

Appendix H

Letter of Prime Minister Brian Mulroney, September 9, 1985



CANADA

PRIME MINISTER • PREMIER MINISTRE

September 9, 1985

AN OPEN LETTER TO MEMBERS OF PARLIAMENT AND SENATORS

Dear Colleagues:

It is a great principle of public administration -- I would even say an 'imperative' -- that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.

To this end, I am tabling today a set of documents providing detail on a package of major initiatives on public sector ethics now being undertaken by this Government. In this letter I wish to provide you with some thought in explanation of the documents, and to acquaint you with other elements of the package which will soon be put in documentary form. There are seven components in the overall program.

1. A new Conflict of Interest-Post-Employment Code for Public Office Holders (tabled);
2. Instructions to Ministers imposing specific and strict limitations on the hiring of family members (tabled);
3. Letters to Opposition Leaders on the subject of ethical standards for MPs and Senators (tabled);
4. An experimental program of Parliamentary scrutiny of Governor in Council appointments;

5. The registration of lobbying activity;
6. Advice to Crown corporations respecting appropriate conduct in their dealings with the Government (tabled); and,
7. A review of the judicial appointments process.

We have not made final decisions in all of the component areas, but we are putting forward an authoritative outline of our intentions. Some elements such as the new Conflict of Interest/Post-Employment Code for Public Office Holders are ready for implementation. The Code will take effect January 1, 1986, once the necessary infrastructure is in place. In the interim, Ministers and Governor in Council appointees will conduct themselves in accordance with its provisions. Other elements, such as the experimental program of Parliamentary oversight of Governor in Council appointments, will be refined through discussion with Opposition leaders and with the benefit of experience. Still others, such as the review of the judicial appointments process, will require more consultation before detailed proposals can be advanced.

The important point is that for the first time a government has placed before Parliament a comprehensive program of initiatives on public sector ethics. It provides tangible evidence to the people of Canada of the determination of this Government to ensure that its actions will be governed by the highest standards of conduct.

Let me deal with each component in turn.

1. CONFLICT OF INTEREST CODE

Among my first actions upon assuming office was to give the Deputy Prime Minister a mandate to:

"[review] existing conflict of interest and post-employment guidelines ... with a view to making recommendations on whether any changes in the current two régimes are required."

The Deputy Prime Minister's recommendations provided the basis for the Conflict of Interest/Post-Employment Code tabled today.

The new Code represents a marked strengthening over the current régime. In particular:

- It covers a much broader population in definitive fashion than does the current régime. The principles

apply to virtually everyone whose salary is paid for by the Canadian taxpayers. Notable exceptions are judges and the officers and employees of Parliament who have been excluded from the application of the Code for constitutional reasons. However, I have written to the Speakers suggesting that both Houses may wish to consider adopting a similar course in respect of those serving them. These letters are among the material to be tabled.

- It includes enforcement mechanisms, which are currently lacking in the post-employment régime. For example, public office holders are forbidden to deal with those operating in contravention of the post-employment provision.
- It places an absolute prohibition on switching sides, just as a lawyer is barred from changing from one side of a case to the other.
- It clearly allocates responsibility and provides for accountability.
- It is fairer to the individuals affected because it permits greater reasonableness in its application by taking into account both individual circumstances and the public interest.
- It is clearer and more precise, presenting in a single consolidated document what is currently found in five.

The precision and fairness of the new Code is important because, in the end, the success of the régime will depend upon the goodwill and the sense of public service of public office holders. The correct balance between fairness to the individual and protection of the public interest is delicate and difficult to attain, but I believe it exists in the new Code.

The first effort to provide ethical guidance to public office holders was made by Prime Minister Pearson more than two decades ago. This was followed by some improvements introduced by Prime Minister Trudeau a decade later. In developing the new Code we have been able to build on the Guidelines and the experience of working with them.

We have also had the advantage of being able to avail ourselves of the thinking and analysis that went into the Report of the Task Force on Conflict of Interest. I want again to pay tribute to the efforts of the Honourable Michael Starr, the Honourable Mitchell Sharp and, I must add, to those of our

colleague the Honourable member for Etobicoke-Lakeshore who, in his previous capacity, acted as executive-director of the Task Force. These gentlemen will find some of their thinking and, on occasion, their very words enshrined in the new Code.

In short the new Code, while it bears the unmistakable stamp of this Government, is clearly an evolutionary step.

We have taken great pains to ensure that the new Code leaves no doubt that the ultimate responsibility for the ethical standards of the federal government rests with the Cabinet and, more particularly, with me.

In carrying out that responsibility the Government is directly accountable to Parliament and through Parliament to the people of Canada. You will find no quasi-independent agencies in this Code that will allow the Government to shirk its responsibility by saying that the problem belongs to someone else. Nor will you find anything which will relieve me and my colleagues of the necessity of exercising judgement. Obviously, from time to time, circumstances may arise that call for an impartial person to conduct an investigation as to fact. Instruments already exist which permit the Government to respond appropriately to such a requirement. But making use of these instruments will not relieve the Government of the responsibility to decide and to stand accountable before Parliament. The principles of responsible government and the supremacy of Parliament are respected and reinforced.

Although there are undoubtedly circumstances which demand such an approach, Canadian governments have too often set up permanent quasi-independent agencies to deal with important areas of public policy. Rules and regulations become a substitute for the exercise of judgement. The intent has usually been to remove the matters concerned from the somewhat disorderly and often confusing arena of politics. The effect, all too frequently, has been simply to substitute an appointed decision-maker for an elected one, and to leave Parliament in the invidious and frustrating position of not being able to influence policy and not being able to exact accountability.

While ultimate accountability for ethical standards is that of the Government, the Code continues to place the onus of responsibility on the individual public office holder for his or her own conduct. What is expected of each individual is clearly stated in the Code, which also provides a clear basis for assessing those individual judgements, as well as prescribing penalties for those who fail to meet expected standards.

More streamlined, more equitable, yet stronger than previous efforts, I am convinced that this new Code represents a significant advance in the safeguarding of the public interest.

2. HIRING PRACTICES

I now wish to turn to the matter of the hiring of family members. The second half of the letter conveying the Conflict of Interest Code to Ministers contains my instructions to Ministers in this regard.

It has been the practice in Parliamentary democracies, even in those like Canada where an impartial appointment process covers the vast majority of positions in the public service, to reserve a number of key senior positions to be filled on a discretionary basis by the Government of the day.

There are important reasons of public policy for leaving certain appointments entirely to the judgement of the Government of the day. Governments change because the electors wish to see changes in public policy, and in the Government's methods of, and approaches to, dealing with the public.

The machinery of government is now so vast and complex that forty Cabinet Ministers acting without assistance could not hope rapidly to bring about desired changes in direction. To do so, they require the assistance of others of like mind, in whom they can have confidence, and who have the same commitment to change. That often means looking to political and even personal associates to undertake such duties -- competent, qualified people of like philosophy and approach. Custom and convention limit the degree of discretion to be exercised in some cases. Overall, the process of political accountability ensures that judgement will be weighted on the side of ability, qualification and competence. To act otherwise would be to invite embarrassment in Parliament and punishment for elected Members at the hands of the electorate -- to say nothing of placing the actual objectives of the Government at risk.

However, there are boundaries which should not be crossed in the exercise of this discretionary authority. My letter to Ministers sets them out in precise detail as they apply to family members. In summary, they are the following:

- No Cabinet Minister or department or agency subject to his or her direction should hire or contract with a member of his or her immediate family.
- No Cabinet Minister, or department or agency subject to his or her direction should, except through an impartially administered hiring process in which the Minister plays no part, hire or contract with members of the immediate family of her or her spouse, the immediate family of Cabinet colleagues, or of the immediate family members of caucus colleagues. An exception to this rule would be the hiring or contracting of ministerial exempt staff.

- The same impartial processes must be applied in the cases of organizations in which such family members hold senior positions of authority.

Obviously, there will be occasions in which it is in the public interest to act otherwise. My letter sets out the conditions under which such action may be contemplated.

I have done my best to reassure Canadians that favouritism will no govern the hiring practices of this Government without, at the same time, arbitrarily denying, to those whose fortune it is to be related to a member of the Government, the opportunity to serve their country.

3. STANDARDS OF ETHICAL CONDUCT FOR MPs AND SENATORS

In conjunction with the issuance of the Code, I have written to the Leaders of the Opposition parties to explore the desirability of working with the Government House Leader towards the adoption of similar standards of ethical conduct for all Members of Parliament.

It may be recalled that a Green Paper entitled Members of Parliament and Conflict of Interest was tabled by the President of the Privy Council in July 1973. This was referred to the Standing Committee on Privileges and Elections the following year and tabled in the Senate in 1975. In 1975 and 1976 the House Standing Committee on Privileges and Elections and the Senate Standing Committee on Legal and Constitutional Affairs submitted reports on the Green Paper. Neither report was debated in the respective Houses.

Later, an Independence of Parliament Act was given first reading in June 1978. Having been reintroduced in October, it was given second reading and was referred to the Sanding Committee on Privileges and Elections on March 9, 1979. This Bill died on the order paper when, eighteen days later, the session of Parliament ended.

It seems to me, at a time when the Government has taken on itself increased and more precise accountability for ethical standards, that Members of Parliament and Senators would find this to be an opportune time to examine their present rules to see whether they, too, should be brought up to date. I believe such action on their part would provide even more assurance to the public that all their elected representatives and those who have been chosen to serve their country in the Senate, are determined to govern themselves according to the highest standards.

4. PARLIAMENTARY SCRUTINY OF APPOINTMENTS

The fourth initiative in this package is that of beginning -- and I want to emphasize this -- on an experimental basis, the Parliamentary scrutiny of Governor in Council appointments.

The establishment of such a process was an undertaking made by this Government during the election campaign. Early in our mandate, we led the House of Commons in establishing a special committee under the chairmanship of the Honourable Member for St. John's East to provide recommendations on this and other matters of Parliamentary Reform. We took no action on the appointments process until we could benefit from the advice of that Committee. It has now presented its excellent report. I congratulate the Chairman, the Honourable James McGrath, and his colleagues from all parties, on the thoughtfulness and thoroughness with which they have addressed the issues, and on the creativity and originality of their thinking. The Government is, as I have said before, very favourable disposed towards the Committee proposals. My colleague, the President of the Privy Council, is hard at work on the Government's response.

In the interim, and as an earnest demonstration of our commitment, we have decided to offer the opportunity to review, on an experimental basis, all of the Governor in Council appointments made since this Government took office, and those to be made in the future.

I cannot provide immediately all of the details of the process. For one thing, we will be consulting with the Leaders of the Opposition parties. The process will, to some extent, be defined during those discussions. For example, there obviously will have to be parameters established about the appropriate lines of questioning to be pursued. We cannot look to the United States for a model because their system is so different from ours. Our deputy ministers, again as an example, have neither the right nor the responsibility to comment upon policies adopted or contemplated by the Government, except to explain. This alone will make for great differences with what we are accustomed to seeing take place across the border.

Because, to my knowledge, this approach has not been attempted in any other jurisdiction with a British Parliamentary form of government, we will have to move with some caution and with due regard to the fact we have embarked on a new path where the end is not in sight. Parliament is not an institution which responds well to radical changes in its operations. It is for that reason we will begin at a point short of where some believe we should end.

Some constitutional experts have warned me that I am wrong to take this step, that it is foreign to our system of government and incompatible with it. These gentlemen and I have agreed to differ, but I am not unconscious of the risks involved. That is why I am fully prepared to end this experiment and to re-think the approach if it seems to be taking a wrong turn.

I ask each of you to see this ground-breaking step for what it is -- an opportunity and a beginning -- and to work with my colleagues and me to ensure that it evolves into a process worthy of emulation by other Parliamentary democracies.

5. LOBBYING LEGISLATION

The fifth component of this comprehensive approach to public sector ethics is the undertaking of this Government to introduce into the House of Commons, at an early date, legislation to monitor lobbying activity and to control the lobbying process by providing a reliable and accurate source of information on the activities of lobbyists. We will require, among other things, paid lobbyists to register and identify their clients. This will enable persons who are approached by unions, and by agents on behalf of foreign governments and other foreign interests, to be clearly aware of who is behind the representation.

I have accordingly asked my colleague, the Minister of Consumer and Corporate Affairs, to prepare, on an urgent basis, legislation to govern lobbying activity.

This initiative should not be misinterpreted to mean that this Government is aware of particular improprieties in the conduct of lobbyists or that it considers lobbying to be an inappropriate activity. On the contrary, the practice of lobbying plays an important role in ensuring that government, in taking the decisions which affect the lives of all of us, are able to take properly into account the multitude of diverse interests involved. This Government is simply saying that something so important should not be shrouded in mystery.

6. ADVICE TO CROWN CORPORATIONS

On a related matter, and as the sixth component of this public sector ethics package, I have tabled a letter, which the Secretary to the Cabinet has written to the Presidents of all Crown corporations, advising them that this Government believes that the corporations' dealings with the Government should be conducted directly between their senior officers and members of the Government -- and without the use of intermediaries. I am sure that they will see the wisdom of the advice and act on it.

The practice, while not a new one, thankfully has not been widespread. Indeed, any instances have been exceptional. However, we do not through inaction wish to see it grow or continue. It is wasteful of public funds and a breach of the candid and direct (albeit arms-length) relationships which Parliament envisaged.

7. JUDICIAL APPOINTMENTS

Seventh, and finally, I wish to announce that my colleague the Minister of Justice has the judicial appointments process under active review. The Minister, from the outset of his mandate, has taken steps to improve the practice of consultation with the provinces, Bench and Bar.

One interesting approach that will assist the Minister in his review is a study of the matter recently completed by a Committee of the Canadian Bar Association. I wish to commend the Bar on its initiative and say that we will be following its review of the Committee's report, and awaiting its conclusions, with great interest. In the meantime, the Minister is proceeding forthwith with consultations in this area of vital importance.

Having dealt with each of its components in turn, may I say in conclusion that this package of reforms is evidence of the Government's intent to adopt ethical standards worthy of the respect of the Canadian people. In so doing, we wish to further the process of national renewal by revitalizing the faith of the citizens of this country in their institutions of government. Many of these steps are long overdue, and heaven knows this Government has had cause to regret their absence. But now they are in place, or in the process of being put in place, and we can look forward together to the dawning of a new day of trust and confidence.

Yours sincerely,

