



November 27, 2013

Via email: nffn@sen.parl.gc.ca

The Honourable Senator Joseph A. Day
Chair, National Finance Committee
Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Day:

Re: Bill C-4, Part 3, Division 15 *Conflict of Interest Act* Amendments

The National Administrative Law Section of the Canadian Bar Association (CBA Section) takes this opportunity to comment on proposed amendments to the *Conflict of Interest Act* in Part 3, Division 15 of Bill C-4, the *Economic Action Plan 2013 Act No. 2*. The CBA is a national association of over 37,500 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. In preparing this letter, the CBA Section has drawn on the members of its Law of Lobbying and Ethics Committee, who have particular expertise working with and providing advice under the Act.

The CBA has steadfastly objected to omnibus legislation like Bill C-4. Enacting important changes in diverse and unrelated subject areas in a single bill precludes meaningful comment and debate.

Part 3, Division 15 of Bill C-4 would amend the *Conflict of Interest Act* to permit Cabinet to designate a person or class of persons as public office holders and to designate a person or class of persons who are public office holders as reporting public office holders.

In February 2013, the CBA Section provided comments to House of Commons Committee on Access to Information, Privacy and Ethics on its statutory review of the *Conflict of Interest Act*.¹ We emphasized that discretion provided in the Act for administration and enforcement ought to be subject to clear and consistent standards, so it is exercised in a reasonable, fair and transparent manner that does not undermine the purposes of the Act.

The amendments proposed in Bill C-4 permit an open-ended and virtually unreviewable exercise of discretion by Cabinet in designating public office holders and reporting public office holders. In our view, Parliament should instead introduce measures that better enhance governmental

¹ Canadian Bar Association, *Statutory Review of the Conflict of Interest Act*, online: www.cba.org/CBA/submissions/pdf/13-13-eng.pdf.

transparency and accountability, with safeguards that inspire greater confidence in the integrity of its decision-making.

For the 2013 statutory review of the *Conflict of Interest Act*, the Conflict of Interest and Ethics Commissioner, Mary Dawson offered 75 recommendations for reform.² The CBA Section made 18 specific recommendations to uphold integrity in public office and improve the administration of justice. Among other things, we proposed:

- Consistent with Recommendation 2-10 of the Commissioner, the definitions of “public office holder” and “reporting public office holder” should be amended to include any individual (e.g., Governor of the Bank of Canada) appointed to an office with the approval of the Governor in Council.
- As proposed in Recommendation 3-8 of the Commissioner, section 15 of the Act should be amended to give the Commissioner authority to permit a reporting public office holder to engage in outside activities prohibited by subsection 15(1) where this would not be incompatible with the reporting public office holder’s public duties or obligations as a public office holder.
- Further to Recommendation 3-10 of the Commissioner, the Act should be amended to incorporate the political fundraising rules in Annex B of Accountable Government, “Fundraising and Dealing with Lobbyists: Best Practices for Ministers, Ministers of State and Parliamentary Secretaries.”
- As proposed in Recommendations 4-26 and 4-27 of the Commissioner, all public office holders should be required to inform the Commissioner and to publicly disclose gifts of threshold value or higher.
- Further to Recommendations 6-11, 6-12, 6-13 and 6-14 of the Commissioner, section 52 of the Act should be amended to give the Commissioner the authority to impose an administrative monetary penalty for any contravention of the Act.
- Section 52 should be further amended to increase the maximum administrative monetary penalty to \$25,000 per contravention.

We recommend that, rather than proceed with the aforementioned amendments in Bill C-4, Parliament continue the process of conflict of interest reform in this session of Parliament. The *Conflict of Interest Act* is vital legislation, and it is equally vital to correct weaknesses and to close gaps in enforcement. We recommend that amendments be made to respond to the recommendations of the Commissioner and of the CBA Section.

Yours truly,



Lorna Pawluk
Chair, National Administrative Law Section

cc. Mr. James Rajotte, M.P., Chair, Finance Committee, FINA@parl.gc.ca

² Office of the Conflict of Interest and Ethics Commissioner. *The Conflict of Interest Act: Five-Year Review Submission to the Standing Committee on Access to Information, Privacy and Ethics* (January 30, 2013), recommendation 2-10.