials are “suspect.” Second, laws must protect against all conceivable ethical transgressions. Protections against obvious misdeeds are not enough. Third, law is the only reliable protection against corruption. Fourth, to facilitate a high standard of ethics among public officials, a group of ethics personnel must be created to oversee necessary changes. This mentality underscored the creation of the *Ethics in Government Act* of 1978. Other developments that preceded Watergate helped to foster the “post-Watergate mentality” as well. For instance, long periods with a divided government, in which different parties controlled the executive and legislative branches, meant that allegations of corruption became a frequent political tool. Efforts to strengthen ethics regulations had been set in motion long before the Watergate scandal, but this affair forced the issue of government ethics to the top of politicians’ priority list.¹⁰⁴

The *Ethics in Government Act* (1978)

¹⁰⁴ Mackenzie and Hafken 31-35.

President Jimmy Carter signed the *Ethics in Government Act* in October of 1978 in response to “problems that developed in the highest levels of government in the 1970s.”¹⁰⁵ The legislation’s major elements were as follows. First, it required that the president, vice president, senior executive branch officials, Members of Congress, federal judges, and each filer’s dependent and children make an annual public financial disclosure. Second, it created restrictions on the post-government activities of federal employees. Third, it established the means to appoint a special prosecutor to investigate and prosecute criminal allegations that arise against the president and his vice president and cabinet. Fourth, it created the Office of Government Ethics (OGE) to formulate ethics rules for federal government employees, conduct ethics training workshops, and monitor compliance with rules.¹⁰⁶

This statute is the foundation of the American ethics regime. Since 1978, the statute has been revised in response to criticisms about some of its original contents. For instance, the legislation’s two-year ban on federal employees’ representing their private employers before the government was scaled back to apply only to those matters that the employee was involved in directly while in government. In 1982, the “special prosecutor” position was changed to the “independent counsel”. In 1983, the OGE was given its own budget line. Also, Congress changed the law to limit the outside employment earnings of senior White House aides and altered some of the financial disclosure details. As the years have progressed, the scope of authority of both the independent counsel and the OGE has been expanded.

¹⁰⁵ “Carter Signs Government-Wide Ethics Bill.” 1978 Congressional Quarterly Almanac. Washington: Congressional Quarterly, 1979: 835.

¹⁰⁶ “Ethics in Government Act 1978.” P.L. 95-521.

President George H. Bush, via Executive Order 12674, banned all outside earned income by presidential appointees. Also, he made a number of suggestions to Congress that were incorporated in the *Ethics Reform Act* of 1989. The statute expanded financial disclosure requirements, tightened gift acceptance rules and restrictions on travel subsidies, and broadened post-employment restrictions on federal employees. Upon President Clinton's election in 1992, he asked all of his nominees to sign a contract in which they pledged to refrain from lobbying their former federal government agencies for up to five years after ceasing government employment.¹⁰⁷

Over the past four decades, each American president has made his own contribution to the ethics regime. While some presidents, such as John Kennedy, created significant reforms, others merely built onto an existing trend by strengthening or broadening regulations that existed already. In some cases, intense public pressure after the revelation of political scandal acted as the major catalyst for changes to the ethics regime. For instance, the *Ethics in Government Act* of 1978 was created in the aftermath of the Watergate scandal. However, for the most part, changes to ethics regulations have stemmed from an overarching concern for ethical governance among citizens and politicians that existed prior to the Watergate scandal. Often, allegations of political corruption were used as political weapons in partisan warfare. Neither party wanted to seem less committed to ethics than the other, so a long-standing game of one-upmanship ensued whereby every president has felt the need to demonstrate a commitment to facilitating the highest ethical standards. As a result, ethics rules are revised regularly, but there have been no major substantive changes in recent years.

¹⁰⁷ Mackenzie and Hafken 47-51.

In the following section, I describe briefly the components of the current American ethics regime. I refer only to those rules in place for federal employees and for Members of Congress, but there are many regulations at the state and municipal levels. Ethics laws for federal employees and Members of Congress fall into specific categories: conflict of interest guidelines; public financial disclosure requirements; regulations on outside earned income, activities, and gifts; nepotism; and the use of government property and information.

The American Ethics Regime: 2004

Federal ethics laws in the United States include criminal statutes, the *Ethics in Government Act*, as well as other statutes and amendments. I discuss each of the categories of rules below.

1. Conflict of Interest

According to 18 U.S.C., it is illegal to give, offer, or promise anything of value to a public official with the intention of influencing the public official in any official act. It is illegal for a public official to demand, seek, receive, or accept anything of value in return for being influenced in any official act. This statute applies to Members of Congress and to federal government employees. It states that officers and employees of the executive branch of government must not attempt to represent a private party before a United States department or agency on matters in which the person participated substantially as a federal employee. The statute includes restrictions on Members of Congress and employees of the legislative branch from representing private interests before the United States government for a period after their public employment is

terminated. It prohibits public officers and employees from participating in decisions in which they have a personal financial interest. Also, it penalizes government officials and employees who accept money from private sources in exchange for services that fall within the realm of their public duties.¹⁰⁸

2. Public disclosure requirements

The *Ethics in Government Act* requires that within thirty days of becoming a public officer or employee, or a candidate for public office, an individual must file a public financial report detailing his or her financial interests. Financial disclosure is required of filers' spouses and dependent children as well. The statute provides that business interests must be placed in blind trusts so as to avoid conflicts of interest. Once the reports are filed, it is the responsibility of designated ethics agency officials, as part of the OGE, to review them.¹⁰⁹

3. Outside earned income

Outside earned income refers to money earned for private activities; it does not include extra compensation for the performance of public duties, which is forbidden under conflict of interest guidelines. During the 1960s, regulations were put in place to restrict the types of private employment in which public employees could engage. In 1989, President George Bush banned all forms of outside earned income for full-time

¹⁰⁸ "Conflicts of Interest." 18 U.S.C. United States Office of Government Ethics. 1 December 2004. <http://www.usoge.gov/pages/laws_regs_fedreg_stats/comp_fed_ethics_laws.pdf>.

¹⁰⁹ Ethics in Government Act. United States Office of Government Ethics. 1 December 2004. <http://www.usoge.gov/pages/laws_regs_fedreg_stats/comp_fed_ethics_laws.pdf>.

presidential appointees. The *Ethics Reform Act* of 1989 limited the outside earned income of other non-career officials.

There are limitations on the outside activities in which Members of Congress and non-career officials and employees can participate. The following activities are prohibited by 5 U.S.C. 502: receiving compensation for participating in a firm or organization which provides professional services involving a fiduciary relationship; permitting such a firm to use the public official's name; receiving compensation for practicing a profession involving a fiduciary relationship; serving for compensation as a member of a board or organization; and receiving compensation for teaching.¹¹⁰

4. *Gifts*

Members of Congress, as well as officers and employees of the judicial, legislative, and executive branches, are prohibited from soliciting or accepting anything of value from a person who is seeking action from or doing business with the person's employing agency or department, or any person who stands to gain from how a public official performs her duties. Public officials must not accept gifts in return for being influenced in the performance of duty. The statute allows for the acceptance of gifts of minimal value tendered or received as a souvenir or gesture of courtesy.¹¹¹

5. *Nepotism*

Public officials, including the President, Members of Congress, and other government employees, are prohibited from appointing, promoting, or advocating the

¹¹⁰ 5 U.S.C. 502.

¹¹¹ 5 U.S.C. 7353, 7342.

advancement of a relative to a civilian position in the agency in which he is serving. This statute applies to an official's immediate family, as well as uncles, aunts, cousins, half-siblings, and step-children.¹¹²

6. *Government Property and Information*

Regulations prohibit any public official from embezzling, stealing, or taking for personal use anything of value belonging to the United States or a U.S. agency or department, whether it is a record, a sum of money, a voucher, or any other thing of value. 5 U.S.C. 798 makes it illegal to knowingly and willingly communicate, furnish, transmit, publish, or make available to an unauthorized person any classified or confidential information.¹¹³

The Office of Government Ethics (OGE), which was established by the *Ethics in Government Act* in 1978, enforces the ethics regime of the executive branch of the United States government. The purpose of the OGE is to work to prevent conflicts of interest on the part of government employees and to resolve the conflicts that do occur. It aims to foster high ethical standards among federal employees and to facilitate public trust in the integrity of the political system.

The OGE is lead by a Director who the president appoints to a five-year term. The OGE is divided into five offices and each of them plays a role in fulfilling the OGE's mandate. *The Office of the Director* provides guidance to the executive ethics branch program and ensures that the OGE fulfills its Congressional and Presidential mandates.

¹¹² 5 U.S.C. 3110.

¹¹³ 5 U.S.C. 798.

The Office of Government Relations and Special Projects provides liaison to the Office of Management and Budget and to the Congress and coordinates the Office's support of U.S. efforts in promoting international ethics and anti-corruption measures. The *Office of General Counsel and Legal Policy* works to maintain a uniform legal ethics framework for government employees. This office develops policies, interprets laws and rules, assists agencies in policy implementation, and recommends changes to statutes. The *Office of Agency Programs* monitors and provides services to federal executive branch agency programs. It provides education and training on ethics and holds annual ethics conferences for government employees. Finally, the *Office of Administration and Information Management* provides support to OGE operating programs in the form of technical assistance, web graphics, facilities and property management, travel, and the printing of materials.¹¹⁴

In addition to the aforementioned ethics laws that apply to federal employees and to Members of Congress, the House of Representatives and the Senate each has its own ethical code of conduct. I discuss each of these briefly here.

Ethics Manual, United States House of Representatives

The Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives is a lengthy document that includes both broad ethical principles and specific rules for conduct. The first of nine chapters is entitled "General Ethical Standards." It states that those who work in the service of the government should do the following: be loyal to the highest moral principles; uphold the laws and Constitution of

¹¹⁴ "About OGE." The United States Office of Government Ethics. 2 December 2004. <http://www.usoge.gov/pages/about_oge/about_oge.html>.

the United States; give a “full day’s labour for a full day’s pay”; expose corruption when they find it; always look for a more economical and efficient way to accomplish tasks; never use privileged information for personal gain; engage in no business with the government; and be mindful that a public office is a “public trust”.

The remaining chapters deal with specific rules for conduct. Chapter Two addresses Members’ acceptance and disclosure of gifts. The *Ethics Reform Act (1989)* prohibits Members of Congress from accepting gifts of value. Members are not to accept gifts in exchange for political favours. In accepting token gifts of appreciation or courtesy, Members must avoid any appearance of impropriety. Chapter Three covers outside employment and income. In order to avoid conflicts of interest from occurring between Members’ public duties and private or outside employment, they are subject to the following rules. All Members, officers, and employees are prohibited from: accepting honoraria for speeches and appearances; representing others in a private capacity before the government; accepting compensation from a foreign government; and attempting to benefit personally from one’s official position. Members of the House are prohibited from contracting with the federal government and practicing in the United States Claims Court or the Court of Appeals for the Federal Circuit. Members of Congress and employees earning at least 120% of the GS-15 basic rate of pay (\$77,080 in 1992) must file annual disclosure forms and may not receive more than 15% of a House Member’s salary in the form of outside income. They may not lobby former colleagues nor represent foreign governments for at least one year after leaving office.

Chapter four of the House Ethics Manual covers the rules for financial disclosure for Members and employees. The disclosure of income, assets, and liabilities is the only

measure required for Members and employees in terms of the avoidance of conflicts of interest. They are not required to divest themselves of any interests upon assuming public office and Members are not required to abstain from votes affecting their personal interests. The manual states: “public financial disclosure provides a means of monitoring and deterring conflicts.”¹¹⁵ Members and candidates for the House of Representatives must file financial disclosure, as must House officers, principal assistants to Members, and employees earning at least 120% of the Federal GS-15 base salary.

Chapter Five deals with staff rights and duties, and covers such things as hiring practices and salaries for government employees. Chapter Six addresses the rules for using official allowances. Chapter Seven outlines the rules for Members to follow when lobbying an administrative agency on a constituent’s behalf. For instance, a Member is permitted to: request information, arrange for appointments, urge the prompt consideration of an important matter, express judgment on a matter, and ask for reconsideration on a matter. In communicating with a Federal agency on behalf of a constituent, a Member of Congress must not exert undue or improper influence or accept money in exchange for coming to the aid of the constituent. Chapter Eight outlines the rules regarding appropriate campaign activity, such as rules regarding contributions, the appropriate use of government letterhead, and campaign work by House employees. Chapter Nine deals with Members’ involvement with “official and unofficial organizations.” Members are prohibited from using public funds to help private organizations and from using private funds to finance their work as a Member of Congress. Members are permitted to participate in private organizations and are

¹¹⁵ “Chapter Four: Financial Disclosure.” Ethics Manual Code of Ethics for Government Service. April 2005. United States House of Representatives. <<http://www.house.gov/ethics/ethicschap4.html>>.

permitted to lend their names to causes. However, they must not use public funds for private endeavours, and vice versa.¹¹⁶

Ethics Manual, United States Senate

According to the Ethics Manual for the United States Senate, Members are required to make annual disclosure of their honoraria, assets, income, liabilities, gifts, travel reimbursements, outside positions, and agreements. Also, they must disclose similar financial information about their spouses and dependent children. Anyone who knowingly fails to comply with disclosure rules is subject to a \$200 fine and civil and criminal penalties for willful failure to make disclosure. Senators must disclose all gifts received as a result of their official position. Senators are generally forbidden from accepting travel subsidies from private sources and are forbidden from accepting honoraria for speeches and appearances. All outside employment must be approved by a supervising Senator and must not conflict with official duties. Outside income is limited to 15% of a Senator's salary. Senators are prohibited from accepting compensation from any source as a reward for improper influence on their behalf.¹¹⁷

The United States has been using statutory ethics regulations, as well as non-statutory codes of conduct, for many years. The codes of conduct in use in the House of Representatives and the Senate are non-statutory, but their contents overlap extensively with the statutory regulations that comprise the *Ethics in Government Act*. The ethics regimes of other countries, such as Canada and the United Kingdom, bear strong

¹¹⁶ Ibid.

¹¹⁷ "An Overview of the Senate Code of Conduct and Related Laws." July 2004. United States Senate Ethics Committee. <<http://ethics.senate.gov/>>.

resemblance to the path pioneered by the American regime. I discuss the United Kingdom ethics regime in the next chapter.

Chapter Five

The British Political Ethics Regime

Until the last decade, British Members of Parliament were not subject to a written code of ethical conduct. It was assumed that MPs were equipped to distinguish between right and wrong in situations with an ethical dimension. In addition to their own personal judgment, MPs facing ethical dilemmas could refer to the largely “informal code” of conduct that had developed over the years, consisting of a collection of recommendations, resolutions, and rulings.¹¹⁸

Despite their historical reliance on informal rules of conduct, in the last decade British politicians have succumbed to pressures for written guidelines for parliamentarians. In 1994, Prime Minister John Major established the Committee on Standards in Public Life, which he envisioned as an “ethical workshop called in to do running repairs.”¹¹⁹ On the committee’s recommendation, the Office of the Parliamentary Commissioner for Standards was set up in 1995 to provide MPs with advice and training on how to deal with professional ethics issues. The Commissioner’s Office was also assigned the task of helping MPs to interpret a new *Code of Conduct* that was to be created for them.¹²⁰ In July of 1996, the House of Commons approved the *Code of Conduct for Members of Parliament* as well as a *Guide to the Rules relating to the Conduct of Members*. The House of Commons made minor revisions to the *Code* and *Guide* in 2002.

¹¹⁸ Mancuso 171.

¹¹⁹ “Committee on Standards in Public Life.” 30 December 2004. United Kingdom Government. <<http://www.public-standards.gov.uk/>>.

¹²⁰ Code of Conduct. December 2004. United Kingdom Parliament. <<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstand/841/84101.htm>>.

In this chapter, I explore the British political ethics regime. First, I discuss the British tradition of relying on informal norms and understandings to guide parliamentarians' ethical conduct. In the absence of written rules, personal judgment and socialization acted as primary influences on MPs in terms of how they responded to ethical dilemmas. Then, I discuss the ethics regime that is in place currently for British MPs. Finally, I review the rules of conduct that are in place for cabinet ministers. While the code for MPs is a recent development, cabinet ministers have been subject to written codes of conduct for several years.

Political Ethics in the United Kingdom: The Traditional Approach

Before the recent creation of the *Code of Conduct for Members of Parliament*, representatives relied on their own judgment to sort through ethical situations. It was assumed that MPs, having been chosen above others to serve as representatives in Parliament, must have distinctive qualities that set them apart from average citizens. In particular, it was assumed that elected representatives were uniquely capable of identifying the appropriate course of action in ethically "murky" circumstances. Further, it was assumed that since MPs would have undergone similar socialization experiences upon becoming public officials, they would hold in common some basic assumptions about what constitutes ethical behaviour. In the absence of written rules, it was expected that this set of informal norms would serve as a guide for MPs when they confronted ethical questions in the course of public duty.¹²¹

In any democratic system, it would seem logical to suppose that representatives who want to be re-elected are well advised to uphold the highest standards of political

¹²¹ Mancuso 17-18.

ethics while in office. The threat of electoral defeat as the punishment of corrupt behaviour might be enough to deter some politicians from acting unethically. However, American research indicates that American politicians who have been accused of corruption are often re-elected, regardless of whether the allegations are substantiated or refuted.¹²² If this is the case, electoral retribution is not likely to be a significant deterrent against corruption.

Incidentally, the assumption that similar experiences among Members of Parliament would produce a consensus on ethical standards has been proven to be false. After conducting interviews with 100 Members of the British House of Commons, Maureen Mancuso found much disagreement among MPs in their understanding of ethical standards. Given the differences that exist between Members of Parliament in terms of culture, age, sex, and socioeconomic background, it is not surprising to find that they interpreted unwritten norms differently. Also, because there were no firm sanctions or punishments in existence to enforce the boundaries of ethical behaviour, Members of Parliament were sometimes unclear about whether or not a specific action constituted a breach of the rules.¹²³

Although not monitored by a written code of conduct per se, MPs have been expected to file an annual disclosure of their financial interests since 1974. The *Register of Members' Interests* is published annually and is available to the public. The main objective of the *Register* is as follows:

to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her

¹²² Peters, John G., and Susan Welch. "The Effects of Charges of Corruption on Voting Behaviour in Congressional Elections." *The American Political Science Review*. 74.3 (1980): 696-708.

¹²³ Mancuso 22-29.

actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament.¹²⁴

The *Register* requires that MPs disclose the *sources* of their paid outside employment, and since 1995 they have been required to register the *amounts* of remuneration for any relationships in which the MP provides services in his or her capacity as an elected representative in the House of Commons. MPs are prohibited from lobbying on behalf of private groups or individuals from whom they receive any form of payment in excess of 1% of their parliamentary salary, if such lobbying is meant to extract a benefit exclusive to the body that is paying the Member. The *Register* states that Members are not required to register gifts or benefits that are known to be available to all MPs, such as British Airports Authority Car Park passes, First Great Eastern Trains stations car park passes, British Airways privilege cards, and other similar benefits. It is assumed that since these benefits are not substantial and are available to all MPs, they will not unduly influence an MP's judgment as a representative in the House of Commons.

The categories of registrable interests are as follows. The threshold for a registrable interest is anything of a value that exceeds 1% of an MP's salary, which is 55000 pounds.

1. remunerated directorships held in public or private companies;
2. remunerated employment;
3. the names of clients for whom an MP provides services which arise out of his membership in the House;
4. sponsorship or financial or material support, including any political donation made at the constituency level in excess of 1000 pounds;
5. gifts and benefits received by a Member or a Member's spouse in excess of 550 pounds in value that are connected to membership in the House;
6. overseas visits that are not paid for in their entirety by the Member or the United Kingdom;

¹²⁴ "Register of Members' Interests." January 2004. The United Kingdom Parliament. <<http://www.publications.parliament.uk/pa/cm/cmregmem/041203/memi01.htm>>.

7. overseas benefits and gifts;
8. land and property worth more than 55 000 pounds, excluding the Member's residential home;
9. registrable shareholdings in public or private companies that exceed 15% of the issued share capital or a value of 55 000 pounds;
10. miscellaneous and unremunerated interests; this is a discretionary section for the registration of interests that do not fall within other categories. Members need not register unremunerated charitable and voluntary commitments.¹²⁵

The *Register* states that complaints about any Member who fails to disclose a registrable interest are to be made to the Parliamentary Commissioner for Standards. It also provides a rectification procedure to be followed by any MP who fails to disclose a minor registrable interest. However, the *Register* contains no mention of any punitive measures that will be taken against an MP who fails to complete the *Register of Members Interest* form or who fails to disclose a registrable interest of a substantial amount.¹²⁶

As I explain later, the *Code of Conduct for Members of Parliament* and the *Guide to the Rules for the Conduct of Members* require that MPs make a financial disclosure of their relevant interests under the *Register of Members Interests*. Therefore, neglecting to register interests would constitute a violation of the *Code of Conduct*. Suspected violations of the code are to be reported to the Parliamentary Commissioner for Standards, who processes and responds to such complaints. It is possible for MPs who violate the code eventually to meet with punishment in the form of withheld salary or the censure of Parliament. I discuss the issue of punishment for *Code of Conduct* violations in more detail later.

Mancuso notes that these financial disclosure requirements are an example of the “declaration and avoidance” approach to ethics regulation rather than the “restriction and

¹²⁵ Ibid.

¹²⁶ Ibid.

avoidance” approach. The former assumes that the public declaration of private interests will deter elected officials from allowing their private interests to affect their public decisions. As Mancuso states, “virtually anything is permitted as long as it is made public.”¹²⁷ This approach is effective only if the public, the media, and/or opposition parties pay attention to the information disclosed. If they do not, conflict of interest situations, whether real or potential, will not be detected and MPs might not be sufficiently deterred from using public office for the purpose of private gain.

While the “declaration and avoidance” approach assumes that the threat of exposure will deter a politician from engaging in a conflict of interest situation, the “restriction and avoidance” approach seeks to eliminate opportunities for conflict of interest situations even before they arise. Rather than require that a public official disclose private interests, such as a directorship of a company, the “restriction and avoidance” approach would prohibit the official from holding such a directorship in the first place while in public office. That way, the opportunity for the official to use public office for personal gain does not even arise.

In light of the fact that other Western countries, such as the United States, Germany, and Australia, have used written codes of conduct for legislators for some time, Britain’s idleness is somewhat surprising. However, Mancuso offers several reasons for Britain’s reliance on more informal ethical rules and norms to cultivate ethical behaviour among MPs. First, she refers to Sandra Williams’ argument that according to Britain’s “aristocratic” political culture, membership in Parliament is seen as an “honorable service” performed by “honorable gentlemen” who have “character, integrity, and

¹²⁷ Mancuso 16.

discretion.”¹²⁸ MPs internalize these expectations and strive to uphold ethical standards so as not to disappoint their colleagues and the public. Second, the British tradition of parliamentary supremacy holds that the House of Commons is the only legitimate adjudicator of the actions and conduct of its members. Therefore, a statutory code of conduct that would allow a court or Officer of the House to pass judgment on MPs’ conduct would be seen as incongruent with the notion of parliamentary supremacy.¹²⁹ Third, Mancuso asserts that because scandal has been an infrequent occurrence in Britain as compared to the United States, British politicians have been under less pressure to adopt written codes of conduct.¹³⁰ As I discuss in the following section, however, public concern with the ethical behaviour of elected officials has intensified in recent years to the point that the British government has adopted written ethical guidelines for its MPs.

The Contemporary Approach to Political Ethics Regulation

The *Code of Conduct for Members of Parliament* came into existence as a result of the recommendations of the Committee for Standards on Public Life. In 1994, Prime Minister John Major set up this committee with the following terms of reference:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life. For these purposes, public office holder should include: Ministers, civil servants and advisors; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities.¹³¹

¹²⁸ Mancuso 18.

¹²⁹ Ibid 19.

¹³⁰ Ibid 170.

¹³¹ “Hansard of the British House of Commons.” 25 October 1994.

<<http://www.publications.parliament.uk/pa/cm199394/cmhansrd/1994-10-25/Debate-1.html>>.

Prime Minister Tony Blair extended the terms of reference in 1997 to include the review of issues relating to the funding of political parties.¹³²

The Right Honorable The Lord Nolan, the first chairman of the Committee on Standards in Public Life, said that the major impetus leading up to the creation of the committee was concern over specific allegations of unethical conduct in several well-publicized cases. The *Register of Members' Interests* forbids MPs from lobbying on behalf of private groups in exchange for payment that exceeds 1% of their parliamentary salary. However, in 1995, Lord Nolan discovered the “cash for questions” problem. He learned that 30% of all MPs were violating these rules. Over 200 MPs were accepting payments in exchange for giving advice to private groups and asking questions on their behalf in the House of Commons.¹³³ In addition to this problem, Lord Nolan was aware of a broad concern on the part of the general public over standards of political ethics.¹³⁴

Since its creation, the *Committee for Standards on Public Life* has played a very active role in shaping the British government's approach to political ethics regulation. By April of 2003, the committee had made over 300 recommendations to the British Parliament and approximately 80% of them have been accepted or implemented. Some of the committee's major recommendations that have been put into practice include: the *Seven Principles of Public Life*, which have been incorporated into the *Code of Conduct for Members of Parliament*; the creation of the office of the Parliamentary Commissioner for Standards; a ban on paid advocacy in the House of Commons; the registration of

¹³² Hansard of the British House of Commons. 12 November 1997. <http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo971112/debtext/71112-20.htm#71112-20_sbhd0>.

¹³³ Dixon, Patrick. “Buying and Selling MPs on a Large Scale.” *The Truth About Westminster*. Hodder: 1996. 35.

¹³⁴ The Lord Nolan. “Foreword to the report for 1994 to 1997.” February 1999. The Committee for Standards on Public Life. <http://www.public-standards.gov.uk/annual_reports/1994_98/forewor.htm>.

MPs' private financial interests; written codes of conduct for MPs, Lords, and Special Advisors; legislation on whistle blowing in the *Public Interest Disclosure Act 1998*; the establishment of the office of the Commissioner for Public Appointments; and the creation of the Electoral Commission to oversee rules on donations to political parties.¹³⁵

In its second report, the committee outlined a general approach to government and organizational ethics, the “elements of best practice” approach, which specifies standards to be observed in the areas of appointments, openness, codes of conduct, and whistle blowing. The committee’s recommendations were meant to be utilized by local governing bodies and boards as well as by Parliament. With regard to appointments, the committee argued for a publicly accessible appointments process, defined terms of appointment, and clear job descriptions. To encourage openness and transparency, the committee recommended publicly available meeting minutes and audit reports and the more frequent use of public consultation processes. The committee recommended the use of codes of conduct so that a governing body or organization could articulate effectively its ethical standards, its obligations towards its citizens or clients, and its approach for handling complaints about ethical behaviour. On whistle blowing, the committee recommended that bodies state clearly a zero-tolerance policy regarding malpractice. It suggested that bodies foster a work environment that is open to the raising of concerns about ethical conduct. Finally, the committee argued that governing bodies and organizations should state clearly the penalties both for unethical behaviour and for making false accusations of unethical conduct against coworkers.¹³⁶

¹³⁵ “Achievements.” 12 January 2005. The Committee for Standards on Public Life. <www.public-standards.gov.uk/>.

¹³⁶ Ibid.

The committee's approach to ethical governance encompasses both broad ethical principles and detailed rules. The *Code of Conduct for Members of Parliament*, together with the *Guide to the Rules*, is a perfect example of the committee's approach to government and organizational ethics. The *Code of Conduct* encourages MPs to respect the following "principles of public life", as recommended by the committee: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.¹³⁷ The *Guide to the Rules* includes very specific instructions on how MPs should interpret the code of conduct and the *Register of Members' Interests*.

This two-pronged approach recognizes the importance of providing MPs and public officials with information on both general ethical standards and specific rules of conduct. I argue that in order to nurture the highest ethical standards, both the general and the specific approaches must be used. Principles such as "openness", "accountability", and "honesty" give an indication of the government's ideal ethical standards, while detailed instructions such as financial disclosure requirements provide officials with information on how to work toward those ideals. The "ideal" situation is a government or organization that is completely free of corruption. This is an unreachable goal, but it must be embraced nonetheless in order to encourage ethical behaviour. If rules for conduct are not interpreted in the context of overarching ethical principles, they tend to encourage a "minimalist" approach to ethics. This means that officials can meet the standard for what constitutes "ethical behaviour" by simply complying with the minimum requirements as set out by written rules.

¹³⁷ "The Code of Conduct for Members of Parliament." 19 July 1995. The United Kingdom Parliament. <<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstand/841/84102.htm>>.

The Code of Conduct for Members of Parliament

The *Committee for Standards on Public Life* drafted the Code of Conduct for Members of Parliament, which the House of Commons adopted in July of 1996 pursuant to the *Resolution of the House of July 19, 1995*. The code describes its purpose as being: “to assist Members in the discharge of their obligations to the House, their constituents and the public at large.”¹³⁸ According to the committee, the code has three main objectives. The first is to restore public confidence in the integrity of political actors and institutions. The second is to reduce the opportunity for conflicts of interest to occur. The third is to provide a “yardstick” against which to judge complaints that MPs have breached the rules.¹³⁹ In other words, the code provides a tangible account of what constitutes ethical behaviour. The code itself is very brief. It requires that MPs adhere to the following seven principles in their conduct as public office holders:

1. Selflessness: decisions should be taken with priority given to the public interest, not the official’s private interest;
2. Integrity: public officials should not place themselves under any financial obligation to an outside individual or group that might influence their conduct as a public official;
3. Objectivity: public officials must make choices regarding appointments, the awarding of contracts, and the like on the basis of merit;
4. Accountability: public office holders are accountable to the public for their decisions and must submit themselves to whatever scrutiny is appropriate in the context of public office;
5. Openness: public office holders must be open about their decisions and actions and must not withhold information from the public unless the “wider public interest” requires such discretion;
6. Honesty: public office holders must declare all private interests relating to their public office and take all necessary steps to avoid conflicts of interest;
7. Leadership: public office holders should support these principles via leadership through example.¹⁴⁰

¹³⁸ Ibid.

¹³⁹ “Consultation Paper: Review of the Code of Conduct.” July 2004. Parliamentary Commissioner for Standards. < <http://www.parliament.uk/documents/upload/PCFSConsultationPaper.pdf>>.

¹⁴⁰ The Code of Conduct for Members of Parliament.

These seven basic principles define the ethical standards which MPs are asked to meet. In general terms, the “thrust” of the code is that MPs must be open and honest in their dealings as public officials while taking care to avoid situations of undue influence and conflict of interest. By following these general rules, MPs encourage their colleagues to do the same. If it is effective, a code of conduct will help to create a professional environment in which unethical behaviour is discouraged and deterred.

By setting out an ideal standard that MPs must work toward, the British ethical regime avoids the trap of “minimalist ethics” that I discussed earlier. However, the code’s explanation of the seven principles is brief and not very specific, which means that different MPs might interpret and apply the principles differently. Therefore, there is a need for a detailed explanation of what the principles mean in the context of an MP’s duties. The *Code of Conduct*, together with the *Guide to the Rules*, provides these instructions for MPs. After outlining the seven basic principles, the code contains a few clauses aimed at clarifying the expectations of MPs. Specifically, it states that conflicts of interest must be avoided whenever possible and should always be resolved in the public interest. It forbids the acceptance of bribes or any form of payment by an MP in exchange for political influence in favor of a private individual or group. It requires that MPs disclose all relevant interests in the *Register of Members’ Interests*. As well, it reminds MPs that any information that they receive in confidence as public representatives should not be used for the purpose of personal financial gain.

The *Guide to the Rules* is an attachment to the *Code of Conduct*. Its purpose is to help MPs to understand how to disclose their financial interests as per the requirements of the *Register of Members’ Interest* and how to avoid conflicts of interest. Although it

might seem that declaring one's relevant interests is a straightforward process, there are some requirements that might not be understood by all MPs if they are not stated specifically. For instance, MPs are required to disclose not only present interests, but also any relevant past interests as well as relevant *potential* interests that might arise in the future could create a conflict of interest situation.

In addition to the requirement that interests be disclosed in the *Register*, it has been the custom in the U.K. for relevant interests to be declared verbally in the House of Commons. MPs are expected to announce their interest in a given area "at an appropriate time" in the proceedings, that is, before debate on the issue gets underway. The *Guide to the Rules* informs MPs that the duty to make a verbal disclosure of interests extends to all correspondence with ministers and public officials, not just parliamentary debates. The *Guide* states that such disclosure must be made in committee meetings, informal conversations and gatherings, and in any type of conversation or communication.

The *Guide to the Rules* states clearly that paid advocacy in the House of Commons is prohibited. No MP is to take payment in exchange for any form of lobbying in the House of Commons on behalf of an individual or group. A Member must be independent of private interests and influences and must be free to act in defense of the general public interest at all times.¹⁴¹

Implementation and Enforcement

The House of Commons created the Office of the Parliamentary Commissioner for Standards in 1995 in light of recommendations made by the Committee for Standards

¹⁴¹ "The Guide to the Rules." 19 July 2005. The United Kingdom Parliament. <www.publications.parliament.uk>.

on Public Life. The Commissioner is an Officer of the House and is appointed by a resolution of the House for a six-year term. The position is funded by the House of Commons. The duties of the Commissioner include: overseeing and monitoring the operation of the *Register of Members' Interests*; providing advice to MPs about the interpretation of the *Code of Conduct and Guide to the Rules relating to the Conduct of Members*; providing guidance and training for MPs on matters of propriety and ethics; monitoring the operation of the *Code of Conduct and Guide to the Rules* and making proposals for their reform; receiving and investigating complaints about MPs who are accused of breaching the *Code of Conduct*. The Parliamentary Commissioner for Standards makes an annual report to the House on his office's work.

Under the British ethics regime, there is a protocol in place for responding to complaints that an MP has violated the *Code of Conduct*. Historically, the British House of Commons would use its power of censure to punish members of the House who did not meet its ethical standards. Currently, the Parliamentary Commissioner for Standards handles complaints made against MPs in the following areas: breaches of the *Code of Conduct*, registration of financial interests, sponsorship and financial support of MPs, deposit of employment agreements, advocacy in situations in which the MP has a financial interest, and participation in delegations where an MP has a financial interest. Complaints are to be made in writing to the Commissioner's office.¹⁴² Allegations relating to other possible "contempt's" by MPs, such as the premature closure of Select Committee proceedings, are addressed by the House as matters of privilege.¹⁴³

¹⁴² "House of Commons Guide: Complaints Against a Member of Parliament." 20 January 2005. Office of the Parliamentary Commissioner for Standards. <www.parliament.uk/about_commons/pcfs.cfm>.

¹⁴³ "Consultation Paper: Review of the Code of Conduct for Members."

When a complaint is filed, the Commissioner must determine whether or not enough evidence exists to warrant a preliminary inquiry. If so, he conducts the inquiry by questioning the complainant as well as the MP about whom the complaint was made. If he finds there to be no case, he reports this to the House Committee on Standards and Privileges. On the other hand, if he finds reason to conduct a full investigation, he does so by interviewing MPs. When he is finished, he reports his findings to the Committee on Standards and Privileges. At this point, the work of the Parliamentary Commissioner is done and it is up to the Committee to pursue the case further if it finds reason to do so.

On the basis of the Commissioner's report, the Committee might deem it necessary to conduct further inquiries by gathering evidence and producing its own report. After completing the report, the Committee advises the House of Commons on potential future actions, including penalties against the subject of the complaint. The House of Commons can impose penalties in the form of an apology to the House by the MP, the withholding of an MP's salary, or the suspension of the MP from the House. Ultimately, it is up to the House of Commons to punish its own members for violations of the ethical code.¹⁴⁴

In order to make it possible to punish *Code of Conduct* breaches, there must be clarity about what constitutes such a violation. Presumably, a violation of a rule of behaviour, such as the requirement to disclose relevant interests, would be an obvious and easily-identifiable breach. However, a violation of one of the seven principles outlined in the code would be more difficult to define and to punish. For instance, the "honesty" principle refers only to the declaration of private interests and the avoidance of conflicts of interest. If an MP lies in the House, this does not trigger punishment under

¹⁴⁴ "House of Commons Guide: Complaints Against a Member of Parliament."

the *Code*. Rather, it is an issue to be dealt with by Parliament as a matter of contempt.¹⁴⁵

To be enforceable, a code of conduct must include specific rules of behaviour so that violations are easy to identify and to address. In the case of the British code of conduct for MPs, the *Guide to the Rules* and the *Register for Members' Interests*, rather than the *Code of Conduct*, contain the enforceable rules of conduct.

Reform

In its Eighth Report, the Committee on Standards in Public Life made the point that no code can “stand the test of time indefinitely.”¹⁴⁶ Therefore, they recommended that the code be reviewed during every Parliament. Both practical experience and public expectations are constantly under construction, and codes of conduct, to be effective, must reflect these changes. While the seven principles set out in the *Code of Conduct* will likely endure as ideal standards to be acclaimed by public officials, specific regulations such as financial disclosure requirements and rules regarding the declaration of registrable interests must be reviewed and reformed to address changes in standards and circumstances.

The Parliamentary Commissioner for Standards initiates reviews of the code by embarking on a consultation process with MPs. He prepares a paper containing information about the *Code* and specific questions about potential reforms. He sends the paper to MPs and invites them to suggest reforms to the *Code* in terms of its scope, content, and clarity. Also, respondents are asked to indicate any additions that they think

¹⁴⁵ “Consultation Paper: Review of the Code of Conduct.”

¹⁴⁶ “Eighth Report: Standards in the House of Commons.” November 2002. Committee on Standards in Public Life. <www.public-standards.gov.uk/>.

should be written into the code. The inclusion of MPs in the revision process is a fundamental part of the code's effectiveness. By considering its contents in detail, MPs become familiar with the *Code of Conduct* to which they must adhere. Because they have the opportunity to suggest reforms, they can feel that they have participated in determining the standards and rules against which their actions are judged. The code is not forced on MPs by an external power, but it is developed and implemented with their cooperation.

The creation of the *Code of Conduct for Members of Parliament* was a significant departure from the British tradition of relying on informal norms to encourage ethical behaviour. However, it can be argued that the implementation of the code in 1995 did not bring about a substantive change in terms of ethics rules. After all, the *Register of Members' Interests*, which is a fundamental part of the British ethics regime, has been in effect since 1974. The *Guide to the Rules* that accompanies the *Code of Conduct* provides MPs with a detailed explanation of what the *Register* requires, but the requirements themselves did not change significantly with the adoption of the *Guide*. Further, several of the elements of the *Code of Conduct* and the *Guide to the Rules*, such as the ban on paid advocacy in the House of Commons, had been passed by the House of Commons as resolutions long before the *Code of Conduct* was adopted. In the case of the prohibition on paid advocacy, the House passed a resolution in 1947 forbidding MPs to advocate on behalf of a private individual or group in exchange for payment.¹⁴⁷ Also, a resolution passed in 1975 required MPs to disclose relevant financial interests not only in parliamentary debates, but in committee meetings and informal conversations with

¹⁴⁷ Resolution of the House of 15th July 1947.

colleagues. Given that the *Guide to the Rules* amounts to an explanation of the *Register of Members' Interests*, and other requirements of the *Code of Conduct* had been established via previous resolutions of the House, it would appear that implications of the *Code of Conduct for Members of Parliament* are mostly symbolic.

While the *Guide to the Rules* amounts to an appendage of the *Register for Members' Interests*, and several ethical rules that are covered by the *Code* and the *Guide* had been adopted previously via resolutions, the adoption of the *Seven Principles of Public Life* marks a significant and substantial change in political ethics regulation in the United Kingdom. By providing MPs with general principles of ethics to refer to in their professional duties, the *Code* helps to encourage adherence to high ethical standards rather than basic compliance with the minimal standards of codes of conduct.

Rules of Conduct for Cabinet Ministers

British cabinet ministers, unlike other MPs, have been subject to written codes of ethical conduct for years. While cabinet ministers and other MPs are elected to the House of Commons in exactly the same manner, their roles in the governing process are considerably different. Cabinet ministers, as members of the executive, are primarily responsible for introducing legislation and defending their policies against criticism in the House of Commons. The cabinet is accountable to the House of Commons and must maintain its confidence in order to govern. In the policy process, MPs' role is indirect. They generally do not propose or formulate policy, but criticize and refine it. They do so by questioning the cabinet ministers in the House of Commons and by working on bills in committees. MPs are permitted to propose private members' bills, but these bills are

generally not in areas of major importance to the government and rarely become legislation. MPs have no authority to propose budgetary measures and have very little individual power over the policy process.¹⁴⁸

The differences between cabinet ministers and MPs in terms of their roles in policy decisions require that they be monitored by different ethical rules. For example, it would be ethically acceptable for an MP to lobby the government on behalf of a transportation company in her riding in the event that the government was awarding contracts in this area. In fact, this type of representation is a fundamental part of an MP's job. However, it would be inappropriate for the Minister for Transportation to advocate for a local transportation company in the same manner, given that the Minister has a definitive role in deciding to which companies contracts are awarded. These circumstances would create an unfair advantage for companies in the Minister's riding.

A Code of Conduct and Guidance on Procedures for Ministers

The ministerial code is divided into ten sections, each relating to a different aspect of a minister's job. Specifically, the code speaks to the ministers' roles with regard to the Crown, the Government, Parliament, their respective Departments, civil servants, constituency and party interests, ministers' visits, the presentation of policy, ministers' private interests, and ministerial pensions. In the following paragraphs, I discuss briefly the major contents of the ministerial code.

The first section addresses ministers' role as representatives of the Crown. This section provides a general introduction to the rest of the code. It states that the Prime

¹⁴⁸ Purves, Grant and Jack Stilborn. "Members of the House of Commons: Their Role." June 1997. Library of Parliament. <http://www.parl.gc.ca/information/library/PRBpubs/bp56-e.htm#INTRO>.

Minister and members of the cabinet are personally responsible for deciding how to conduct themselves and for justifying their behaviour to the public and to the House. The Prime Minister is the ultimate adjudicator of the appropriateness of ministers' conduct. The ministerial code is not subject to interpretation and enforcement by the Parliamentary Commissioner for Standards, as is the *Code of Conduct for Members of Parliament*. This first section sets out the general principles that should be followed by ministers in their executive capacities. These include: taking responsibility for the activities of ministers' respective departments, giving truthful information to Parliament, being open and transparent with the House and the public, avoiding both real and apparent conflicts of interest, keeping their ministerial role separate from their representative one, and upholding the political impartiality of the civil service.¹⁴⁹

The remaining nine sections of the code instruct ministers on what is expected of them in terms of their official behaviour in order to uphold the principles set out in the first section. For instance, s. 62 of the ministerial code states that ministers must not ask civil servants to participate in party activities. Several of the code's clauses relate to the principle of ministerial conduct forbidding both real and apparent conflicts of interest. S. 63 requires that ministers record the proceedings from meetings held with outside groups in order to protect themselves against allegations of impropriety. S. 113 states specifically that ministers are not to allow any real or perceived conflict of interest to exist between their personal interests and their public duties. S. 114 explains that it is the personal responsibility of ministers to take the necessary steps to avoid such conflicts. They must decide whether or not a specific situation creates a conflict of interest situation

¹⁴⁹ "Ministers of the Crown." Code of Conduct and Guidance on Procedures for Ministers. January 2005. Cabinet Office.
http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code/page1.asp.

and what actions must be taken to avoid the conflict. Ministers are invited to consult the Head of the Home Civil Service and Cabinet Secretary, who is advised by the Propriety and Ethics Team, for advice in resolving ethical matters. Situations that are particularly serious or troubling are to be brought to the attention of the Prime Minister. Ultimately, however, cabinet ministers are responsible for living and working in such a way as to avoid conflicts of interest and allegations of impropriety.

Like ordinary MPs, cabinet ministers are expected to disclose their financial interests that could create a real or potential conflict of interest. The interests that must be disclosed include the minister's personal interests as well as those of his or her spouse and dependent children. S. 121 states that ministers are expected to avoid association with outside organizations whose objectives might conflict with government policy. Ministers are expected to refuse invitations to act as patrons of private groups that might be recipients of government funding.

S. 123 advises ministers to dispose of any financial interest that might result in an apparent or real conflict of interest. If disposal is not an acceptable option, the interest can be placed in a blind trust, which means that the minister would be purposely kept uninformed of the state of the company's portfolio. S. 131 states that ministers who are partners in firms should cease to participate in the daily activities of these organizations. S. 132 holds that ministers must resign all directorships upon taking ministerial office. Ministers are not to accept gifts if doing so would create a real or apparent conflict of interest. S. 137 states that the matter is left to the "good sense of Ministers." Small gifts can be retained, but gifts of a value over 125 pounds must be disclosed under the *Register of Members' Interests*. S. 140 states that for a period of two years after leaving

ministerial office, former ministers must seek advice from the Advisory Committee on Business Appointments before taking any professional appointments. The goal here is to avoid the public perception that the minister, when in government, might have been influenced by the hope of gaining employment with a particular organization in the future.

S. 69 addresses the minister's dual role as minister of the Crown and representative of an electoral district. It states that a minister is free to advocate on behalf of her constituency, but when doing so, she must make it clear to the relevant minister that she is acting in her capacity as an MP rather than as a minister. Further, she must bear in mind any implication that her efforts as a representative have for the government. In other words, she must be careful not to create difficulty for the government and for the minister that she is lobbying by opposing government policy.

With regard to ministers' travel, while the general rule is that ministers' travel should be paid for with public funds to avoid real or apparent conflicts of interest, s. 85 holds that there are some situations in which a minister's travel might be funded by an external source. For instance, foreign travel might be funded by the host government, provided there is no possibility of a perceived undue obligation. Offers of transportation from private organizations, as a rule, should be turned down.¹⁵⁰

Implementation and Enforcement

The Propriety and Ethics team advises cabinet ministers and departments on the theory and practice of ministers' accountability to Parliament. The team provides advice to ministers and their departments on the following issues: ministerial ethics and

¹⁵⁰ Code of Conduct and Guidance on Procedures for Ministers.

propriety issues, ministerial responsibilities, civil service ethics, and the role of special advisers.

The ministerial code informs ministers as to what is required of them in terms of their responsibilities to the House of Commons, to the public, and to their fellow ministers. However, it clearly states that ministers are personally responsible for monitoring their conduct and avoiding conflicts of interest, whether real or apparent. The *Code of Conduct for Members of Parliament* identifies the Parliamentary Commissioner for Standards as the monitor of the code and of MPs' ethical conduct. Allegations of code violations are brought to the Commissioner's attention and, after he investigates such allegations, it is up to the House to punish an MP who is found to have breached rules for conduct. In contrast, the ministerial code does not have an "enforcer" such as the Parliamentary Commissioner for Standards. Ministers are expected to monitor their own behaviour. If a minister is accused of impropriety, it is up to him to defend himself before the House and the Prime Minister. A minister serves at the pleasure of the Prime Minister, which means that the Prime Minister has the ultimate power to dismiss a minister on account of accusations of corruption, whether or not they are substantiated.

A negative implication of the lack of a procedure for punishment in the ministerial code is that it is more difficult to enforce a code when the penalties for violating it are not clear. There is no official or commissioner designated to monitor the activities of ministers, which means that ethical transgressions might go undetected. However, ministers might be deterred from committing acts of impropriety by the possibility of dismissal by the Prime Minister or embarrassment in the event that their actions became known to the public.

In terms of ministerial accountability, however, there is a benefit from the absence of an independent adjudicator of cabinet ministers' actions. Cabinet ministers, as opposed to an independent person or body, ultimately are held responsible for their conduct while in office. In regimes in which a parliamentary commissioner is appointed to monitor officials' ethical behaviour, it is possible that the "minimalist" approach to ethics will prevail. For instance, suppose a Canadian MP is accused of impropriety in her official duties. In order to clear her name, she can ask the Ethics Commissioner to review her case to determine whether or not her actions were appropriate. If the Ethics Commissioner does not find there to be a case against the MP, due either to lack of evidence against her or to the fact that the alleged activity did not offend the Commissioner's interpretation of rules of conduct, she is declared to be innocent. In other words, it is up to the Ethics Commissioner to define the boundaries of ethical behaviour, as he is the interpreter and enforcer of Canadian MPs' code of conduct. If the Ethics Commissioner's standards are not congruent with public standards, the public often will be unsatisfied with the Ethics Commissioner's decisions. This might give the impression that unethical behaviour is rampant and that the Ethics Commissioner is an ineffective guardian of ethical standards in politics.

In the next chapter, the Canadian ethics regime is reviewed. It is more similar to the British system than the American one, mostly because Canada and the United Kingdom both have parliamentary systems of government. Also, the Canadian and British formal ethics regimes are decades younger than the American one. This makes it more difficult to judge their success, as not much time has passed since their initial adoption.

Chapter Six: The Canadian Political Ethics Regime

For decades after Confederation, there were no written ethics guidelines in Canada for either cabinet ministers or Members of Parliament. In 1964, Prime Minister Lester Pearson thought it necessary to send a written message to cabinet ministers that would emphasize the government's commitment to high ethical standards. It was his hope that through good behaviour on the part of cabinet ministers public confidence in the political system and its integrity would be restored and enhanced. Subsequent Prime Ministers expanded on Pearson's rather brief guidelines, and today Canadian cabinet ministers and MPs are subject to written codes of conduct. The Canadian ethics regime has changed gradually, with each Prime Minister modifying it in his own way. In some cases, changes to ethics rules followed political scandals at the federal level.

In this chapter, I analyze the development of the Canadian ethics regime. I trace the changes that Canadian Prime Ministers have made to ethics rules for cabinet ministers and MPs. My goal is not to give a description of the changes to ethics regulations, but to give a critical analysis of the Canadian political ethics regime as a whole as it has grown and changed over the past several decades. I am more concerned with broad policy changes that reflect governments' attitudes towards political ethics than with minor modifications to codes of conduct.

The Canadian Political Ethics Regime: The Origins

Prime Minister Pearson's letter to his cabinet was in response to growing public concern about the occurrence of political corruption. His rules prohibited bribery, financial conflicts of interest, and the use of privileged information for personal gain.

Further, he warned against any behaviour that might not bear the “closest public scrutiny.”¹⁵¹ Pearson was aware of the damage that the mere perception of corruption could cause, even if no real corruption had actually taken place. He extended his warnings to cabinet ministers only – he did not attempt to counsel ordinary MPs on their ethical conduct. Although ethics regulations were in their infancy at this time, one can assume that Pearson’s focus on cabinet ministers implied the belief that MPs did not require the same ethics rules that cabinet ministers did. This makes sense, given the different roles for cabinet ministers and MPs in the policy process. The cabinet is responsible for proposing legislation and defending their decisions before the House of Commons. The cabinet must maintain the confidence of the House in order to continue to govern legitimately. MPs are responsible for holding the cabinet to account for its decisions. MPs do not propose major pieces of legislation and do not have the authority to propose budgetary measures.¹⁵² Because of the difference in cabinet ministers’ and MPs’ authority in the policy process, they require different ethics rules. For instance, even if an MP had a private interest in a shipping company, he would not ever find himself in the position to make a decision on awarding a government contract to a shipping company. Cabinet ministers make executive decisions regarding the allocation of public resources and must be careful to avoid conflicts between public and private interests.

Pearson’s letter, although brief and ambiguous, remained the sole source of ethics rules for cabinet ministers for almost a decade. In 1973, when several cabinet ministers became the target of conflict of interest allegations, Privy Council President Allan

¹⁵¹ MacEachern, Allan J. “Members of Parliament and Conflict of Interest.” Ottawa: Information Canada, 1973.

¹⁵² Purves and Stilborn.

MacEachern proposed a legislative code of conduct for MPs, senators, and cabinet ministers.¹⁵³ Prime Minister Pierre Trudeau did not adopt MacEachern's recommendations, but sent his own letter to cabinet ministers that contained more detailed conflict-of-interest guidelines than Prime Minister Pearson had set out. In this letter, Trudeau called for the disclosure of non-personal assets and gave ministers a choice between: (a) selling off any assets that might create a conflict of interest; and (b) placing them in a blind trust.

In 1974, the Canadian government made its first explicit attempt at enforcing compliance with conflict-of-interest rules. It created the office of assistant deputy minister general (ADMG) to process disclosure documentation from cabinet ministers and other public officials covered by the guidelines. In 1979, Prime Minister Joe Clark publicized these guidelines and expanded them to include ministers' spouses and dependent children. Trudeau removed the spousal declaration requirement when he regained prime ministerial office in 1980. He did so amidst pressure from those who regarded the requirement too invasive.¹⁵⁴

If codes of ethical conduct are so invasive as to undermine the privacy of politicians and their families, there is a danger that potential candidates are discouraged from seeking political office, particularly those with significant wealth who would have much to disclose. As I noted earlier, MacKenzie and Hafken expressed this concern when writing about disclosure requirements for United States Members of Congress.¹⁵⁵ For most citizens, it is unlikely that strict disclosure requirements would deter them from seeking elected office, given that many candidates would be unaware of conflict-of-

¹⁵³ MacEachern.

¹⁵⁴ Greene and Shugarman 49-50.

¹⁵⁵ MacKenzie and Hafken.

interest guidelines until they came to office. It is more likely that sitting MPs who are frustrated with conflict-of-interest guidelines are deterred from reoffering. MPs in Canada have become so frustrated with increasingly-stringent disclosure requirements that many consider ending their political careers because of them.¹⁵⁶ In 2004, Ethics Commissioner Bernard Shapiro expanded the disclosure requirements for MPs, their spouses, and their dependent children. Specifically, it is now necessary for them to disclose the nature, source, and monetary value of the following: personal assets, residential property, investments such as Registered Retirement Savings Plans and mutual funds, sources of income, credit card balances, and liabilities such as leases.¹⁵⁷ Although this information is to be disclosed privately to the Ethics Commissioner as opposed to the public at large, the revised disclosure requirements are still seen by many MPs to be an onerous and unnecessary invasion into their private lives. Once an MP makes full disclosure to the Ethics Commissioner, a disclosure summary that includes the nature and source, but not the monetary amount, of the MP's income, assets, and liabilities is prepared for public release. The new rules anger many MPs who think that their right to privacy is being overlooked in the attempt to quench the public's thirst for comprehensive conflict of interest rules.

In order to be effective, ethics rules must be drafted to get the right balance between the public's desire for strict rules of conduct and MPs' right to privacy. Governments must resist the temptation to over-regulate. In fact, distrust of politicians might be nurtured by over-regulation, as it gives the impression that politicians would not

¹⁵⁶ Interview with Canadian Member of Parliament. October 28, 2004.

¹⁵⁷ "Disclosure Statement for Members of the House of Commons." October 2004. Office of the Ethics Commissioner. <<http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/oe01457e.html>>.

be able to choose between right and wrong without written guidelines to help them to do so.

Canadian Political Ethics and the Mulroney Government

The Mulroney era proved to be an eventful time for the Canadian political ethics regime due to the frequency of corruption allegations during the period relative to others in Canadian political history. The Prime Minister's reaction to several of these instances was to revise ethics rules. For instance, in 1983 former federal cabinet minister Allistair Gillespie was accused of having personal business dealings with his former department soon after leaving public office. In response to these allegations, Mulroney appointed a task force on ethical conduct to be co-chaired by Michael Starr and Mitchell Sharp, former Progressive Conservative and Liberal cabinet ministers respectively. The Starr-Sharp report recommended that a legislative code of conduct be applied to all public office holders and that an Office of Public Sector Ethics be created to interpret and apply the code. In September of 1985, Mulroney created the *Conflict of Interest and Post-Employment Code for Public Office Holders*, a non-statutory conflict-of-interest code that applied to cabinet ministers and public employees, but not to ordinary MPs and senators. Under it, the following activities were prohibited: real, apparent, and potential conflicts of interest, the acceptance of gifts and money in exchange for favors, and the use of privileged information for private purposes. Like Trudeau's code, it did not contain a definition of "conflict of interest". Greene and Shugarman argue that this omission indicates the lack of serious thought given to the issue of how to regulate ethics effectively.¹⁵⁸ The absence of a concrete definition of "conflict of interest" compromised

¹⁵⁸ Greene and Shugarman 50-51.

the impact of the code on conduct, as it did not provide a clear explanation of exactly what behaviours would create a conflict of interest situation.

Between 1986 and 1988 alone, the Mulroney government suffered fourteen conflict-of-interest accusations involving either ministers or ministerial aides.¹⁵⁹ The most infamous of the Mulroney government's scandals was the Sinclair Stevens affair. Stevens was Mulroney's cabinet minister for industry. In April of 1986, allegations surfaced in *The Globe and Mail* and in the House of Commons that Stevens' wife had secured a \$2.6 million loan for York Centre, the family business, due to intervention by Magna International Inc., an autoparts manufacturer that had relied on Steven's ministerial support for loans, grants, and contracts worth millions of dollars. Although the Conservatives attempted to play down these accusations in the House, the opposition did not let up. On May 12, 1986, Stevens resigned.

The Prime Minister was out of the country for much of the time that the Stevens affair dominated Question Period. Upon his return to Canada on May 15, Mulroney announced Mr. Justice William Parker's appointment as leader of a public inquiry into Stevens' actions. Parker found that while serving as the federal minister for industry, Stevens remained involved in searching for a solution to the York Centre's financial woes. Further, Parker found that Stevens used his ministerial position and the contacts he gained as a result of it to promote the company's interests.

The Sinclair Stevens affair brought to light the limitations of the blind trust arrangement in dealing with conflicts of interest. Stevens' interests in York Centre had been placed in a blind trust, which meant that he was allowed to receive annual reports about the company's performance overall. He was not permitted to familiarize himself

¹⁵⁹ Ibid 51.

with the minor operations of the company. Under a blind trust arrangement, responsibility for handling day-to-day issues is placed with a trustee. In Stevens' case, the blind trust did not prevent him from being kept informed of York Centre's activities because it was his family's business. Although the blind trust provided him with only annual reports, it is unlikely that he would not have been told of the company's circumstances by other family members. The fact that the blind trust arrangement was used for Stevens' family business in the first place reveals the government's lack of forethought into the design of effective ethics regulations.

The inability of the blind trust arrangement in relation to family businesses does not mean that Stevens was innocent of deliberate wrongdoing. In fact, Justice Parker found evidence that Stevens kept himself informed of the financial situation at the company and became involved in attempts to reverse the company's declining performance.¹⁶⁰

After reviewing the Stevens case, Justice Parker made the following recommendations. First, he argued that cabinet ministers *fully* disclose their financial situation to the ADMG in confidence, and that non-personal financial interests be disclosed publicly. This would protect ministers' privacy by not making public information on such things as RRSP holdings, place of residence, and personal effects. Second, he recommended the abolition of blind trusts as a method for eliminating conflicts of interest regarding family businesses. Third, he recommended that the conflict-of-interest code be clarified and that it include a definition of "conflict of interest". Fourth, he recommended that conflict-of-interest guidelines apply to ministers' spouses. Finally, he advised that the office of the ADMG be revised to have broader

¹⁶⁰ Ibid 66-69.

powers and a higher profile so that the new conflict of interest code can be understood and enforced.¹⁶¹ On the heels of the Parker report, Prime Minister Mulroney ordered that the trusts set up under the conflict-of-interest code be reviewed and that ministers' spouses and dependents be required to make confidential financial disclosure to the ADMG.¹⁶²

Despite Parker's recommendations, it appeared as though Mulroney was not going to take a strong course of action regarding political ethics reform. No other changes were made until February of 1988, when Michael Cote left cabinet after failing to report a \$250,000 loan he received from a Progressive Conservative Party organizer. The Mulroney government tabled Bill C-114, a conflict-of-interest measure that would have covered ministers, senators, MPs, and parliamentary spouses. This was the first time in Canada that a government attempted to take a *statutory* approach to political ethics. It was also the first time that a government attempted to extend ethics regulations to regular MPs as opposed to only cabinet ministers. The proposed bill met with intense criticism from some who thought it too invasive and others who thought it too soft. MPs from all parties criticized the disclosure requirement for parliamentary spouses. The bill failed to pass before the 1988 election and similar legislation that the Mulroney government introduced died in 1993.¹⁶³

In 1985, the House of Commons Standing Committee on Management and Members Services was asked to examine whether or not a Register of Members' Interests

¹⁶¹ Parker.

¹⁶² In December of 2004, a federal court judge overturned the Parker inquiry's finding of a conflict of interest on Sinclair Stevens' part in 1987. Justice John O'Keefe said that the phrase "conflict of interest" was not defined in the code of conduct that existed for cabinet ministers at that time. Therefore, Parker's conclusion regarding Stevens was invalid. See CBC News Online. "Judge throws out 1987 Sinclair Stevens conflict decision." 17 December 1994. <<http://www.cbc.ca/stories/2004/12/17/sinclair-stevens041217>>.

¹⁶³ Greene and Shurgarman 73-77.

should be established for legislators to disclose their financial interests. After consultation with political parties, the committee concluded that such a register was not necessary and would compromise MPs' privacy.¹⁶⁴

Some scholars of political ethics contend that statutory codes of conduct are more effective than non-statutory codes. In Canada, codes of conduct for MPs and cabinet ministers are not statutory, but make up part of the Standing Orders of the House of Commons. The efforts of the Mulroney government suggest that it is difficult to move ethics legislation through the House of Commons and the Senate successfully. Therefore, one advantage to a non-statutory code is that it is easier to adopt.

It has been argued that legislative codes have more "teeth" and are easier to enforce. However, legislative codes are superior in this regard only when compared to non-statutory codes *without* the appropriate mechanisms for enforcement. Although the Canadian *Conflict of Interest Code for MPs* is non-statutory, there are measures in place to ensure that MPs follow the rules. Failure to comply can result in a complaint to the Ethics Commissioner, who has the power to investigate the complaint and make recommendations to the House of Commons for punishment of the guilty parties. While the House can levy punishments in the form of censure or a monetary fine, perhaps the most significant punishment for failure to comply with ethics rules is the loss of credibility in the eyes of the public. Non-statutory codes that contain effective enforcement mechanisms are capable of having as much "teeth" as do statutory codes.

The Chretien Era

¹⁶⁴ Young, Margaret. "Conflict of Interest Rules for Federal Legislators." Ottawa: Library of Parliament Information and Research Service, Law and Government Division, December 19 2003.

Given the frequency of allegations of political corruption during the Mulroney government's tenure, it was no surprise when the Liberal Party made "ethical governance" a cornerstone of its campaign in the 1993 general election.¹⁶⁵ In June of 1994, Prime Minister Jean Chretien announced Howard Wilson as the new Ethics Counselor. A new *Conflict of Interest Code* was released for cabinet ministers and public office holders, but it was very similar to the previous one. The Ethics Counselor was to administer the code of conduct, advise cabinet ministers and public office holders on their ethical responsibilities, and examine the need for ethics legislation. He reported to the Prime Minister, not to the House of Commons, and despite his role as administrator of the code, he had no independent mandate to conduct investigations.¹⁶⁶

In 1995, the House of Commons established a Special Joint Committee of the House and the Senate to develop a code of conduct for legislators. In March of 1997, the committee drafted a code that would have prohibited the use of public office to pursue private interests.¹⁶⁷ Also, it would have required financial disclosure for MPs, their spouses, and their dependent children. The committee recommended the creation of a new parliamentary officer to administer and enforce the code, to handle MPs' disclosure forms, to advise parliamentarians, and to investigate complaints of impropriety. Finally, the committee recommended that the code be passed as legislation rather than as a standing order of the House. For years after the committee tabled its report, no action

¹⁶⁵ "Liberal MPs vote against Red Book promise". 14 February 2001. CBC News Online. http://www.cbc.ca/stories/2001/02/13/canada/ethics_mps010213.

¹⁶⁶ "Role of the ethics commissioner". 10 June 2005. CBC News Online. <http://www.cbc.ca/news/background/cdnngovernment/ethics.html>.

¹⁶⁷ "Second Report of the Special Joint Committee on a Code of Conduct." Parliament of Canada. 1997. http://www.parl.gc.ca/committees352/sjcc/reports/02_1997-03/report-e.html.

was taken on the committee's recommendations, despite several attempts by private members to turn Parliament's attention to creating a code of conduct for MPs.

In 2002, Prime Minister Jean Chretien announced that such a code would be implemented. The Liberal government was under pressure to do this for at least two reasons. First, ethical misconduct on the part of Liberal cabinet ministers undermined the government's credibility with the public. For instance, in August of 2000, Public Works minister Alphonso Gagliano was accused of awarding contracts to an advertising company that hired his son. In May of 2002, newly-appointed Public Works minister Don Boudria was chastised by opposition parties for spending a ski weekend with Quebec advertising executive Claude Boulay, whose firm, Groupe Everest, had received lucrative government contracts.¹⁶⁸

Second, the position of the Ethics Counsellor was seen by the public, the media, and the opposition as an ineffective monitor of ethical conduct in politics. This distrust of the Ethics Counsellor was due mainly to his lack of independence from the government, as he was chosen by and responsible to the Prime Minister alone. He was not an officer of Parliament but an appointee of the Prime Minister. Given these circumstances, his objectivity was compromised. Neither the public nor the opposition parties trusted him to conduct a fair and impartial investigation of the government's ethical conduct.

Ethics Counsellor Howard Wilson conducted a number of investigations during his tenure. On several occasions, his findings lent credence to his critics' argument that he was unlikely to criticize the ethical behavior of the Liberal government. The most

¹⁶⁸ "Liberals introduce new ethics package". 24 October 2002. CBC News Online. http://www.cbc.ca/stories/2002/10/23/ethics_021023.

infamous of these was the “Shawinigate affair”, in which Wilson cleared Prime Minister Jean Chretien of wrongdoing. In April of 1996, Chretien phoned Francois Beaudoin, the president of the Federal Business Development Bank of Canada, about a \$2 million loan sought by Yvon Duhaime, owner of the Auberge Grand-mere, a golf course of which Chretien had partial ownership before becoming Prime Minister. Beaudoin rejected the original loan application on the grounds that it was too risky, but later approved a loan for \$615,000 after another phone call from the Prime Minister. In May of 1999, the Ethics Counsellor found that Chretien did not violate conflict-of-interest rules in regards to federal government aid granted to Duhaime, but Wilson did not know about Chretien’s contact with Beaudoin at this time. When details of these phone calls become public, Chretien defended himself by saying that in lobbying Beaudoin on Duhaime’s behalf, he was acting appropriately in his capacity as Duhaime’s MP. Wilson ruled that the calls did not violate conflict-of-interest rules. In February of 2001, Beaudoin released a letter that he wrote in 1999. In this letter, he complained of political interference in a hotel loan and suggested that he was fired because of his suggestion that Duhaime’s loan be called in. Again, Chretien was cleared by the Ethics Counsellor.¹⁶⁹

Wilson’s credibility as ethics watchdog suffered tremendously because of his decisions in the Shawinigate affair. Chretien’s defense of his actions – namely, that he was acting as Duhaime’s MP and not as the Prime Minister when he pressured Beaudoin to approve the loan – was interpreted as suspect by opposition members and the media. Clearly, a Prime Minister cannot choose to remove his “prime ministerial cap” and the power that goes along whenever he chooses.

¹⁶⁹ Khoo, Lisa, and Owen Wood. “L’Affair Grand-mere.” 15 September 2004. CBC News. <www.cbc.ca>.

In November of 2003, Wilson found that Industry minister Allan Rock had done nothing wrong in accepting an invitation to a fishing lodge owned by the Irving family, who run major oil, lumber, and shipbuilding business. He was one of five cabinet ministers who received hospitality from the Irvings, and Wilson cleared all of them of wrongdoing. His decisions invited intense criticism from the opposition parties, who charged that he was a “lapdog” of the Prime Minister.¹⁷⁰

The Liberal government did not escape criticism completely during Wilson’s tenure. He found that solicitor general Lawrence MacAulay had violated conflict-of-interest guidelines by having the federal government invest in Holland College, of which his brother is the president. Both Mr. MacAulay and Prime Minister Chretien stated publicly that according to their interpretation of ethics rules, MacAulay was innocent. However, MacAulay resigned voluntarily after Wilson’s report was released.¹⁷¹

This case demonstrates that written rules are not always successful in their attempts to build a consensus on the meaning of “ethical behaviour” and to encourage compliance with high ethical standards. Chretien and MacAulay had different interpretations of the rules than did Wilson, which demonstrates that the presence of written guidelines does not necessarily guarantee the absence of ambiguity. Further, even though Wilson found that MacAulay had violated conflict of interest rules, he had no authority to punish him. Chretien stated that he did not ask for MacAulay’s resignation and would have defended him in the House of Commons had he not resigned.

¹⁷⁰ “Ethics counsellor clears Rock of wrongdoing.” 4 November 2003. CBC News. <http://www.cbc.ca/stories/2003/11/04/rock_ethics031104>.

¹⁷¹ Brown, Jim. “MacAulay resigns.” 22 October 2002. Canoe.ca. <<http://cnews.canoe.ca/CNEWS/Politics/2002/10/22/2373.html>>.

The ethics package proposed by Prime Minister Chretien would have revised the *Parliament of Canada Act* to establish an independent Ethics Commissioner and introduce a code of conduct for MPs. The House of Commons passed Bill C-34 in 2003 to bring about these changes, but the Senate amended the bill, and sent it back to the House. It died when the House was prorogued in November of that year.¹⁷²

The Martin Era

In November of 2003, Paul Martin took over as leader of the Liberal Party and Prime Minister of Canada. As a contender in the leadership race, he campaigned on eliminating the “democratic deficit.”¹⁷³ His six-part strategy for achieving this goal included the introduction of an independent Ethics Commissioner who would report to the entire House of Commons and have the independent authority to review the actions of all MPs and cabinet ministers.¹⁷⁴ In May of 2004, Bernard Shapiro became Canada’s first Ethics Commissioner. In addition to establishing the position, the Martin government introduced Canada’s first conflict-of-interest code for MPs. As well, the conflict-of-interest code for cabinet ministers and public office holders was revised. The Ethics Commissioner’s role, in general terms, is to interpret and enforce the provisions of these codes of conduct.

Paul Martin’s commitment to establishing an independent Ethics Commissioner was, in part, a response to a scandal in the federal sponsorship program, which first emerged in 2000 but came to the forefront in 2003. The sponsorship program was

¹⁷² Young 2003.

¹⁷³ Aucoin, Peter and Lori Turnbull. “The democratic deficit: Paul Martin and parliamentary reform.” *Canadian Public Administration*. 46.4 (2003).

¹⁷⁴ Martin, Paul. “The Democratic Deficit.” *Policy Options*. December 2002- January 2003. <www.irpp.org>.

created in 1995 after a narrow federalist victory in the Quebec referendum on sovereignty. Operated under the Public Works department, the sponsorship program allocated \$250 million to advertisements run in Quebec aimed at improving the federal government's image. In 2000, there were reports in the news media of exorbitant and poorly documented spending under the program. The Auditor General's report of 2002 revealed that bureaucrats in the Public Works department had broken almost all of the established rules in operating the sponsorship program. Over-billing, artificial invoices, and unjustified expenditures were prevalent. Approximately \$100 million in contracts was awarded to advertising firms with ties to the Liberal Party.¹⁷⁵

As previously stated, rules existed that, if applied, would have prevented the abuses that occurred. However, as political ethics expert Maureen Mancuso points out, there was a lack of enforcement of accountability measures. Specifically, Public Works officials violated rules by allowing one person, Charles Guite, to handle both the selection of firms for government contracts and the negotiation and award of contracts to these agencies. If these responsibilities had been separated, as they ought to have been, then Guite would not have had the ability to select advertising firms based on non-meritorious grounds and then over-pay them. Although the program has been investigated by a parliamentary committee, a public inquiry, and is still under investigation by the RCMP, it is still unclear as to whether or not the bureaucrats who violated the rules were acting under political direction.¹⁷⁶

Although the establishment of the independent Ethics Commissioner was partly a response to the "sponsorship scandal", Dr. Shapiro has not been involved in the

¹⁷⁵ Mancuso, Maureen. "Country reports: Canada." Global Corruption Report 2005. Transparency International. <<http://www.globalcorruptionreport.org/download.html>>.

¹⁷⁶ Ibid.

investigations into the abuses of power. To date, no Members of Parliament have been implicated in the scandal, so there have been no alleged violations of the MPs' code of conduct. Although former cabinet minister Alphonso Gagliano has been accused of wrongdoing, no formal complaints have been brought before the Ethics Commissioner under the code of conduct for cabinet ministers.

Conflict of Interest Code for Members of the House of Commons (2004)

The *Conflict of Interest Code for Members of the House of Commons* came into effect in 2004. It is not a statutory code, but it forms part of the Standing Orders of the House of Commons. The Canadian code for MPs, like its British counterpart, takes a two-pronged approach to the regulation of ethical conduct. First, the code contains general principles of ethics to which MPs must strive to adhere at all times. Second, it contains a list of specific rules that MPs must follow with regard to disclosing private interests, avoiding conflicts of interest, accepting gifts and travel subsidies, and the like.

The code for MPs has four stated purposes. They are: (a) to maintain and enhance public confidence in the integrity of the political system and its actors; (b) to demonstrate to the public that MPs are expected to place the public interest before their private interest; (c) to provide guidance for Members in terms of how to reconcile their private interests and public responsibilities; (d) to foster a consensus among Members by establishing common ethical standards and by providing means by which questions regarding appropriate conduct can be referred to an independent advisor.¹⁷⁷

Section 2 of the Code identifies the general principles to which MPs are expected to adhere. Specifically, MPs are asked to serve the public interest and to maintain the

¹⁷⁷ "Conflict of Interest Code for Members of the House of Commons."

highest possible ethical standards both in their public and private conduct. They are to take all necessary steps to avoid real, apparent, and potential conflicts of interest. As well, they are not to accept gifts which might be seen to compromise their independence as public representatives.

Although there is a separate code of conduct for cabinet ministers, this code applies to ministers in their capacity as MPs. The code distinguishes between ministers and ordinary MPs in a few of its sections. For instance, s. 7 states that MPs who are not ministers of the Crown or parliamentary secretaries are free to engage in employment or the practice of a profession, carry on a business, and hold partnerships and directorships in trade unions, associations, and corporations, provided that doing so would not interfere with their observance of the code's requirements.

Codes of conduct often instruct their subjects on what *not* to do as opposed to what they are expected to do. They outline *inappropriate* conduct, which allows for some confusion as to what constitutes *appropriate* conduct. The Canadian code for MPs makes a brief attempt at defining acceptable behaviour in s. 5 by stating that activities in which MPs normally engage on behalf of constituents do not violate the code. In other words, while MPs must be careful not to use their public office to further their own private interests or those of their family or associates, they are expected to work on behalf of their constituents and to represent their interests to the government and the House of Commons. It is an acceptable and fundamental part of an MP's job to represent constituency concerns and to lobby on behalf of voters. There are times in which cabinet ministers might be prohibited from lobbying for a constituent's interests. For instance, the Minister of Public Works would be prohibited from lobbying on behalf of a particular

corporation in a bid for a government contract, given that the minister could play a major role in deciding which firm is ultimately successful. However, it would be appropriate for an MP who is not part of the cabinet to lobby on behalf of a company in his constituency.

Sections 8 – 25 of the code are devoted to the “rules of conduct.” In these sections, the code specifies the requirements of MPs in the following areas: financial disclosure, the avoidance of conflict of interest and undue influence, and the acceptance of gifts and travel subsidies. First, MPs are required to disclose private interests, either their own or those of a family member or close associate, that might be affected by a matter before the House. They are to disclose these interests to the Clerk of the House as soon as possible, and the Clerk files the disclosure with the Office of the Ethics Commissioner. MPs are not to participate in debates on matters in which they have a private interest. MPs are prohibited from using information obtained through their position for private purposes and are prohibited from using their public position to influence the decision of others. MPs are not to be part of a contract with the Government of Canada or any federal body from which they receive a substantial benefit.

Members and their families are prohibited from accepting gifts that are offered in connection with the MP’s position, unless they are offered out of or courtesy. If an MP’s gifts total more than \$500 within a 12-month period, he must disclose the nature and source of the gifts to the Ethics Commissioner. Regarding travel, if costs exceed \$500 are absorbed by a source other than the public purse, a political party, or an

interparliamentary association, the member must disclose the details of the trip to the Ethics Commissioner within 30 days.¹⁷⁸

Within 60 days of being elected, MPs are expected to make a comprehensive financial disclosure to the Ethics Commissioner of their own interests as well as those of family members. These statements are kept confidential by the Ethics Commissioner, but he prepares a disclosure summary that is made available to the public. The contents of the full disclosure include: assets and liabilities; the value and source of income for the previous and upcoming 12-month periods; benefits received as a result of contracts with the Government of Canada; and all corporations, trade unions, and associations in which an MP or family member is a partner. The disclosure summary includes information on the source and nature of income, assets, and liabilities, but not their values. Also, it includes information on contracts with the government and the names of affiliated corporations.

As stated earlier, the Office of the Ethics Commissioner revised the financial disclosure requirements in 2004, making them more invasive for both Members of Parliament and their spouses. For the first time in Canadian history, parliamentary spouses' assets and liabilities are to be made public. Cabinet ministers' spouses have been required to make financial disclosure for years, but it has never been publicized as it is now. The new disclosure requirements strike many MPs as being too strict and invasive of their privacy.¹⁷⁹

If MPs want to seek clarification on the code's requirements or complain about a suspected violation of the code, these requests are to be made in writing to the Office of

¹⁷⁸ Code of Conduct for Members of the House of Commons.

¹⁷⁹ Francoli, Paco. "Ethics czar's "special reading" of the code rejected." The Hill Times. 25 October 2004.

the Ethics Commissioner. The Ethics Commissioner gives an opinion on the issue, which might include a written response containing recommendations. This opinion is confidential but might be made public by the MP who filed the request. The Ethics Commissioner is free to publish the contents of the report in such a way that the identity of the MP is not disclosed. Any opinion that the Ethics Commissioner gives is binding in the future if he were to reconsider the subject matter. Inquiries into the conduct of an MP are conducted at the request of a Member, the House, or the Ethics Commissioner himself. The Ethics Commissioner is free to reject requests for inquiries that he suspects are unreasonable or are being made in bad faith. The Ethics Commissioner's reports are filed with the Speaker of the House, who then reads them in Parliament. The MP who is the subject of the report is permitted to make a reply to the House of Commons. The Ethics Commissioner might make recommendations for punishing the MP if it he thinks it necessary. If he wishes to do so, the Ethics Commissioner might launch educational programs for MPs and the public regarding the contents of the code of conduct.

In addition to conflict-of-interest codes for cabinet ministers, MPs, and public office holders, there are ethics rules to be found in three Acts of Parliament (the *Criminal Code*, the *Parliament of Canada Act*, and the *Canada Elections Act*) and in the Standing Orders of the House of Commons and the Rules of the Senate. The *Criminal Code* prohibits bribery, the punishment for which is up to fourteen years in prison. The *Parliament of Canada Act* prohibits the receipt of payment for services rendered on matters before the House or the Senate. Further, it states that a person who holds a contract with the government in which public money is to be paid is not eligible for

membership in the House of Commons. Sitting Members of the House are not to be party to any federal government contract through which they would receive a benefit, whether the money spent is public or not. The *Canada Elections Act* prohibits public office holders from running for elected office.

Standing Order 21 of the House of Commons prohibits MPs from voting on matters in which they have a pecuniary interest. Standing Order 22 requires MPs to register all trips made outside of Canada that relate to their membership in the House and where the cost is not covered by the Member, a political party, or the government.¹⁸⁰ The Standing Committee on Procedure and House Affairs must undertake a comprehensive review of the code and its provisions every five years.¹⁸¹ This revision procedure ensures that the code is kept up to date and that any problems or loopholes that are discovered will be addressed.

Codes of Conduct for Members of Parliament: What's the Point?

Many of the rules of conduct that are included in Canadian statutes and standing orders are repeated in the codes of ethical conduct for MPs, cabinet ministers, and office holders. For instance, the requirement to report foreign travel is repeated in the *Conflict of Interest Code* for MPs. Also, while the *Criminal Code* prohibits bribery, the MPs' code prohibits bribery, conflict of interest, and the acceptance of any outside payment for services related to their membership in the House of Commons. Both the code and the *Parliament of Canada Act* prohibit MPs from holding contracts with the federal government from which they would benefit.

¹⁸⁰ Young.

¹⁸¹ Code of Conduct for Members of the House of Commons.

If rules for conduct exist among statutes and standing orders, is it necessary to have a code of ethical conduct as well? Despite the repetition of rules in statutes and in new codes, a major advantage of having a code of conduct is that it consolidates ethics rules into one comprehensive list. Prior to the creation of the code for MPs, ethics rules were scattered among different statutes and standing orders. Another factor is that the new code for MPs does not simply restate previously-existing rules, but it includes new ones as well. The most substantial of these is the requirement that MPs disclose their financial interests. Another benefit of a code of conduct is that through this document, a government can enunciate broad principles of ethics that it expects MPs, cabinet ministers, and office holders to observe.

Despite these advantages, several Canadian MPs have questioned the usefulness of codes of ethical conduct. During the proceedings of the Special Joint Committee on a Code of Conduct in 1997, MPs of different parties cautioned that ethical behaviour can be encouraged, but not regulated or enforced. Given that codes of conduct, no matter how strict or inclusive, cannot guarantee good behaviour among MPs, what is the point of having the codes in the first place? Do codes of conduct have a substantive effect? If the codes were repealed, would anything change in terms of politicians' standards and behaviours?

Ethics Counsellor Howard Wilson has argued that disclosure rules might not be necessary for Canadian MPs, given their lack of individual authority in the policy process.¹⁸² United States Congress members, for at least two major reasons, are more active players in the policy process than are their Canadian counterparts. First, under

¹⁸² Statement by Howard Wilson, while appearing before the Special Joint Committee on a Code of Conduct. Canadian House of Commons. 6 February 1997. Office of the Ethics Commissioner. <http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/h_oe01265e.html>.

Canada's parliamentary system, the government, which includes the Prime Minister and cabinet, must maintain the confidence of the majority of the members of the House of Commons in order to govern. In single party majority government situations, which are the norm in Canada, a government needs only the support of its own party caucus in order to meet the "50% + 1" threshold. Prime Ministers ensure the confidence of the House by requiring that all members of the caucus of the governing party vote with the government on issues of confidence. In the United States congressional system, the executive and legislative branches of government are separate from each other. The President has very little control over the Congress and there are often periods where the White House and the Congress are controlled by different parties. The separation of powers in the United States means that Congress members have more individual authority in their legislative capacities. This can make them targets for private groups attempting to exercise undue influence on the policy process.

Second, United States Congress members have a more direct role in the formulation of policy than do Canadian MPs. For instance, members of the House of Representatives have the authority as individuals to propose budgetary measures. Wilson argues that these differences justify a softer approach to ethics regulation for Canadian MPs than for United States Members of Congress.¹⁸³

While the necessity of codes of conduct for MPs might be debatable, there is little disagreement about the need to regulate carefully the conduct of cabinet ministers. The power of the immigration minister to grant temporary residence visas (TRVs) is a perfect example of the authority that is concentrated in the hands of an individual cabinet

¹⁸³ Proceedings of the Special Joint Committee on a Code of Conduct. 6 February 1997. <http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/h_oe01265e.html>.

minister. In the spring of 2005, immigration minister Judy Sgro resigned from the position under intense criticism for allegedly awarding TRVs to individuals who worked as volunteers on her 2004 election campaign. The Ethics Commissioner's report on the matter, which I discuss in detail in the next chapter, found that Sgro's political staff was to blame for this transgression. The *Conflict of Interest Code and Post-Employment Code for Public Office Holders* has been revised over the years, most recently in 2004. I review its contents in the following section.

Conflict of Interest and Post-Employment Code for Public Office Holders

The code for cabinet ministers and public office holders, including judges, parliamentary secretaries, Crown employees, ministerial appointees, and RCMP, consists of three parts. The objects and principles of the code are set out in the first part. Like those in the MPs' code, the objectives are to enhance public confidence in the integrity of the political system and its actors, to facilitate interchange between the public and private sectors, to establish clear rules of conduct regarding conflict of interest, and to minimize the potential for conflicts to occur either during or after employment with the government. The code encourages adherence to the following principles: honesty, high ethical standards, the performance of tasks in such a way as to bear the closest public scrutiny, respect for the merit principle in awarding contracts, respect for the public interest, and the proper use of privileged information and government property.

The second part explains the measures that public office holders must take in order to comply with the code's requirements. S. 5 states that the Ethics Commissioner is charged with the administration of the code and with ensuring that private information provided

under disclosure requirements be kept confidential and that all information provided for public purposes is made available in the Public Registry. S. 9 outlines the information that public office holders are to provide to the Ethics Commissioner via a confidential report. Cabinet ministers and public office holders are required to disclose the source and value of all assets, liabilities, and income received during the twelve month period prior to the assumption of public office as well as the income that is expected for the following twelve month period. Cabinet ministers, ministers of state, and parliamentary secretaries must disclose the assets, income, and liabilities of their families as well. These categories of people must also disclose any benefits that they or their families expect to receive in the following twelve months as a result of a contract with the Government of Canada. Private and non-commercial assets, such as residences, art and personal loans of less than \$10 000, are not subject to public disclosure or divestment. As reviewed earlier, since the *Conflict of Interest and Post-Employment Code for Public Office Holders* was revised in 2004, new and more invasive disclosure requirements that apply to all Members of Parliament, including cabinet ministers.

For public office holders' "controlled interests", the value of which could be affected directly or indirectly by government policy, disclosure is not enough. Examples of controlled interests are: publicly traded securities of corporations and foreign governments, self-administered Registered Retirement Savings Plans (unless exempt due to its value), and stock options. In these circumstances, it is appropriate for a public office holder to divest an interest by placing it in a blind trust or arms-length arrangement for the duration of her employment as a public official. The divestment process must be cleared with the Ethics Commissioner.

With regard to outside activities, cabinet ministers and public office holders must provide the Ethics Commissioner with a description of all activities in which they were involved in the two years prior to becoming a public office holder. Once they assume public office, they are prohibited from the following: engaging in employment, managing or operating a business, retaining directorships, holding office in a union, serving as a paid consultant, holding an active business partnership, and personally soliciting funds. Participation in philanthropic activities is permitted, but the Ethics Commissioner must be informed of it.

All gifts that could influence the decision making process of public office holders must be declined. Gifts that qualify as protocol or courtesy are acceptable so long as they would not arouse suspicion or compromise the government's integrity. If the value of gifts received in a twelve month period exceeds \$200, disclosure must be made to the Ethics Commissioner.

Public office holders are forbidden from giving preferential treatment to friends and associates in the awarding of government contracts. They are expected to avoid even the appearance of impropriety in this regard. As it is stated in the introduction of the code, public office holders' behaviour must withstand the closest public scrutiny.¹⁸⁴

In the final section of Part II, the code states that if the Ethics Commissioner advises that a public office holder is not complying with any part of the code, the official in question will be subject to punishment measures as determined by the Prime Minister, including dismissal from office. This aspect of the code is important because it is not clear how officials who are guilty of wrongdoing will be punished. Punishment is not to be determined by the Ethics Commissioner in reference to objective standards, but by the

¹⁸⁴ Conflict of Interest and Post-Employment Code for Public Office Holders (2004).

Prime Minister. There is no guarantee then that a Prime Minister would dismiss a minister who was guilty of serious wrongdoing, for there is no requirement for any specific punishment in the code of conduct. Given these circumstances, a Prime Minister might either over- or under-react to the discovery of an official's misconduct. He might prescribe a punishment that is too severe in order to persuade the public of his commitment to governmental ethics. Or, he might attempt to downplay the significance of the misdeed, which would allow him to prescribe a weaker punishment. Either way, under the code of conduct that is in place currently, the fate to be met by officials who violate it is unclear. This undermines the effectiveness of the code as a deterrent against corruption.

Part III of the code deals with the post-employment compliance measures that must be followed once an official leaves public office. Essentially, after employment as a public official, one must never act in such a way as to take improper advantage of his previous public office. The code indicates that before leaving office, public officials are not to allow their decisions to be influenced by the possibility of future employment with any private company or organization. Therefore, officials must disclose to the Ethics Commissioner any firm offers of employment that could place them in a conflict of interest. Officials must inform the Ethics Commissioner if they accept an offer of employment. If an official is to be employed with a company that does business with the government, the official will be removed from transactions with that company for the remainder of his public employment.

Once a public official has left office and joins the private sector, she is forbidden from "switching sides" by acting on behalf of any person, association, or company in an

ongoing transaction with the government if the official previously acted on the government's behalf. Further, she must not share privileged information with such a person or group. For a period of one year after leaving office, officials must not accept contracts, appointments, directorships, or employment with an organization or company with which they had direct dealings during their last year of public employment. Further, they must not make representations before the government for any such entity for the year immediately following their public employment. For cabinet ministers and ministers of the state, the time period is two years instead of one.

Because of his personal wealth as owner of a successful shipping company, Prime Minister Paul Martin had to take a number of steps to comply with conflict of interest rules before taking his current position. His case provides a good illustration of how ethics rules for cabinet ministers are applied.

Paul Martin and Canada Steamship Lines

In 2003, in anticipation of becoming Canada's next Prime Minister, Paul Martin asked Ethics Counsellor Howard Wilson what steps he would have to take as Prime Minister in order to comply with the conflict-of-interest code for cabinet ministers. At the time, Martin had a controlling interest in Canada Steamship Lines (CSL), a shipping company that has held numerous lucrative contracts with the federal government. Had Martin's controlling interest in this company continued once he became Prime Minister, he would have been in a conflict-of-interest situation any time that he participated in a decision that could result in a direct benefit to CSL. Martin acted as Canada's finance minister from 1994 to 2002 and during this time, he avoided conflicts of interest by

removing himself from all cabinet decisions that could have benefited his company. However, once he became Prime Minister, he thought that this was no longer a viable option. Howard Wilson recommended a blind trust arrangement to prevent conflicts from occurring between the public interest and Martin's private interest. He did not deem it necessary for Martin to divest his interest in the company, although many critics saw this as the appropriate solution. The blind trust arrangement would have given Martin access to annual statements regarding the company's overall performance.¹⁸⁵

Despite Wilson's reassurances that divestiture was not necessary, Martin decided to transfer his control in Canada Steamship Lines to his three sons, thereby removing the need for the blind trust arrangement. The major difference between a blind trust arrangement and divestiture is that in the former, the interest is retained. In the latter, it is given up entirely. Under a blind trust arrangement, Martin would have withheld interest in CSL but he would have been kept in the dark about the performance of the company. Because a blind trust cannot erase one's knowledge of an interest entirely but can only hide detailed information about the company's performance, the arrangement that Wilson recommended included a requirement that Martin recuse himself from a narrow range of government decisions that could result in a direct benefit to CSL. In the end, Martin decided to divest his interests in CSL by transferring them to his sons. Had Martin divested his CSL interests to a third party, this would likely have meant that he would never resume interest in CSL. However, it is conceivable that divestiture to his sons allows for Martin's resumption of his former interests when his term as Prime Minister ends. If Martin's divestiture is in fact a temporary arrangement, it is not unlike a blind

¹⁸⁵ Wilson, Howard. "Paul Martin: Conflict of Interest." A letter from Ethics Counsellor Howard Wilson to Member of Parliament Paul Martin. 28 July 2003. Office of the Ethics Commissioner. <http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/oe01340e.html>.

trust. The major advantage of a blind trust over complete divestiture from the standpoint of the public official is that he can resume his corporate activity once his public employment ceases.

Because the transfer constituted a sale to Martin's sons and not to a third party, Wilson maintained that Martin, as Prime Minister, must recuse himself of all future decisions that could be directly beneficial to Canada Steamship Lines. In a letter to Prime Minister Martin written in July of 2003, Howard Wilson emphasized that had he chosen to go through with the blind trust arrangement, it would have protected the public interest from conflicts with Martin's private interest. Wilson wanted to be clear that if citizens with substantial holdings in private corporations wish to hold public office, they can do so without having to divest their interests.¹⁸⁶ Wilson's interpretation of the conflict-of-interest guidelines was indicative of his priorities and values. He did not want ethics rules to deter wealthy citizens from seeking public office, and he was willing to take a flexible interpretation of the rules in order to achieve this goal. Wilson's approach to Martin's situation struck many observers as being entirely too soft. Indeed, Martin himself took measures that went beyond what the Ethics Counsellor deemed necessary. He might have done so to gain favor with the public. If this were the case, it would illustrate Martin's understanding that the public's threshold for ethical behaviour might be higher than Wilson's.

When considering the effectiveness of ethics rules in nurturing high ethical standards among politicians, it is important to consider the potential influence of the rules' interpreter. If his standards are different from those held by the public, the perceived effectiveness of the rules might be compromised. On the other hand, Martin's decision to

¹⁸⁶ Ibid.

divest his interests in Canada Steamship Lines, despite Wilson's contention that divestiture was unnecessary, shows that an ethics watchdog does not always have the final word on what constitutes ethical behaviour. A politician is free to go beyond the requirements set out by the code and its interpreter. The CSL example shows that public pressure can have a significant impact on a politician's behaviour. That being said, the sale of Martin's controlling interests to his sons does not go far enough for many Canadians. There are many who believe that a sale to a third party is the only appropriate solution in this type of case. Given that the business remains in Martin's family, some people argue that Martin will have plenty of opportunities to keep himself informed of the company's activities. However, the recusal requirement will prevent him from participating in government decisions that might benefit the company.

When considering whether or not codes of ethical conduct are useful in any political system, it must be remembered that accusations of corruption are an inevitable part of democratic politics. Opposition parties, in their attempt to present themselves as a superior alternative, often accuse governing parties of ethical wrongdoing. Mudslinging is easy to do, it attracts media and public attention, and it puts governments on the defensive. As long as there is free speech, there will be accusations of corruption in politics. Therefore, even if codes of conduct are effective at preventing ethical wrongdoing, they cannot eradicate partisan bickering in an adversarial political system.

Chapter Seven
Codes of Ethical Conduct: An Evaluation

Every government policy is born with the purpose of meeting one or more specific objectives. The Canadian, American, and British governments state their policy goals in the introductory sections of their written codes of conduct for legislators. The codes' purposes are very similar for the three countries. In general terms, each government developed its code of conduct to encourage adherence to high ethical standards among politicians and to enhance public confidence in the integrity of the political system and its actors.

In this chapter, I evaluate the codes to determine their potential effectiveness at helping governments to meet their stated goals. I evaluate each code separately to draw attention to its unique features, even though the codes are more similar to one another than different. The evaluation exercise allows me to draw general conclusions about the effectiveness of written codes of ethical conduct in general.

In each of the codes, there is a stated commitment to enhance both the ethical behaviour of politicians and public trust in political actors and institutions. Although both goals are understandable from the government's point of view, they each cannot necessarily be achieved by the same measures. In other words, approaches that might encourage politicians to observe ethical standards might do nothing to encourage the public to trust them, and vice versa. In fact, measures taken to meet one of the goals might actually compromise the effort to meet the other. For instance, governments might adopt strict rules of conduct in the attempt to encourage public trust in the government.

However, if the rules become too rigid, politicians are likely to grow frustrated with them and feel reluctant to comply.

During the proceedings of the Special Joint Committee on a Code of Conduct established by the Canadian House of Commons in 1995 to develop a code of conduct for Members of Parliament, Liberal MP Marlene Catterall called attention to the possibility of conflict between the two policy goals. In the course of the Committee's interview with Ethics Counsellor Howard Wilson, Catterall posited: "In a sense, I think what we're trying to do is have a code of conduct that's going to protect our public image more than it improves our ethical conduct, and that's my concern."¹⁸⁷ Catterall's comment speaks to the friction between the two major goals of codes of ethical conduct. In order for a code of conduct to meet both objectives, it must take a balanced approach that does not focus on one goal more so than the other. Efforts to rebuild public trust must not result in rules so rigid that legislators refuse to comply. On the other hand, in the effort to devise regulations that are seen as fair and acceptable by politicians, governments must not "water down" ethics regulations to the point that their effectiveness is compromised in the eyes of the public.

To assess the likelihood that a code will have the effect of encouraging ethical behaviour among politicians, I use the following criteria. First, I determine whether or not a code contains an effective mechanism of enforcement. Without one, a code is unlikely to be an effective deterrent of corrupt behaviour. Second, I determine whether or not a code contains a guarantee that its contents will be reviewed and reformed when necessary. Ethical standards will eventually reach an "expiry date", so rules must be revised both to reflect changes in societal standards and to address any "loopholes" that

¹⁸⁷ "Proceedings of the Special Joint Committee on a Code of Conduct."

might have been discovered by those administering the code and/or those who were held subject to it. Third, I determine whether or not a code includes reference to broad ethical principles as well as specific rules. Abstract principles of ethics that are mentioned in codes of conduct, such as “honesty” and “integrity”, give politicians a sense of the “ideal” standard of ethics toward which they should strive. Also, they give the Ethics Commissioner a range of discretion in interpreting the code. If an MP committed an act that seemed ethically questionable but did not violate a specific clause of the code, the Ethics Commissioner could rule that the act offended an ethical principle such as honesty or integrity.

In the spring of 2005, Conservative Member of Parliament Gurmant Grewal secretly tape-recorded a conversation he had with cabinet minister Ujjal Dosanjh. Although there is no specific rule against this, it offended the ethical standards of other MPs and of many Canadians. This incident is currently under investigation by the Ethics Commissioner. If Dr. Shapiro were to find that Grewal’s actions violated the code in that they were dishonest and harmful to the integrity of the system, it would breathe life into the abstract principles of the code. However, the main purpose of Shapiro’s investigation is to determine whether or not the cabinet minister offered political rewards in exchange for Grewal’s support in the House of Commons. It is not yet clear whether Shapiro will pass judgment on Grewal’s secret recordings.

To evaluate a code’s effectiveness at encouraging public trust in the political system, I ask the following questions. First, does the code have “teeth”, or mechanisms to encourage compliance? If a code is seen by the public and the media to be unenforceable, it is unlikely to encourage public trust in the political system and its

actors. Second, do survey data and public opinion polls that test levels of public trust in politicians indicate whether or not codes of conduct have had an effect on levels of public trust?

Taken together, these criteria test the likelihood that a code of conduct will be successful at meeting the goals proposed by the sponsoring government. If the criteria are met, it is more likely that the code will have a positive effect than if they are not. However, as I argued in the first chapter, there is no guarantee that a code of conduct will improve either politicians' ethical behaviour or the public's trust in the political system, even if all of the criteria are met. Having evaluated and compared the potential effectiveness of the ethics regimes of the three countries, I deal with the larger question of whether or not codes of conduct in general are an effective way of maintaining high standards of ethics among politicians and nurturing the public's trust in them.

Do Codes of Conduct Encourage Ethical Behaviour?

a) Does the code contain an effective mechanism of enforcement?

The codes of conduct for politicians in Canada, the United States, and the United Kingdom all contain some sort of enforcement mechanism. It is important to note that in all three countries, bribery is a criminal offense that is punishable under the criminal law. Therefore, if evidence suggested that a politician is guilty of accepting bribes in exchange for political favors, he could be charged with committing bribery and be forced to defend himself in a criminal court. Codes of ethical conduct are not focused on major ethical breaches such as bribery, but deal with ambiguous "grey areas" of ethical conduct, such as the acceptance of gifts and travel subsidies, attempts at undue influence, and the like.

Canada

In Canada, the Ethics Commissioner administers the *Conflict of Interest Code for Members of the House of Commons*. His primary responsibilities are to process disclosure statements from MPs and to give advice to them on how to comply with the contents of the *Conflict of Interest Code*. If an MP suspects that another MP has not complied with the code's requirements, he is advised to report his suspicions to the Ethics Commissioner and request an inquiry into the matter. Also, if the Ethics Commissioner himself suspects that a Member is not complying with the rules, he is free to conduct an inquiry into the matter. Following an inquiry, the Ethics Commissioner reports his findings to the Speaker of the House, who then delivers the contents of the report to the House of Commons. This report is to be made available to the public when it is delivered in the House. If the Ethics Commissioner finds that a Member has violated the contents of the code, he communicates this in the report and might recommend appropriate sanctions to be enforced by the House of Commons. Ultimately, if a punishment is to be issued, this will be done by the House of Commons, not by the Ethics Commissioner. Although he might recommend sanctions, these recommendations are not binding. It is up to the House to decide if and how to punish its Members in the event that they violate the code.

The Ethics Commissioner is charged with the task of *interpreting* the conflict of interest code. His interpretations are given effect when he advises Members of Parliament on how to comply with the rules. However, the effective enforcement of the code is ultimately in the hands of the MPs themselves. The extent to which the code is enforceable depends on MPs' willingness to punish their own colleagues' ethical

breaches. Therefore, the ethical standards that MPs hold play a significant role in Canada's political ethics regime. Because MPs have the final word on whether or not violations of the code will be punished, their interpretations and judgments of the code's contents become just as important as the judgments of the Ethics Commissioner. In fact, the decision of the House not to punish an MP for a violation, in effect, would negate the Ethics Commissioner's original finding of guilt.

From the perspective of democratic accountability, the House of Commons' control over the enforcement of the code is a positive thing, as electors can hold MPs to account for decisions regarding whether or not to punish inappropriate conduct. Their control over the enforcement of the ethics code is a form of self-regulation. However, if MPs are unwilling to punish each other for ethical violations, the overall effectiveness of the code is undermined. It is conceivable that partisan colleagues would try to refrain from punishing each other for breaches of the code. From this standpoint, the code would be more effective if the independent Ethics Commissioner had the power to punish violations. The downside to this is that his interpretation of the code would become the only one that mattered. Currently, MPs' interpretations of the code can be expressed through their decision to punish ethical violations. If the Ethics Commissioner is given exclusive authority over enforcement, MPs lose this avenue of expression. Further, if MPs choose to look the other way when colleagues break ethics rules, they will be held to account for this decision at election time.

The Grewal Report

To date, the Ethics Commissioner has released only one report following a complaint of a violation of the *Conflict of Interest Code for Members of the House of Commons*. In April of 2005, the Honourable Joe Volpe, minister for Citizenship and Immigration, asked the Ethics Commissioner to investigate MP Gurmant Grewal on the grounds that he had made a practice of requesting personal bonds from persons seeking his support on immigration matter. Mr. Volpe was concerned that such a practice would give the impression that Grewal's support for these matters could be purchased. It was unclear to Volpe and to some applicants who sought Grewal's support whether or not Grewal stood to gain financially from his requests for bonds. If he did, his actions would constitute a conflict-of-interest and thus would violate the code of conduct for MPs.

After conducting an inquiry that consisted mostly of interviews with Mr. Volpe, Mr. Grewal, and individuals who had sought Mr. Grewal's support for Temporary Residence Visas (TRVs), Dr. Shapiro concluded that there was no "real" conflict-of-interest. Mr. Grewal did not profit personally and did not intend to do so. During the inquiry, Shapiro found that it was an undisputed fact that Grewal had requested personal bonds from those seeking his support on immigrations matters related to TRVs. These bonds were meant to act as incentives to constituents acting as sponsors to ensure that their visitors left Canada. The typical amount pledged was \$50,000. Although he requested these bonds, Mr. Grewal did not attempt to "redeem" these personal guarantees and did not charge any other fee in exchange for his support for TRV applications.

Dr. Shapiro concluded that Mr. Grewal's actions placed him in an "apparent" conflict-of-interest by raising questions as to whether or not he would gain personally from the bonds that he requested. The practice generated confusion among those asked

to provide the personal guarantees. Some individuals thought that the provision of the bond was a government requirement, while others thought that it was specific to their constituency. Some felt burdened by the pledge, while others did not. Some thought that the pledge was “legally enforceable.” Considering the lack of clarity regarding the purpose of the pledge, and the fact that this practice is not universal, it is reasonable to question whether or not Mr. Grewal was gaining personally from it.¹⁸⁸

Although the Ethics Commissioner found that Grewal’s actions did not “fully comply” with the code in that an apparent conflict-of-interest occurred, he was not particularly critical of Grewal. He argued that Grewal’s error in judgment was made “in good faith.” He did not recommend sanctions, despite his finding that the code had not been fully complied with. It is stated explicitly in the “Principles” section of the code that MPs should fulfill their duties according to the highest standards so as to avoid “real or apparent conflicts of interest.”¹⁸⁹ Shapiro could have used the Grewal case to draw attention to the broad principles listed in the code and to discuss how any violation of them undermines public confidence in the system. However, he made no mention of these principles or their importance. His report concentrated on Grewal’s actions, but not on their potential implications for the integrity of political institutions and actors. Shapiro’s soft response does not encourage other MPs to avoid apparent conflicts-of-interest, as they now know that Shapiro does not consider this to be a punishable offense.

The *Conflict of Interest and Post-Employment Code for Public Office Holders* states that if an official fails to comply with any part of the code, he will be subject to punishment as deemed appropriate by the Prime Minister. The Ethics Commissioner

¹⁸⁸ Shapiro, Bernard J. “The Grewal Inquiry.” June 2005. Office of the Ethics Commissioner. 1-6.

¹⁸⁹ Conflict of Interest Code for Members of the House of Commons.

does not recommend punishments under this code. Again, from the perspective of democratic accountability, it is appropriate that the Prime Minister, an elected official, is ultimately responsible for doling out punishments and therefore can be held accountable for his actions in this regard. On the other hand, there is nothing in the code to compel a Prime Minister to impose any particular punishment in any situation. Therefore, it is possible for cabinet ministers' ethical violations, as determined by the Ethics Commissioner, to go unpunished – especially where a Prime Minister deems it to be politically expedient to attempt to sweep these violations “under the rug.” However, since the public is aware of the violation, the Prime Minister would be under pressure to respond appropriately. Still, even if a Prime Minister responds to ethical violations with appropriate punishments, the fact that the code does not contain references to the kinds of punishments that officials can expect diminishes the impact of the code in deterring corrupt behaviour. Officials know that there is a possibility that transgressions will go unpunished, and therefore might be willing to accept the risk that they will be caught.

The Sgro Report

Since his tenure began in June of 2004, Bernard Shapiro has released one report following complaints of possible violations of the *Conflict of Interest and Post-Employment Code for Public Office Holders*. In November of 2004, Conservative MP Diane Ablonczy asked the Ethics Commissioner to investigate the possibility that Sgro had abused her power as immigration minister to grant temporary residence and work permits. Ablonczy called Shapiro's attention to allegations that Ms. Sgro, just three days before the 2004 federal election, granted a TRP to Alina Balaican, an applicant for

immigration status who had volunteered on Ms. Sgro's re-election campaign.

Ablonczy's letter made reference to other applicants for landed immigrant status who had been active in Sgro's campaign. Her concern was the possibility that Sgro's campaign attracted individuals seeking special consideration and that favoritism was extended by the immigration minister.

Mr. Shapiro's investigation consisted largely of conducting interviews and reviewing documents produced by Citizenship and Immigration Canada and by Ms. Sgro's office. The Ethics Commissioner concluded that Ms. Sgro, in granting the temporary residence permit to Ms. Balaican, was not aware at the time that Ms. Balaican was a volunteer on her campaign. Therefore, she was not personally responsible for placing herself in a conflict-of-interest situation. Shapiro blamed Ihor Wons, a policy advisor to Ms. Sgro who left his position to work on her election campaign, for creating the conflict by allowing Ms. Balaican to work on the campaign while applying for a TRP. Dr. Shapiro found evidence that in general, Wons failed to separate his work for Ms. Sgro as immigration minister from his work on her campaign. On several occasions, he sought ministerial TRPs for volunteers to Sgro's campaign.

The key factor determining Sgro's guilt or innocence, according to Shapiro, is whether or not she was aware of Wons' actions. Shapiro acknowledged the lack of concrete evidence to answer this question. However, he found in favour of the former minister. He states in his report:

(A) great deal of uncertainty remains. However ... I choose to believe the Minister, in granting the TRP to Ms. Balaican, was either unaware of the fact or did not recall that Ms. Balaican was one of the many volunteers on her re-election campaign.¹⁹⁰

¹⁹⁰ Shapiro, Bernard J. "The Sgro Inquiry: Many Shades of Grey." June 2005. The Office of the Ethics Commissioner. 14.

Regarding cases other than Ms. Balaican's, Shapiro concluded that Sgro's knowledge of instances where those seeking permits were also volunteers on her campaign seems "limited, but is not completely non-existent."¹⁹¹ He acknowledged that ministers are individually responsible to Parliament for the actions of their departments, including those of their political staff, whether or not the minister had knowledge of these actions. This seems contradictory to his claim that her knowledge of Wons' actions is key to holding her responsible for them. Ultimately, although Shapiro found that Ihor Wons was primarily responsible for creating the conflict-of-interest situation, he did not find that Sgro was entirely without responsibility.

The report is easy on Sgro and does not sufficiently acknowledge the harm that the incident caused to the integrity of the immigration system. As did the Grewal report, the Sgro report concentrates on "technicalities" rather than on ethical principles. His threshold for proof for assigning responsibility to Sgro was too high, especially considering that even if she did not know about Wons' actions she is still responsible for them as a cabinet minister. In the final paragraphs of his report, Shapiro says that Sgro "was placed" in a conflict-of-interest situation, as if to absolve her of responsibility. His report does not offer a strong incentive to obey the rules.

In his report on this incident, Shapiro explains that the Ethics Commissioner is not responsible for all matters of ethics, but only those that fall within his mandate as outlined by the codes of conduct for public office holders and for MPs. In particular, Shapiro states that he is not responsible for investigating allegations that a cabinet minister has misled the House. Part of Diane Ablonczy's request of Shapiro was that he investigate whether or not Sgro had done so. He declined to respond to this issue, as it is

¹⁹¹ Ibid 21.

up to the House of Commons to deal with it as a matter of parliamentary privilege. He is correct on his point that the House has the authority to act in this case. However, in declining to comment on it himself, he ignored the fact that lying to the House of Commons violates the principles set out in ethical guidelines. Section 3 of the rules for public office holders states that they must act with “honesty” and maintain the highest ethical standards so as to encourage public confidence in the government. Shapiro appears to be unwilling to take seriously the principles of ethics that lay the foundation for rules for conduct.

The United States

The United States Constitution gives the Senate and the House of Representatives authority over the election, qualification, and conduct of its own Members. Article 1, Section 5 of the Constitution gives each body the power to determine its own rules of proceeding and to “punish its Members for disorderly Behaviour.” With the support of two-thirds of its Members, the House may expel one of its own. Early discussions and interpretations of this constitutional clause ruled that “disorderly behaviour” as it is mentioned here is not confined to behaviour that occurs within the walls of the Congress, but includes “outside” behaviour as well. By giving Congress the authority to regulate its Members’ behaviour, the Framers sought to protect the legislature from interference from the executive branch, and thus preserve the separation of powers.

In 1968, the Senate and the House adopted written codes of ethical conduct. Before this, Members were judged by informal and unwritten standards of ethics. In the event that they are found guilty of ethics violations, Members of Congress are subject to

ethics review and possible disciplinary action from their peers. The Standards Committee in the House of Representatives and the Senate Ethics Committee handle complaints of ethical misconduct in their respective Houses. The membership of these committees is equally divided along partisan lines to ensure that the ethics regime does not become politicized. The committees review the cases that come before them and, if necessary, make recommendations of disciplinary action in the form of censure, reprimand, or expulsion from the respective House. The recommendation is put to a vote by all members of the House or Senate, as the case may be. In some instances, the House and Senate Committees have issued letters of reprimand or reproof to Members, but these letters are not considered to be formal disciplinary actions, such as censure.

The ethics enforcement process in place in the United States Congress has its strong points. First, there are standing committees in each House that are ready to investigate alleged ethics violations and recommend punishments. Second, the equal division of membership along partisan lines ensures that those accused of ethics violations will not be left to the mercy of members of the opposing party. Third, the entire membership of the House or Senate is involved in deciding whether to punish a Member. This way, Members feel engaged in the process of ethics regulation and become familiar with congressional standards for ethical conduct. If Members not only witness a peer's punishment for misconduct, but bear some responsibility for levying it, they will be deterred from engaging in similar inappropriate behaviour for fear of facing disciplinary action themselves.

There is an enforcement mechanism in place in the United States Congress that has the potential to encourage Members' adherence to ethical standards. However,

evidence shows that disciplinary action is rarely taken. A report released in 1993 by the Joint Committee on the Organization of Congress stated that the Senate had used censure 9 times and had not expelled a Member since the Civil War. The House had used censure 22 times and reprimand 7 times. Expulsion had been used 4 times. The infrequency with which punitive measures are used has several possible explanations. For example, it could be that Members facing disciplinary action might choose to resign before committee proceedings commence. Or, it could be that these Members are defeated at the polls before disciplinary measures are completed. There is evidence to suggest that this is not the case, however. Welch and Peters, who study voting behaviour in the United States, have found that most incumbents who are accused of corruption are re-elected.¹⁹²

Since 1993, there have been approximately 30 complaints of misconduct made to the House of Representatives' Committee on Standards of Official Conduct. The nature of these allegations ranged from the improper use of a congressional fax machine to incomplete financial disclosure to improper relations with a lobbyist. The committee responded to over half of these complaints by sending a letter to the accused representative to encourage better compliance with ethics rules. In 1994, Rep. Newt Gingrich was reprimanded and directed to reimburse \$300000 to the public purse after it was found that he used official resources for non-official purposes. One congressional

¹⁹² Peters and Welch, "The Effects of Charges of Corruption on Voting Behaviour in Congressional Elections." 697-708.

representative, James A. Traficant, was expelled in 2002 upon conviction of conspiracy to violate federal bribery rules.¹⁹³

The letters sent by the committee to reprimand an official's behaviour serve as an explicit recognition of wrongdoing on the Member's part, but they are hardly a punishment. The option to send a critical letter provides an "out" for committee members caught between chastising their colleagues on the one hand and being accused of having a laissez-faire attitude toward ethics on the other. The letters are a response but not a harsh one. The committee's inquiry into the actions of the accused Member and the letter that results from it are both publicly accessible. Therefore, even if the committee declines the opportunity to punish their colleague, its proceedings provide the electorate with the information necessary to decide whether or not the Member should not be re-elected on account of ethical misconduct.

The most significant contributing factor to the infrequency of punitive measures seems to be Members' hesitance to punish each other. Unless a Member who has been found guilty of a violation is expelled - a rare scenario - the Member must resume a working relationship in the House with the committee members who recommended his punishment. Tension between these Members could compromise the legislature's effectiveness and would definitely make the re-integration of the Member more difficult. Because of these factors, many Members of Congress have expressed a preference not to sit on ethics committees. They fear criticism from the public for being too lenient and criticism from their peers for being too strict. The unwillingness of Members to participate, combined with their reticence to punish their peers, certainly compromises

¹⁹³ "Historical Summary of Conduct Cases in the House of Representatives." 9 November 2004. Committee on Standards of Official Conduct.
<http://www.house.gov/ethics/Historical_Chart_Final_Version.htm>.

the effectiveness of the ethics enforcement process and its ability to encourage adherence to high ethical standards.

There is an obvious tension between the legislature's constitutional right to regulate its own behaviour and the hesitance of Members to do so out of fear of poisoning their work environment. As a result, there have been calls for the reform of the ethics enforcement process. A frequent recommendation is for independent, non-legislators to act as members of the ethics committees. These members would not feel any pressure to be lenient towards Members of Congress who violate ethics rules, since they would not be required to resume a working relationship with those who are punished. However, some critics express the concern that non-Members might not be equipped to judge the ethical standards and behaviour of congressional representatives. An assumption that underpins a group's right to regulate its members' conduct, whether in the case of professions or any other occupation, is that its members, given their intimate knowledge of the roles and responsibilities of their vocation, are uniquely suited to pass judgment on their colleagues' behaviour. Without this hands-on experience, a person would not be qualified to determine whether or not a particular behaviour crosses the boundaries of appropriateness.¹⁹⁴

The involvement of congressional representatives on the committee would resolve any problem that might result from independent members' inexperience. If Members of Congress feel uncomfortable punishing their peers, and therefore are encouraged to take a lenient interpretation of ethics rules, the entire ethics regime could be compromised. Independent committee members could provide a much-needed "reality check" in terms of

¹⁹⁴ "Enforcement of Ethical Standards in Congress." Final Report of the Joint Committee on the Organization of Congress. December 2003. <<http://www.house.gov/rules/jcoc2.htm>>.

the appropriateness of Members' behaviour. The involvement of independents on the committee could prevent the decay of ethical standards that might result from representatives' reticence.

Independent members of the ethics committee should consist of former Members of Congress and people who have never served in elected office. The latter, before beginning their work on the committee, should be educated in the duties and activities of Members of Congress so that they understand the ethical quandaries elected officials often confront. Some political ethics observers in the United States are opposed to the involvement of former Members of Congress because they worry that partisan loyalties would undermine their objectivity. Former Members of Congress should be appointed to the committee in equal numbers from each party. This would eliminate the possibility that partisanship on the part of "outside" committee members would compromise the committee's objectivity.

United Kingdom

The enforcement mechanism in the code of conduct for British Members of Parliament is virtually identical to the one in place for Canadian MPs. The Parliamentary Commissioner for Standards receives and investigates complaints against MPs regarding violations of the code of conduct. The Commissioner reports the results of his investigations to the House Committee on Standards and Privileges. At this stage, it is up to the Committee to decide whether or not to pursue the case further, based on the information gathered in the Parliamentary Commissioner's inquiry. As is the case in the United States, the membership of the committee is equally divided between government

and opposition party members. This eliminates the possibility that the committee's decisions would be controlled by either the governing party or opposition parties. The Committee chooses its course of action from one of the following options: it might dismiss the case entirely; it might gather more information in order to make a decision on the accused Member's guilt or innocence; or it might decide that there is sufficient evidence against the Member to warrant recommending that the House levy some sort of punishment. As is the case in Canada and the United States, it is up to legislators to punish their peers for ethical violations. The House chooses from such disciplinary measures as the withholding of salary, suspension from the House, and forcing the MP to apologize formally to the House.¹⁹⁵

In all three countries, legislators bear the ultimate responsibility for deciding if and how to punish colleagues who are found guilty of misconduct. Therefore, the British mechanism for the enforcement of its code is subject to the same criticisms as are the other countries. Relying on MPs to punish each other's ethical violations is not the best way to facilitate high standards of political ethics among politicians. Again, legislators are often hesitant about punishing their peers because as soon as the disciplinary proceedings are over, they are expected to resume a working relationship with the MP whom they have punished. Between a rock and a hard place, MPs are not able to be completely objective when they decide if and how to punish a colleague. The result is that ethical standards for politicians become vulnerable to MPs' willingness to pass judgment on each other's actions.

¹⁹⁵ "House of Commons Guide: Complaints Against a Member of Parliament."

The House Committee on Standards and Privileges is responsible for reviewing the Parliamentary Commissioner for Standards' reports following any inquiries into complaints about members' conduct. The committee must decide whether to pursue these reports further, which might result in disciplinary action against an MP. Some critics have expressed the concern that members of this committee might be lobbied by other MPs about which cases to consider. Although there has been no evidence of this, the House of Commons is considering revising the code to include a provision prohibiting the lobbying of committee members by MPs.¹⁹⁶

Cabinet ministers in the United Kingdom are subject to the *Code of Conduct and Guidance on Procedures for Ministers*. Unlike the code of conduct for ordinary MPs, the cabinet ministers' code does not include a mechanism for enforcement. Cabinet ministers are expected to monitor and control their own behaviour. The Parliamentary Commissioner for Standards, who handles complaints of ethical violations made against MPs, does not get involved in monitoring ministers' behaviour. Cabinet ministers serve at the pleasure of the Prime Minister and it is up to him to discipline them in the event that they are found guilty of misconduct by the Parliamentary Commissioner for Standards.

The Prime Minister is an elected official, accountable to the House of Commons and, by extension, the British public. If he does not respond to cabinet ministers' ethical misconduct in a responsible way, he risks being punished in the House and at the polls. Therefore, it is logical to assume that in an effort to avoid the wrath of either the House of Commons or the public, the Prime Minister will take disciplinary action against corrupt cabinet ministers. However, public pressure to uphold high ethical standards is

¹⁹⁶ "Consultation Paper: Review of the Code of Conduct for Members."

only one force acting on the Prime Minister when he decides how to deal with allegations of misconduct against a minister. If he deems it politically expedient to attempt to sweep misconduct allegations “under the rug”, he might attempt to do so. If the accused minister is popular with the public, the Prime Minister might decide to weather the storm rather than remove the minister. If the Prime Minister fails to reprimand a cabinet minister for misconduct reported by the Ethics Commissioner, other ministers might assume that his ethical standards are lenient and that similar transgressions on their part will also go unpunished. In this regard, the ministerial code’s ability to encourage adherence to ethical standards is compromised.

Anecdotal evidence suggests that Prime Minister Tony Blair has not always disciplined ministers against whom complaints of misconduct have been brought, especially in cases where the minister has been loyal to him. In December of 2004, British Home Secretary David Blunkett was accused of using his position to direct “perks” to a former lover. Although the evidence was damning, Blair did not call for his resignation or take any sort of disciplinary measure against him. Amidst public pressure, the Home Secretary resigned. It is possible that Blair called for his resignation privately, but in public, the Prime Minister defended Home Secretary Blunkett.¹⁹⁷

In being called on to discipline cabinet ministers, the Prime Minister is placed in the same uncomfortable situation as are legislators who are responsible for punishing their peers. In fact, the Prime Minister could be held at least partially responsible for cabinet ministers’ ethical misconduct because he appointed them. The enforcement mechanisms in place in each of the three countries rely on politicians to judge the

¹⁹⁷ “Scandal threatens Brit politician’s career.” 4 December 2004. CTV News.
http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1102091247156_22?hub=CTVNewsAt11>.

appropriateness of each other's behaviour and to take disciplinary action when necessary. Therefore, although enforcement mechanisms are in place in each country, their role in encouraging politicians to adhere to high ethical standards is limited.

b) Is there a guarantee that the code will be reformed when necessary?

Gradually but certainly, ethical standards evolve. The rules inscribed in a code of ethical conduct capture the standards of the time at which the code was written. As standards and expectations change, these rules become out of date and require revision in order to be effective in nurturing ethical behaviour among politicians. Another reason for revision is that after a code has been in place for some time, any inadequacies or loopholes in that could allow legislators to circumvent the spirit of the rules become obvious. Without regular revision, a code of conduct becomes passé and cannot be effective at encouraging high ethical standards among politicians.

Canada

Section 33 of the *Conflict of Interest Code for Members of the House of Commons* states that once every five years, the Standing Committee on Procedure and House Affairs must conduct a comprehensive review of the code's provisions and operation. Further, it must submit a report on this review to the House of Commons, including any revisions that the committee recommends.¹⁹⁸

¹⁹⁸ Conflict of Interest Code for Members of the House of Commons.

United States

The United States Congress has the constitutional right to create and enforce rules to govern the behaviour of its members. If the House of Representatives' Ethics Manual were to be reviewed or revised, the Committee on Standards of Official Conduct would perform the task. The Senate Ethics Manual gives the Senate Select Committee on Ethics the authority to recommend revisions to the Senate's ethics regime. In both Houses, reform proposals would have to be put to a vote by all members in order to be implemented. Although both the House and the Senate have in place a mechanism for the review and revision of the code of conduct, neither of the codes contains a guarantee of review or revision at regular intervals.

United Kingdom

The code of conduct for British Members of Parliament contains a provision which states that it is to be reviewed with every new Parliament. The Parliamentary Commissioner for Standards initiates the review by contacting MPs by mail. He sends a paper containing information about the code and specific questions about potential reforms. After gathering the opinions of MPs, the Commissioner puts forth recommendations for revision to the Committee on Standards and Privileges. Then, the Committee makes recommendations of revision to the House. To be implemented, proposed reforms require the approval of the House of Commons.¹⁹⁹

In each of the three countries, all legislators participate in the review and reform of the code of conduct that is supposed to inform their actions. In all three countries, the

¹⁹⁹ "Consultation Paper: Review of the Code of Conduct for Members."

review procedure is initiated by a committee that specializes in ethical standards. The committee consults legislators, members of the public, and experts before adopting proposals for the reform of the code. Then, recommendations for review are put to the legislature as a whole for members' approval. This makes for an informed and engaged review process. Committee members' leadership is important, as they have experience in matters of ethics and bring intimate knowledge to the review process. Legislators must learn and abide by the rules, so they are uniquely suited to comment on ethics codes' weak points. Academic experts and members of the public are able to inform the committee on how the rules are perceived outside Parliament. This information is important, since a major goal of ethical codes of conduct is to enhance public confidence in politicians. This consultation process ensures that reforms, when they do occur, have a strong foundation of support. Also, the review process necessitates a broad dialogue about the ethical standards of politicians and of the public. Members' participation in this process familiarizes them with the rules, which can only help in encouraging adherence to them. Discussions in the legislature on the review and revision of ethical standards help to establish common standards among MPs, which encourages MPs to obey the rules that have been commonly agreed to. Presumably, legislators' participation in the review process will result in rules that they accept as fair and functional, which makes compliance all the more probable.

The United States is the only country of the three in which there is no guarantee of a regularly scheduled review process. Therefore, although reviews and reforms have occurred of the codes of conduct in both the Senate and the House of Representatives, there is no guarantee that this will occur at regular intervals. In this sense, the United

States' code is weaker than the others. That being said, the ethics committees in both the U.S. Senate and House of Representatives have taken it upon themselves to review and revise the codes when there is an incentive to do so. For instance, in 1997, the House of Representatives appointed a bipartisan Task Force to review the "standards process" by which Members and employees are adjudicated following the filing of a complaint against them. This was the first time that the rules of conduct had been investigated since 1989. The task force consisted of twelve House representatives, who interviewed other House representatives as well as members of the public to gather opinions on how the standards process should be revised. On the basis of its research, the task force made a number of recommendations that it thought would "improve the trust and confidence that the Members, and the American people, have in the House standards process." The task force made recommendations regarding the confidentiality of committee proceedings, the efficient administration of the standards committee, and the timely resolution of matters before the committee.²⁰⁰

The absence of a guarantee of regularly scheduled reviews does not mean that an ethics code will not be kept up to date. It means simply that ethics committees are on their own to take review and revision measures when they are necessary. There is no evidence that the American codes of conduct are "weaker" than those of the other countries' due to the lack of a regularly-scheduled review. Further, whether or not a code of conduct contains a clause guaranteeing reviews at fixed times, all legislative bodies in all three countries are free to conduct a review process at any time. They are not required to wait until a review is necessary.

²⁰⁰ "Report of the Ethics Reform Task Force on H. Resolution 168." 17 June 1997. Committee on Standards of Official Conduct website. 105th Congress, First Session.
<<http://www.house.gov/ethics/ethicsreport.txt>>.

c) Does the code include both broad principles and specific rules?

The best way to encourage politicians to hold themselves to high ethical standards is to take a two-pronged approach that includes both specific rules of conduct, such as disclosure requirements, and broad principles of ethics, such as honesty and integrity. A code of conduct that includes only one of these formats is inadequate.

Canada

The Canadian codes of conduct for legislators and cabinet ministers take a two-pronged approach in the attempt to encourage adherence to high standards of political ethics. Both codes include rules for conduct, such as requirements for financial disclosure, and broad principles of ethics. The rules of conduct in the Canadian codes are described in detail in an earlier chapter on the Canadian political ethics regime. The *Conflict of Interest Code for Members of the House of Commons*²⁰¹ and the *Conflict of Interest and Post-Employment Code for Public Office Holders*²⁰² are very similar in terms of their overall objectives and in the ethical principles to which they refer. In general terms, the codes define the following as major objectives: (a) maintain and enhance public confidence and trust in the integrity of Members and the House of Commons as an institution; (b) to demonstrate publicly that Members are held to standards that place the public interest ahead of their private interests; (c) to provide greater certainty for Members on how to avoid conflicts of interest; (d) to establish common standards of ethics among Members.

²⁰¹ Conflict of Interest Code for Members of the House of Commons.

²⁰² Conflict of Interest and Post-Employment Code for Public Office Holders.

The general principles that legislators and public office holders are expected to abide by are as follows: (a) to protect the public interest; (b) to perform public duties honestly and to avoid conflicts of interest, either real or apparent; (c) to perform official duties in a manner that would bear the closest of public scrutiny; (d) to arrange private activities so that real and apparent conflicts of interest can be avoided; (e) not to accept personal gifts or benefits that could be seen to compromise integrity or objectivity.

United States

The House of Representatives' Ethics Manual contains a section entitled "Code of Ethics for Government Service." It consists of ten principles of ethics to which those in government service are expected to adhere. Among these are the following: (a) putting loyalty to the highest principles above loyalty to the Government or to any department; (b) seek efficient ways to complete tasks; (c) give a full day's work for a full day's pay; (d) avoid conflicts between public and private interests; (e) expose corruption whenever it is found.²⁰³

The Senate Ethics Manual is similar to that which is in place for the House in that it includes specific instructions for avoiding conflicts of interest, disclosing financial interests, and the like. However, it does not include a section that is dedicated specifically to articulating broad principles of ethics, such as honesty and integrity. In most other codes of conduct, these principles are pronounced in the introductory section.²⁰⁴

²⁰³ "Ethics Manual for Members, Officers, and Employees of the United States House of Representatives." 1992. <<http://www.house.gov/ethics/Ethicforward.html>>.

²⁰⁴ "Senate Ethics Manual." 2003 Edition. Select Committee on Ethics, United States Senate. <<http://ethics.senate.gov/downloads/pdf/manual.pdf>>.

United Kingdom

The British approach to ethics regulation is two-pronged; it includes both broad principles and specific rules. The ethics regime for Members of the British House of Commons consists of the *Code of Conduct* and the *Guide to the Rules* relating to the conduct of MPs. The code encourages MPs to behave according to seven basic principles: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. The guide consists of specific rules, such as disclosure requirements and rules regarding the acceptance of gifts.

The *Code of Conduct* consisting of the seven principles listed above is part of the ministerial code for British cabinet ministers. Further, in the introductory section of the ministerial code, ministers are asked to behave according to “the highest standards of constitutional and personal conduct in the performance of their duties.” Following the introduction, the code includes specific rules for behaviour regarding conflicts of interest, disclosure, travel, and the like.

In Canada, the United States, and the United Kingdom, almost all codes of conduct contain both broad principles and specific rules. The only exception is the United States’ Senate Ethics Manual, which does not include a section dedicated to broad ethical principles. It would be difficult to make the argument that U.S. Senators are more corrupt than are other legislators because of this omission. Indeed, there is no evidence to suggest that. However, in this regard, the Senate Ethics Manual is inferior to the other codes of conduct that I study. For at least four reasons, codes of conduct must include

broad ethical principles in order to encourage politicians to behave ethically and to avoid corruption.

First, ethical principles such as honesty and integrity never become outdated. They are ideals to be worked toward throughout a politicians' career. When rules of conduct, such as disclosure requirements, become dated and must be revamped, broad principles provide continuity throughout these changes. Second, they give meaning and purpose to the rules for conduct. Without the ideals to work toward, disclosure rules become nothing more than a burden on politicians' time and an invasion of their privacy. If rules of conduct are not linked to overall goals and principles, MPs might grow to resent these rules and look for ways to circumvent them. Third, the articulation of broad principles is useful when it comes time to interpret the rules for conduct. Broad principles such as honesty and integrity promote the spirit of the code in when the rules are interpreted for a specific case. Every case has its own intricacies to which rules of conduct have to be applied, and the articulation of broad principles of ethics makes this process easier.²⁰⁵ Finally, if broad principles of ethics are not emphasized, specific rules of conduct become MPs' only guide to ethical behaviour. The risk here is that concentration on ethics rules would encourage adherence to the lowest standards of ethics rather than the highest.

In 1994, British Prime Minister John Major appointed the Committee on Standards in Public Life to examine concerns about public sector ethics and to make recommendations for improvements. Subsequently, on the committee's recommendation, the House of Commons adopted both a code of conduct for MPs and a guide to interpret this code. The former articulates broad ethical principles that are to

²⁰⁵ Telephone interview with Canadian Member of Parliament. April 29, 2005.

guide MPs in their professional behaviour, while the latter consists of specific rules for conduct. According to the committee, each of these documents has a unique objective, and therefore takes a different approach to encouraging the observance of high ethical standards. The code, in articulating principles of ethics that are commonly understood and agreed upon, contributes to a “good, ethical culture.”²⁰⁶ The guide to the rules, consisting of more specific requirements, tells MPs how to avoid conflicts of interest. To put it in another way, the code sets the standard and the guide tells MPs how to go about meeting it. To both encourage a solid culture of ethics and give MPs the information they need on how to avoid conflicts of interest, the two-pronged approach is necessary.

In an appearance before the Special Joint Committee on a Code of Conduct in 1997, Canadian Ethics Counselor Howard Wilson offered a justification for the two-pronged approach to ethics. In ethics regulation, Wilson maintained that the principles, not the rules, are most important. His suggestion to the committee was to “set out some principles and then certain modest rules could flow from that.”²⁰⁷ Because no set of rules is capable of capturing every possible ethical transgression, it is important not to get caught up in the attempt to create the most far-reaching code possible. The better approach is to rely primarily on broad principles to encourage ethical behaviour.

Do codes of conduct nurture public trust in political actors and institutions?

(a) Does the code have an effective mechanism of enforcement?

²⁰⁶ “Standards of Conduct in the House of Commons: Eighth Report.” November 2002. Committee on Standards in Public Life. <http://www.public-standards.gov.uk/reports/8th_report/report/eighthreport.pdf>.

²⁰⁷ Wilson, Wilson. “Proceedings of the Special Joint Committee on a Code of Conduct. Canadian House of Commons.” 5 February 1997. <<http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/en/oe01203e.html>>.

The second major objective of codes of conduct in politics is to facilitate public trust in the integrity of a political system. The variable under consideration here, namely the existence of an effective enforcement mechanism, is fundamental to the achievement of both of the main objectives of codes of conduct: the facilitation of public trust and the encouragement of high ethical standards among politicians. Regarding public trust, governments often create or revise codes of conduct in their attempt to restore public confidence in politicians after a scandal has surfaced. Policymakers tighten up ethics rules so that the public will see them as a means of protecting the public interest from the indulgences of self-interested officials.

For a code of conduct to encourage public trust in political actors and institutions, it must be seen as an effective, enforceable policy instrument. Without a reliable mechanism for enforcing their provisions, codes of conduct are interpreted by the media and the public as being incapable of protecting the public interest. The punishment mechanisms in each code were reviewed in the first section of this chapter, so I explain them here only briefly.

Canada

Under the Canadian code of conduct for MPs, the Ethics Commissioner investigates complaints brought against any member who is suspected of violating the code. After his investigation, he makes a report to the House of Commons, which includes his recommendations for punishments in the event that he deems such measures necessary. The House of Commons is ultimately responsible for deciding if and how to punish its members for code violations. Cabinet ministers are answerable to the Prime Minister for

ethical transgressions, not to the Ethics Commissioner. The Prime Minister must decide if and how to punish cabinet ministers for ethical transgressions. The Ethics Commissioner does not get involved.

The United States

Each House of Congress has the constitutional authority to regulate and monitor the behaviour of its members. The Standards Committee in the House of Representatives and the Senate Ethics Committee handle complaints of ethical misconduct in their respective Houses. The committees review the cases that come before them and, if necessary, make recommendations of disciplinary action in the form of censure, reprimand, or expulsion. The recommendation is put to a vote by all Members of the House. In some cases, the House and Senate Committees have issued letters of reprimand or reproof to Members, but these letters are not considered to be formal disciplinary actions, such as censure.

The Office of Government Ethics (OGE) takes primary responsibility for monitoring the ethical conduct of executive branch personnel. Through ethics education and training, the OGE attempts to instill high ethical standards in the approximately 300,000 employees of the executive branch. They are taught to be aware of the particular types of ethical quandaries that often occur in their line of work and are given advice on how to avoid them. The OGE requires that executive branch employees make annual financial disclosure so that potential conflicts of interest can be detected. Federal

employees are prohibited from accepting gifts of consequence from any person or organization that might benefit from the work of their agency. Employees are prohibited from accepting private payment for a task performed as part of their public duties. Upon leaving public office, employees are prohibited from: using government contacts and information for private purposes, representing a person or organization before the federal government, and prior to leaving office, participating in a decision that involves a prospective future employer.²⁰⁸

Several institutions are involved in the enforcement of ethics rules for the executive branch. The OGE is responsible for enforcing the following: disclosure requirements, outside employment restrictions, ethics training, and post-employment restrictions for executive branch employees; conflict of interest statutes; ethics audit reports from government agencies; and the ethical aspects of the *Government Employees Training Act*, the use of government property, and official travel.

The Federal Bureau of Investigation (FBI) has been involved in ethics enforcement since 1953. This agency is responsible for conducting full-field investigations of presidential appointees. Interviews are conducted with acquaintances, business associates, and neighbours of the nominee, and the information is passed on to the White House counsel for review. Mackenzie notes that while FBI field investigations rarely produce information that is useful to those managing the presidential appointment process, they often “provide fodder” for the opponents of a nomination. FBI files on nominees are shared with the chair and ranking minority member of the Senate committee with jurisdiction over nominations. If a file uncovers a hint of scandal, this encourages resistance to the appointment from opponents and damages the reputation of

²⁰⁸ Mackenzie and Hafken 55-66.

the nominee, even if the alleged “stain” on the nominee’s record is never proven to be substantial.

The president’s attorney, the counsel to the president, has taken on a role in ethics regulation and enforcement for presidential appointees. Once an individual has agreed to be a president’s nominee to an appointed position, she meets with the president’s attorney to discuss the ethics regime. At this time, the nominee must complete forms, some of which will be passed on to the OGE to fulfill financial disclosure requirements.

The *Ethics in Government Act* (1978) established a procedure in which an attorney general can call for the appointment of an independent counsel to investigate any senior executive branch official if there was sufficient evidence to require such an investigation. Once an independent counsel is appointed, he has the power to perform all investigative and prosecutorial functions of the Justice Department and cannot be removed before the completion of the investigation, save for very rare circumstances. The Justice Department has primary jurisdiction for investigation and prosecuting corruption charges against federal officials involving potential violations of federal law.²⁰⁹

The involvement of the Justice Department in this regard draws attention to the difference between statutory and non-statutory laws. The United States ethics regime for the executive branch is largely statutory. The fundamental piece of ethics legislation is the *Ethics in Government Act*. However, the executive branches in the Canadian and British systems are subject to a non-statutory code that is interpreted by the Ethics Commissioner. The Prime Minister in both countries is ultimately responsible for deciding whether or not findings of guilt by the Ethics Commissioner will lead to

²⁰⁹ Ibid 74-82.

punitive measures taken against the individual in question. In this regard, the punishment mechanism for the United States executive is more reliable than the mechanisms used in the other countries. While Prime Ministers might feel pressured to overlook the ethical transgressions of fellow ministers, the U.S. Justice Department would likely take a more objective approach. Department personnel would have no allegiance to a subject of an ethical complaint and would have nothing to lose from prosecuting him.

United Kingdom

The Parliamentary Commissioner for Standards receives and investigates complaints against MPs, then reports the results of his investigations to the House Committee on Standards and Privileges. At this stage, it is up to the Committee to decide whether or not to pursue the case further, based on the information gathered in the Parliamentary Commissioner's inquiry. The Committee chooses whether to dismiss the case entirely, gather more information, or levy some sort of punishment on the accused Member. As is the case in Canada and the United States, it is up to legislators to punish their peers for ethical violations. The House chooses from such disciplinary measures as the withholding of salary, suspension from the House, and forcing the MP to apologize formally to the House.²¹⁰ The Prime Minister bears responsibility for deciding whether or not to punish cabinet ministers for violations of the ministerial code.

The procedures used in the three countries for punishing legislators who violate codes of ethical conduct are very similar. All three countries rely on legislators to decide

²¹⁰ "House of Commons Guide: Complaints Against a Member of Parliament."

whether to punish their colleagues for code violations. There is no clause in any of the codes that compels MPs or Members of Congress to take any sort of punitive action against a guilty colleague. As long as the alleged activity does not offend the criminal code, legislators could choose to ignore it. This compromises the codes' effectiveness as a deterrent of corruption, especially since evidence in the United Kingdom and the United States suggests that legislators are loathe to punish colleagues' ethical transgressions.

(b) Is there evidence of a correlation between codes of conduct and levels of public trust?

Surveys and public opinion polls are used frequently to determine levels of public trust in political actors and institutions. If there is a correlation between high levels of public trust and the use of codes of ethical conduct for politicians, this suggests that codes of conduct might account, at least in part, for the public's trust in its government. However, it is difficult to measure the extent to which a code is a causal variable in this equation. It might be that countries with high levels of public trust are more likely to demonstrate a commitment to ethics via a code of conduct, even though the code itself does not facilitate public trust to any significant degree. Survey and polling data do not necessarily provide conclusive evidence on the effectiveness of codes of conduct. A correlation does not prove a causal relationship between codes and high levels of public trust.

A point to remember when assessing the effect of the codes on public trust is that if levels of confidence in government are low or are in decline, ethics regulations are ill-equipped to deal with the problem if the perception of corruption is *not* a contributory

factor to low levels of public trust. In other words, if people are not overly concerned about corruption in government, measures taken to reduce corruption are unlikely to affect public attitudes toward government in a significant way. The solution to the problem of distrust in government must be tailored to the source of the problem. Survey data from each country provide information on the sources of public distrust in government.

Canada

The code of conduct for Canadian MPs was introduced only in the summer of 2004, so it is difficult to measure its potential effect on the public's trust in the government. Not enough time has passed since the code's establishment to be able to determine any implications for public opinion. However, a survey taken by Ekos Research Associates in 2002 asked respondents to comment on the subject of ethics and government. Although this survey was conducted prior to the introduction of the code, it is useful to review the results.

The study indicated that levels of public trust were relatively steady, with modest improvement in the 1990s. In terms of corruption, 43% of respondents said that they thought the federal government was at least somewhat corrupt. However, most respondents believed that the rate at which corruption occurs in government has stayed the same over the past ten years. Generally, corruption was seen by respondents to be a problem, but no more so than in previous years.

Of particular interest are the data relating to Canadians' feelings about the ethics package that Prime Minister Jean Chretien introduced in 2002. An overwhelming

majority of respondents supported the package, but 66% of respondents had not heard of it before participating in the Ekos study.²¹¹ Therefore, although the package received enormous media attention and had been championed by the Chretien government as proof of its commitment to ethical governance, it was largely unknown to the Canadian public. If it is generally the case that ethics regulations and codes of conduct escape the public's attention, then they are unlikely to enhance the public's trust in the government, no matter how well the policies are constructed.

The study revealed that government ethics is not a top concern for Canadians. This is not to say that voters do not see political corruption as a problem. Studies reveal both Canadians' perception of corruption and an increase in cynicism and distrust in government. For instance, in 2001, a CRIC survey revealed that 86% of respondents agreed that politicians often lie to get elected.²¹² A 1997 CRIC survey of Canadians aged 18-34 found that almost two-thirds of respondents had "not much" or no confidence in political leaders.²¹³ However, if ethics are not a top priority for Canadians, then ethics rules are unlikely to change public opinion to any significant degree, especially if Canadians are unaware of the codes and their contents. That being said, the issue remains that scandals do reduce trust in government and codes and commissioner ought to reduce the incidence of scandals.

United States

²¹¹ "Trust and the Monarchy: an examination of the shifting public attitudes toward government and institutions." 30 May 2002. Ekos Research Associates. <http://www.ekos.com/admin/articles/31may2002.pdf>.

²¹² "Trade, Globalization and Canadian Values, 2001." *Opinion Canada*. 3.23 (2001).

²¹³ "CRIC survey on the concerns and values of young Canadians." March 1997. The Centre for Research and Information on Canada. www.cric.ca.

The codes of conduct that are in place for Members of Congress have existed since 1968. Therefore, if these codes were able to enhance public trust in government, they have had sufficient time to do so. In 1998, The Pew Research Centre for the People and the Press conducted a survey called “Deconstructing Distrust.”²¹⁴ The study found a substantial broad-based distrust of government that is linked to feelings about the overall state of the nation. People who feel good about the country tend to trust the government, and those who feel poorly about the country tend to distrust the government.

On the topic of ethics and government, the study revealed that the perception of a morality crisis among American political leaders is fuelling pessimism about the country’s future. Discontent with the honesty of elected officials is a contributor to overall distrust in the government, which suggests that ethics regulations directed at improving politicians’ ethical behaviour might have an effect on public attitudes. When asked why they do not like their government, 40% of respondents complained about political leaders or the political system as a whole. Only 24% expressed dissatisfaction with how the government does its job. The complaints against political leaders involved personal and public ethics. Respondents mentioned scandals, self-aggrandizement, and dishonesty as reasons for their distrust. However, because these feelings of cynicism are directed mostly at political leaders such as the President and his administration, not at Members of Congress, codes of conduct for elected officials are not likely to address this problem. Further, the link between respondents’ feelings of trust for the government and their perception of the nations’ overall performance suggests that trust in government is based on a variety of factors, many of which have little to do with politicians’ ethics. The

²¹⁴ “Deconstructing Distrust.” March 1998. The Pew Research Centre for the People and the Press. <http://people-press.org/reports/display.php3?ReportID=95>.

country's status in terms of economic performance, foreign policy issues, and other broad issues have a major effect on public attitudes, which means that the overall effect of codes of conduct is likely to be unsubstantial.

United Kingdom

The code of conduct for MPs was introduced in the United Kingdom in 1996, as drafted by the Committee for Standards in Public Life. This committee was appointed by Prime Minister John Major in 1994 to examine heightened public concern over standards of ethical conduct for politicians and to make recommendations for improvements. The government's primary goal in creating the committee that drafted the code was to repair the damage that frequent allegations of scandal had done to the public's trust in politicians.

In March of 2003, the committee commissioned a survey to test public attitudes about standards of conduct in public life.²¹⁵ The committee's research found that the principles set out in the code, such as objectivity, honesty, selflessness, accountability, openness, and integrity, reflect the priorities of the public. Further, respondents indicated that they want to see a greater commitment to honesty on the part of politicians. In particular, they want politicians to be more honest about policies and services, to acknowledge difficulties and pressures, and to admit when things go wrong.

Respondents identified the mass media as a significant influence on their political views. Only 27% of respondents said that they trusted MPs in general, while 47% said that they trusted their local MP. Trust in most professions was highest among young

²¹⁵ "Survey of public attitudes toward conduct in public life." September 2004. The Committee for Standards of Public Life. <<http://www.public-standards.gov.uk/research/researchreport.pdf>>.

respondents and those with higher education. The study found that while the public prioritizes a range of principles of conduct, honesty and the public service ethics were of greater importance than the declaration and resolution of conflicts of interest. Most respondents judged political corruption, in the form of bribery or other financial transgressions, as being the exception rather than the rule, but the majority sensed that politicians do not communicate with the public as honestly as they should. 68% of respondents expected that cronyism played a large role in government hiring procedures.

Overall, perceptions of the conduct of British public office holders are neutral or guardedly positive, despite respondents' negativity when asked about specific behaviours such as political favoritism. 45% felt that standards were quite or very high and 42% felt that standards were neither high nor low. 28% felt that standards had improved over the years, 30% felt that they had deteriorated, and 38% felt that they had stayed relatively the same.²¹⁶

The survey results indicate low levels of trust in politicians in general, even though respondents believed blatant political corruption to be a rare occurrence. The majority indicated that the public perceives the real problem to be politicians' failure to communicate honestly, rather than their tendency to engage in criminal or unethical behaviour. Respondents showed greater support for the code's broad principles than its specific rules for behaviour, such as disclosure requirements. The data gathered in the survey suggest that since the public does not see conflicts of interest and other ethical transgressions as serious problems, then rules for conduct are unlikely to alter the public's distrust in politicians. The root of this distrust is the failure of politicians to communicate honestly with the public. This problem is more likely to be solved through

²¹⁶ "Survey of public attitudes toward conduct in public life".

the reference to broad principles, such as honesty and integrity, rather than to disclosure rules. Although the study proved that the public agrees with the seven principles laid out in the code, it seems that the introduction of the code has not altered the public's feelings of distrust. Many respondents felt that politicians must place more emphasis on honest communication.

For two reasons, I argue that codes of conduct for politicians are unlikely to affect levels of public trust. First, the decline in public trust for politicians is a complex problem of international proportions. The sources of the problem are numerous and varied. Therefore, it is highly unlikely that a code of conduct regulating politicians' behaviour is going to substantially enhance public's trust in government, especially since the citizens of the three countries studied here do not perceive the occurrence of corrupt behaviour to be a rising problem in recent years. The second reason is that the codes of conduct in each of the three countries have received little public attention. Ethics scandals draw public and media attention to ethics czars and their responsibilities. This has been the case in Canada recently where episodes involving former immigration minister Judy Sgro and Conservative MP Gurmant Grewal have brought Ethics Commissioner Bernard Shapiro into the media's focus. However, when these events occur, there is little coverage in the media on the substance of the rules and the exact way in which they were allegedly violated. The public is not educated on Canada's ethics regulation system. Instead, it is assailed with information on the accusations made against politicians and, in the case of Dr. Shapiro, the incompetence of the ethics watchdog.

In the following chapter, I conclude my project by using my findings to draw general conclusions about the effectiveness of codes of conduct in meeting their goals.

Chapter Eight: Are Written Codes of Conduct Effective?

Written codes of conduct have become a commonly-used tool by governments in their efforts to regulate the behaviour of politicians, even though there is no proof of their effectiveness. My research seeks an answer to this question. Having evaluated the ethics regimes in place in Canada, the United States, the United Kingdom, I discuss my findings in this final chapter. In terms of the effectiveness of written codes at meeting their first goal, which is to encourage legislators to behave ethically, the data are mixed. Several Members of the Canadian Parliament maintain that written codes are effective in this regard. However, I have not found any concrete evidence to suggest that written codes have any effect on the ethical behaviour of legislators. This is not the result of poorly-written codes of conduct. In fact, for the most part, the codes studied in this project tended to meet the criteria that I set out to determine their potential effectiveness. The problem is that even when a code is well-constructed, there is no evidence to suggest that it will reduce corruption or encourage adherence to the highest ethical standards. For the majority of legislators who have never contemplated corruption, written codes of conduct are nothing more than additional paperwork. As far as corrupt politicians are concerned, there is no evidence that written codes are more effective than informal norms at setting them straight. It seems logical to assume that written rules are more helpful to legislators than unwritten ones, given that unwritten rules are more prone to conflicting interpretations. However, I have not found proof that legislators have altered their own ethical standards in response to written codes or that their commitment to ethics has been enhanced by the codification of rules that were once unwritten.

I have not found compelling evidence to suggest that written codes of conduct are successful at meeting their second objective, which is to encourage public trust in political actors and institutions. Public opinion polls and survey data suggest that levels of public trust remain low despite governments' increasing use of written codes of conduct. In addition, it appears that citizens, for the most part, are unaware of the ethics rules that are in place for their legislators, even though citizens tend to support the idea of ethics rules in theory. If the public is not aware of ethics rules, how could these rules affect public trust? While ethics rules might be useful for legislators, they are futile as a public relations tool.

This chapter is divided into three sections. In the first is an explanation of how I arrived at my conclusions, including a review of some of the information gathered during my evaluation of the three countries' ethics regimes. In the second is a discussion of some of the negative implications of written codes of conduct. Given the lack of evidence attesting to the positive implications of codes, it is important to consider any unintended negative consequences that written codes might bring. Policymakers in particular should consider both positive and negative factors when deciding whether or not to adopt written codes of conduct for legislators. In the third section is a list of recommendations to improve codes of conduct to make them more effective at meeting the goals of their authors.

Are written codes of conduct effective at meeting their goals?

a) Do written codes encourage ethical behaviour among legislators?

This question has an implicit comparative component. It not only asks whether written codes facilitate ethical behaviour, but it invites a consideration of whether written codes do this “better” than unwritten rules. To determine the potential effectiveness of written codes at meeting this goal, I apply the following three criteria to my case studies. First, is the code enforceable? Second, is it kept up to date through regular review and revision? Third, does it include both explicit rules for behaviour and broad principles of ethics? If these criteria are met, then a code’s capacity to facilitate ethical behaviour increases. However, the satisfaction of these criteria does not guarantee that corruption will disappear or that ethical standards or behaviour will change. No matter how well rules are crafted and enforced, there are always people who are willing to break them.

For the most part, the codes of conduct in all three countries meet my criteria. All three countries’ codes of conduct for legislators contain mechanisms of enforcement. The codes in Canada and the United Kingdom include guarantees that they will be reviewed and revised on a regular basis. The codes in the United States do not include such a clause, but Members of Congress have revised their codes. All of the codes, except for the Ethics Manual for United States Senators, contain both broad ethical principles and specific rules for conduct.

Despite how thoughtfully-crafted and well-implemented codes are, there is no evidence to suggest that they have been more effective than unwritten ones at facilitating high ethical standards among politicians. In fact, although the governments in all three countries have made serious efforts to improve their ethics regimes, there is no evidence

to suggest that these changes have had any effect. As I mentioned in the first chapter, rates of corruption are very difficult to measure. Corrupt activities are not always reported, which makes it difficult to assess whether the occurrence of corruption in any given regime is becoming more or less frequent. Also, as ethical standards become more demanding over time, activities that were once tolerated are now rejected. Rising standards might make it seem as though corruption is on the rise even when the behaviour of politicians has not changed. Notwithstanding these limitations on the ability to measure rates of corruption accurately, there is no evidence that the rate of corruption in democratic countries is changing in any significant way. This begs the question: what purpose is served by codes of conduct for legislators? It appears that they have no substantive effect on legislators' behaviour.

The inability of codes of conduct to affect legislators' ethical standards and behaviour can be attributed to one major factor: the window of opportunity for legislators to engage in corrupt activities is very narrow, particularly within parliamentary systems. Given that corruption among MPs is rare to begin with, codes of conduct are not particularly effective at reducing its rate of occurrence. The role of MPs in Canada and the United Kingdom is either to support or critique the government, depending on the side of the House on which the MP sits. MPs are not major players in policy and do not make decisions involving the allocation of public resources. Their lack of discretion in this regard makes them unlikely targets for private parties that are attempting to hijack the policy process for their own purposes. In the same vein, MPs are not in a position to offer political favors in order to garner political support for their projects. Written codes of conduct in Canada, the United States, and the United Kingdom require that legislators

disclose financial information so that conflicts of interest can be avoided. However, MPs in Canada and the United Kingdom do not control public money, which means that opportunities to allocate this money in such a way as to bring about a personal benefit would be very rare.

Members of the United States Congress have more authority as individuals than do MPs in Canada and the United Kingdom. For instance, not only are United States legislators able to introduce budgetary measures, those that are introduced are often successful. Also, the requirement for party discipline in the United States is not nearly as strict as is the case in parliamentary systems, which gives Members of Congress more freedom when voting in the legislature. Because U.S. representatives have more discretion when voting on the allocation of public resources, they are more likely than parliamentary representatives to come across opportunities for corrupt activities that create conflicts of interest. Therefore, codes of conduct for legislators are of more significance in a congressional than a parliamentary system.

Despite the fact that codes of conduct for legislators have not been shown to have a substantive effect on their subjects' behaviour, some MPs have expressed support for the rules and believe that they contribute to the maintenance of high ethical standards among legislators. One Member of Parliament, in an interview for this project, argued that the code of conduct for Canadian MPs is effective because it gives MPs a guide to ethical behaviour, which is particularly useful to new parliamentarians. In addition, codes give MPs "protection": if they are accused of inappropriate conduct, they can defend themselves by demonstrating their compliance with ethics rules.²¹⁷ This is a valid point. If used in this way, ethics rules might prevent accusations from spiraling out of

²¹⁷ Interview with Canadian Member of Parliament. November 2, 2004.

control and causing irreparable damage to a person's political career. However, it is usually the case that reputational costs begin to accumulate as soon as allegations are tabled. Although one can appeal to the Ethics Commissioner to clear one's name, this process is lengthy and by the time it is complete, the MP's political career would likely have suffered a serious setback.

Another Member of Parliament supported the use of written codes of conduct because they provide the means to punish ethical violations. He holds that in deciding whether or not to violate rules for conduct, an MP would consider 2 factors: the likelihood of getting caught and the severity of the punishment. If either of these factors is too hard to swallow, the MP would decide against breaking the rules. Because written codes of conduct include a punishment mechanism, they deter MPs from violating the rules and therefore facilitate adherence to ethical standards.²¹⁸

The MPs' comments find some support within academic literature. Michael Johnston asserts that one factor that incites unethical behaviour is the absence of anti-corruption rules. He argues that written ethics rules help to maintain congruency between public standards of ethics and those of politicians. Further, he maintains that written rules deter corruption by forcing politicians to confront the reality that they could face punitive measures if they are found to be guilty of misconduct.²¹⁹ While Johnston's arguments make logical sense, it remains the case that levels of corruption in democratic countries were low prior to the advent of written codes of conduct and they remain low today. Written codes of conduct have not resulted in any significant changes in legislators' behaviour or in the overall occurrence of corruption.

²¹⁸ Interview with Canadian Member of Parliament. October 28, 2004.

²¹⁹ Johnston 463.

Ultimately, the bottom line is that in democratic societies, inappropriate conduct among legislators has always been the exception, never the rule. The vast majority of candidates who seek public office do so with genuine intentions. The work of a politician is time-consuming, stressful, and not particularly lucrative as compared to other lines of work, so it is unlikely that people with relentless financial ambitions would look to elected office as the most appropriate career choice.

Because corruption has always been rare in democracies, it is somewhat surprising that political leaders thought it necessary to adopt written codes of conduct in the first place. The pattern of evolution of the ethics regimes in Canada, the United States, and the United Kingdom shows that most often, revisions to ethics regimes have not been brought on by proven misconduct among politicians. Rather, when political leaders change ethics rules, it is usually in response to the public's *perception* that corruption is on the rise. When introducing changes to ethics rules, political leaders do not justify them by acknowledging that elected officials have behaved badly and must be monitored more closely. Instead, they attribute the reforms to the government's wish to reverse the trend of declining public trust in politics. For instance, British Prime Minister John Major set up the Committee for Standards on Public Life in 1994 in response to "concerns about standards of conduct of all holders of public office."²²⁰ His attempt was not to change officials' behaviour, but to change the public's perception of it.

(b) Do written codes facilitate public trust?

There is no indication that a written code of conduct for legislators is an effective tool for dealing with the problem of declining public trust in government. Levels of

²²⁰ Committee on Standards in Public Life.

public trust remain low in Canada, the United States, and the United Kingdom despite the introduction of written codes of conduct for legislators. What is more, survey research suggests that written codes of conduct have not improved the public's perception of corruption. In 2004, Transparency International conducted an international survey called the Global Corruption Barometer, in which respondents indicate their perceptions of the occurrence of corruption in their respective countries. The vast majority of Canadian, American, and British respondents said that they expected corruption levels to remain steady or increase over the next 3 years.²²¹

In Canada, the survey was conducted one month after Ethics Commissioner Bernard Shapiro was sworn in as the interpreter and enforcer of written codes of conduct for federal politicians. Given Canadians' anticipation of more corruption in the near future, it seems that the establishment of Shapiro's position did not enhance public trust in politicians' integrity. It should be noted that the survey was conducted one month after the federal election, in which the "sponsorship scandal" featured prominently as a campaign issue. It is possible that the establishment of the independent Ethics Commissioner and the benefits that might result were drowned out by the media's coverage of corruption in the sponsorship program.

No matter how well a code of conduct is constructed, its effectiveness in meeting this second goal is severely limited by the following two factors. First, although the governments in Canada, the United States, and the United Kingdom have made serious attempts at strengthening their ethics codes, the public has, for the most part, been unaware of their efforts. In general, citizens are "in the dark" about the existence of codes of conduct and their specific contents. The lack of public knowledge of ethics

²²¹ Global Corruption Barometer 21.

rules might be the result of the fact that conduct regulation and punishment is an internal matter for legislatures. In any case, it is a serious roadblock in the path to improving public trust. If the public is unaware of written codes and their contents, what effect could the codes possibly have on levels of public trust?

There is evidence to suggest that the public is supportive of the *idea* of ethics rules, even if it is largely unaware of the rules in place currently. Ekos Research Associates released a study in 2004 that found that 62% of respondents agreed that full, immediate disclosure of government contracts would improve honesty and reduce corruption in the Canadian government. Fifty percent of respondents agreed that the creation of an independent ethics commissioner who reports directly to parliament would improve honesty and reduce corruption.²²² In light of these findings, it is conceivable that levels of public trust in the government would improve as a result of written codes. However, there must be a much greater effort to make the public aware of the rules that do exist. It is interesting that while half of respondents to this survey agreed that an independent ethics commissioner would help to reduce corruption in Canada, the other half disagreed. Public support for ethics regulations is not a sure-thing.

The second factor undermining written codes' effectiveness at facilitating public trust in political actors and institutions is that the problem is a complex one that is rooted in any number of potential causes. Further, the decline has been measured in a number of countries. It seems to be the case that as democratic societies mature, their citizens become more interested in politics but less trusting of political actors and institutions.

²²² "Public and Apex Perspectives on Trust and Ethics: What Do the People Really Want?" October 2004. Ekos Research Associates Inc. <<http://www.ekos.ca/admin/articles/APEX7Oct2004.pdf>>.

Neil Nevitte describes this phenomenon as the “decline of deference.”²²³ As citizens become more interested, educated, and engaged, they reject hierarchical, elitist institutions in favor of more participatory ones. The traditional notion of representative democracy, in which citizen involvement is requested only during elections, does not quench the growing thirst for more grassroots participation in politics and policymaking. If Nevitte is right, and at the heart of the public trust problem is a socio-cultural rejection of hierarchy – not a perception of corruption in government – then anti-corruption measures, no matter how well-crafted, are futile.

The Negative Implications of Written Codes of Conduct

Given that the positive implications of written codes of conduct are less than clear, it is important for policymakers to consider any *negative* effects that these codes might have. In the first chapter, I highlighted some of the negative implications that written codes of conduct might bring. For instance, written codes of conduct might encourage a minimal standard of ethics. Some officials might be encouraged to do only what is necessary to satisfy the rules instead of aspiring to a higher standard. Secondly, written rules might invade the privacy of politicians and their families via financial disclosure requirements. Thirdly, written codes of conduct are usually interpreted and enforced by an ethics watchdog. Therefore, the public’s perception of the code’s effectiveness is vulnerable to the perception of the ethics czar’s legitimacy. If the interpreter is seen as unsatisfactory for some reason, the code itself is cast in a negative light.

²²³ Nevitte.

My research has led me to conclude that all three of these negative implications are causes of serious concern. Canadian MPs have already voiced concern over the tendency of written codes to invade their privacy. As governments revise their written codes of conduct to make them stronger, they increase the likelihood that the codes will become an obstacle in the attempt to recruit citizens to the political world. Rules that are too rigid and invasive could deter citizens from contesting public office, as well as sitting legislators from re-offering. The latter scenario is more likely than the former, since those seeking public office for the first time would be unaware of ethics rules and therefore would not be turned away by them. Sitting legislators have already expressed frustration with changes to the rules that intrude on their personal privacy. For instance, changes made to the Canadian *Conflict of Interest Code for Members of Parliament* in 2004 require that MPs' spouses make full disclosure of their incomes, assets, and liabilities. MPs expressed "deep reservations" at the new rule's intrusiveness.²²⁴ Because the rules are too rigid, worthy candidates will think twice about entering politics. Further, current MPs might not re-offer in light of the new rules and their implications for parliamentary spouses. The new rules fail to balance the need for ethics rules against MPs' entitlement to some measure of privacy.²²⁵

In theory, the potential for written rules to encourage a minimal standard of ethics is addressed by the fact that codes of conduct tend to include broad principles of ethics as well as specific rules for conduct. The inclusion of these principles encourages legislators to aspire to the highest standard of ethics, and to interpret the rules for conduct with the principles of honesty, integrity, and transparency in mind. However, in Canada,

²²⁴ Francoli.

²²⁵ Interview with Canadian Member of Parliament. October 28, 2004.

the application of broad ethical standards has been soft, to say the least. As evidence by the Sgro and Grewal reports discussed in the previous chapter, Ethics Commissioner Bernard Shapiro has not taken advantage of opportunities to breathe life into the more abstract clauses of the code of conduct for MPs.

This leads to the issue of the vulnerability of written codes to the legitimacy of their interpreters. In theory, this problem can be averted through the adoption of an *independent* Ethics Commissioner to interpret the ethics code. In 2004, the Canadian government amended the *Parliament of Canada Act* to establish the position of an independent Ethics Commissioner to interpret the code of conduct for Members of Parliament and advise MPs on ethics rules. This official serves for a maximum of five years and reports to the entire House of Commons. The creation of the position was received warmly by the Canadian public, at least by those who were aware of it. Prior to this, ethical issues in the Canadian House of Commons were dealt with by an Ethics *Counselor*. The Liberal government established this position in 1993. Prime Minister Jean Chretien appointed Howard Wilson as Canada's Ethics Counselor, who served in this capacity until 2004. The ethics counselor was seen as a less-than-ideal guardian of ethical standards in the House of Commons. He was appointed directly by the Prime Minister and was required to report only to him. There were no limitations on the amount of time that one person could hold the office. The public, the media, and opposition parties saw the ethics counselor as the pawn of the Prime Minister, who used the Ethics Counselor more to defend himself against allegations of wrongdoing rather than to encourage high ethical standards. Now that the Ethics Commissioner has

replaced the Ethics Counselor, the legitimacy of the Canadian political ethics regime has been renewed, at least in the short term.

Although the Canadian public and its elected representatives are generally supportive of the notion of an independent ethics watchdog, Ethics Commissioner Bernard Shapiro has been the subject of intense criticism due to his lack of expertise in matters of ethics. In a recent case involving tape-recorded conversations between cabinet minister Ujjal Dosangh and Conservative MP Gurmant Grewal, Dr. Shapiro has expressed confusion over whether his mandate gives him the authority to investigate the actions of Tim Murphy, who is not an elected MP but an political appointee of the Prime Minister.²²⁶ Shapiro has acknowledged that “he’s still learning his job.” Members of Parliament have grown impatient with Dr. Shapiro. In an appearance before the Commons ethics committee in June of 2005, the Ethics Commissioner came across as “incompetent”, according to Conservative MP Russ Hebert. During his testimony, Shapiro maintained that ministerial staff were not within his mandate but later reversed his position.²²⁷ If MPs do not believe the Ethics Commissioner to be a competent guardian of ethics rules, the overall effectiveness of the code of conduct is cast in doubt. MPs are unlikely to be deterred from corruption by a code that is not enforced. Similarly, a code that is vulnerable to the incompetence of its interpreter is not likely to encourage public trust in the integrity of politicians.

I have found little evidence to suggest that written codes of conduct are effective at meeting their stated objectives. Given the negative implications of written codes that are

²²⁶ Clark, Campbell. “Harper backs Grewal as ethics probe starts.” *The Globe and Mail*. June 4, 2005: A4.

²²⁷ Thorne, Stephen. “New Democrats file ethics complaint against prime minister in Grewal affair.” 9 June 2005. *Newscape News*. *The Canadian Press*. June 9, 2005.

<<http://channels.netscape.ca/news/article.adp?id=20050609173909990015>>.

stated above, I question their net benefit. However, as stated earlier, no political party or government would want to appear to be “anti-ethics”, and opposing or repealing ethics legislation would likely create this image. Therefore, given the likelihood that written codes are a permanent fixture of democratic regimes, I recommend the following three measures to improve the likelihood that written codes meet their objectives. My recommendations are limited to the Canadian regime, given that Canadian politics is my area of concentration. However, they can be applied in other countries.

Conclusions

(a) Consultation with MPs

First, in order to improve the effectiveness of written codes in facilitating adherence to high ethical standards, I argue that the Ethics Commissioner must encourage more discussion and debate among MPs about the broad principles of ethics that support the rules for conduct. It is stated in the MPs’ code that part of the Ethics Commissioner’s mandate is to undertake educational activities for MPs in regards to this code. The Ethics Commissioner must take this opportunity to draw MPs’ attention to the broad principles articulated in the introductory section of the code of conduct, including honesty, transparency, openness, and integrity. Rules for conduct and disclosure requirements are not likely to change MPs’ orientations to ethics to any significant degree, given that the opportunities for MPs to engage in corrupt activities are rare. However, if MPs concentrate more on ethical principles, this might encourage a change in their attitudes toward each other. For instance, if MPs were to reflect on the concepts of honesty, integrity, and openness, they might treat each other with more respect while in the House

and might think twice before engaging in the mudslinging that tarnishes the reputations of all politicians. If written codes of conduct help to modify MPs' behaviour in this way, this would be a significant contribution.

Although I recommend that the Ethics Commissioner take more seriously his role in educating MPs about the code of conduct that applies to them, I acknowledge that the Commissioner is only one player in the process. In order for these educational exercises to be effective, MPs would have to be responsive and open-minded to the ethics issue. There is some evidence to suggest that this might not be the case. The Office of Government Ethics in the United States offers training sessions and workshops on ethics for federal government employees. However, a conference scheduled in April of 2005 was cancelled due to low registration.²²⁸ While this is a cause of concern, I argue that *elected* officials, as opposed to government employees, are under increasing public pressure to demonstrate a commitment to ethics. If given the opportunity to be educated on the ethical code of conduct for MPs, I believe that most MPs would respond positively – if for no better reason than to score points with voters.

Initiatives in ethics education can be taken by the Ethics Commissioner and by political leaders as well. Kenneth Kernaghan argues that ethics leadership undertaken by premiers and ministers can have an “extremely beneficial effect” on the behaviour of politicians and public servants. He argues that to be effective, ethics measures must go beyond written codes to include ethics education and the embracing of ethical principles. For example, under the leadership of former Ontario Premier David Peterson, Liberal members of the legislature, including cabinet ministers, were briefed on the nature of

²²⁸ “Training Seminars and Workshops.” 30 May 2005. United States Office of Government Ethics. <http://www.usoge.gov/pages/training_wrkshops/training_wrkshps.html>.

conflicts of interest and the importance of avoiding them. Once his government was sworn in, Peterson met with all of the province's deputy ministers to explain that public business should be conducted according to the values of openness, fairness, equity, integrity, honesty, and trust. Also, in addition to developing ethics rules for politicians and public servants, the Peterson government created a conflict of interest commissioner and held a number of ethics workshops for public servants.²²⁹

(b) Consultation with the public

If written codes of conduct are ever to have an effect on the public trust problem, the Ethics Commissioner must become more active in educating the public about the Canadian political ethics regime. As stated above, exercises in public education are part of his mandate. These exercises could include town hall meetings, conferences, and information packages sent to Canadians via mail. A more bold initiative would be to hold a citizens assembly on reforms to codes of ethical conduct. Participants could attend information sessions on the ethics regime and could recommend binding changes to ethics codes. As is the case with MPs, there is no guarantee that citizens would respond positively to the Ethics Commissioner's attempts to educate them on ethical codes of conduct. However, the attempt must be made nonetheless. At the time of writing, a political scandal of serious proportions grips the Canadian political system. While citizens' attention is already turned toward political ethics, they are more likely to want to become informed and participate in discussions about ethics rules. The Ethics Commissioner and his staff should seize this opportunity and initiate a nation-wide discussion on political ethics.

²²⁹ Kernaghan. "Rules are not enough." 188-189.

In addition to the general lack of public knowledge about ethics rules, the other major reason that ethics rules do not facilitate public trust is that the decline in public trust is a complex phenomenon that is based in the rejection of hierarchical institutions in favor of more participatory ones. The perception of corruption does not seem to be a major factor explaining why citizens do not trust their governments. The approach of inviting citizens to *participate* in discussions about ethics rules might go further in addressing the public trust problem than codes of conduct do in and of themselves.

The problem of public ignorance of ethics rules is certainly possible to overcome, if effective measures are taken toward educating the public about existing regulations. However, even if the public were to become well-acquainted with the codes of conduct for MPs and cabinet ministers, the public trust problem runs deep, as is evidenced by Nevitte's research. It might be that public education is not enough of a solution and that the public trust problem will persist.

(c) Relaxation of disclosure requirements for MPs

If Members of Parliament find disclosure requirements to be frustrating, invasive, and onerous, they are less likely to respond positively to them. Rules that are unreasonable could encourage noncompliance. In a worst case scenario, invasive ethics rules could discourage participation in politics. In order to avoid these situations in Canada, the disclosure rules for MPs must be relaxed. Since 2004, Members of Parliament, along with their spouses and dependent children, have been required to disclose all of their private income, assets, and liabilities. This includes declaring the value of furniture, household goods, farming implements, sporting equipment, and the

like. Further, MPs are expected to report any outstanding credit card balances. The logic behind these new requirements is not immediately clear. Given the fact that MPs lack any substantial discretion over the spending of public resources, what use could the public have for such personal information? How could an MP's credit card balance place her in a conflict of interest? The new, more invasive rules make it possible for the Ethics Commissioner to find out if MPs have received kickbacks and have hidden the money in their personal bank accounts or those of their family members.²³⁰ These rules have a distinct tinge of cynicism. It is as if the Ethics Commissioner assumes wrongdoing on the part of MPs before he has reason to believe that it has happened.

Many have voiced opposition to these new rules on the grounds that they are too invasive and are not likely to be especially effective at guarding against abuses of the system. Conservative Senator Consiglio Di Nino argues that the new ethics requirements for MPs are a "political necessity" but that they will not deter corruption any more so than previous conflict-of-interest rules.²³¹ If MPs do not believe that the new disclosure rules are likely to have a positive effect, and that they are an unnecessary breach of their privacy, they are less likely to comply with them. If noncompliance were to become commonplace, then the code of conduct could *lower* ethical standards rather than raise them. In order for MPs to respect the rules, they must be balanced against their right to privacy. Therefore, I argue that the new disclosure requirements be dropped and that the rules used for cabinet ministers prior to the 2004 changes be applied to ordinary MPs as well. Prior to the 2004 reforms, MPs were not subject to disclosure requirements at all. However, if the government were to repeal rules for MPs, it might appear as though it

²³⁰ Interview with Canadian Member of Parliament. October 28, 2004.

²³¹ Francoli, Paco. "Ethics gap remains in Senate." The Hill Times. 4 October 2004.

was neglecting its responsibility to maintain high ethical standards in parliament. No government would want to take that risk. Until 2004, cabinet ministers were required to disclose assets, income, and liabilities, but they were not required to declare the values of personal items such as residential property, farm equipment, and household goods. Further, although ministers' spouses had to make financial disclosure, the information was kept confidential. Under the new rules, a summary of parliamentary spouses' financial information is available to the public. I argue that the rules that were applied previous to the 2004 amendments are sufficient for the public to have the necessary information to detect conflicts of interest. The new requirements are more onerous than useful and might deter MPs from re-offering their services as elected officials.

Chasing a Phantom?

The code of conduct for Members of Parliament is only one part of a multi-pronged undertaking by the federal government to revise and strengthen the Canadian ethics regime. Allegations of scandal have plagued the Liberal government throughout the last decade, the most serious being those pertaining to the sponsorship program and the Liberal Party's relationship with advertising agencies in Quebec. It appears that some Quebec advertising agencies were given lucrative government contracts over the past ten years in exchange for making large donations to the Liberal Party. While the level of involvement of elected officials is not yet clear, the government has wasted no time in introducing reforms geared at "cleaning up" the reputations of both elected officials and bureaucrats. In addition to creating a code of conduct for MPs in 2004, Prime Ministers Chretien and Martin have responded to allegations of corruption by beefing up campaign

finance rules and disclosure requirements, by introducing an Ethics Counselor and then an independent Ethics Commissioner, and by drafting legislation to protect “whistle-blowers” who call attention to inappropriate conduct within the public service. As allegations of scandal accumulate, political leaders respond by creating more numerous and more invasive ethics rules.

My research has shown that codes of conduct for Members of Parliament are ineffective at bringing the government closer to their goals. This is a cause for serious concern, and not only because codes for MPs are ineffective tools for encouraging high ethical standards. A larger concern is the possibility that the government’s overall approach to ethics regulation is not the correct path to deter corruption and encourage public trust. If one buys into the argument that corruption can be deterred through regulation, then it is possible to jump to the conclusion that an increase in the scope and the detail of the rules would yield a decrease in the overall occurrence of corruption. My concern is that we are moving toward an unattainable goal – the complete absence of corruption – and that in the name of this goal, governments are justifying the over-regulation of politicians. Governments are able to legitimize the increasing invasiveness of the rules by arguing that this will improve the ethical standards of politicians and encourage the public to trust them. Even though these are admirable goals, there is no proof that menacing regulations are the way to meet them.

The push for stricter ethics rules comes not only from the government’s desire to clear its name, but also from the public’s more demanding ethical standards. As members of the public become more educated and interested in politics, they become less tolerant of even the hint of misconduct or impropriety in the public sector. Therefore,

governments feel mounting pressure to demonstrate a commitment to ethics via reforms to codes of conduct. While these measures provide a tangible indication of the government's dedication, they are leading to a trend of over-regulation that has dysfunctional and perverse consequences.

In reforming ethics rules to facilitate high ethical standards and public trust, the government faces the following paradox: ethics rules might bring us farther away from these goals rather than closer to them. If ethics rules are too rigid, politicians might refuse to comply or be discouraged from re-offering for office. Further, the constant revamping of ethics codes invites public cynicism rather than trust. Stricter disclosure requirements seem to be based on the assumption that wrongdoing is already occurring – politicians are forced to prove themselves innocent long before they are alleged to be guilty.

Ultimately, there is no cure for corruption. As long as there is self-interest, there are people who are willing to break the rules for personal gain. It is important to remember that the elimination of corruption is an elusive goal – to pursue this end relentlessly is to chase a phantom. A regime that is completely free of impropriety is an ideal that must not be used to justify invasive ethics rules that, by inviting noncompliance, might actually weaken the ethical standards of politicians.

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