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The impact and role of officers of Parliament: Canada's conflict of interest and ethics commissioner

Abstract: Officers of Parliament play a vital role in providing parliamentarians with access to critical information and resources that allow them to hold the government of the day to account. Critics have argued officers have exceeded their mandates and even threaten to supplant the opposition. Canada's Conflict of Interest and Ethics Commissioner (CIEC) holds a unique mandate, given that her primary focus concerns the behaviour of public office holders. This article draws on a comprehensive examination of the commissioner's reports and recommendations, and a content analysis of committee appearances to analyze and understand the impact and role of the CIEC. In contrast to the portrayal of other officers in the extant literature, we find that the office of the CIEC is constrained in its mandate and its impact limited by the nature and extent of its relationship with Parliament.

Sommaire : Les agents du Parlement jouent un rôle crucial pour fournir aux parlementaires l'accès à des renseignements et à des ressources essentiels qui leur permettent de rendre imputable le gouvernement en place. Certains critiques ont soutenu que les agents ont outrepassé leur mandat jusqu'au point de menacer et de supplanter l'opposition. La commissaire aux conflits d'intérêts et à l'éthique (CCIE) du Canada détient un mandat unique, étant donné que son objectif principal est de superviser le comportement des titulaires de charge publique. Cet article s'appuie sur un examen exhaustif des rapports et des recommandations de la commissaire, ainsi que sur une analyse du contenu des comparutions au comité, dans le but d'analyser et de comprendre les répercussions et le rôle de la CCIE. Contrairement à l'image d'autres agents dans la littérature existante, nous concluons que le Commissariat de la CCIE est limité dans son mandat et sa portée à cause de sa relation avec le Parlement.

One increasingly prominent institutional feature that purportedly enhances Parliament's accountability function is the officer of Parliament. These agents assist the legislature "in holding ministers and the bureaucracy accountable" (Thomas 2003) by providing oversight on a particular area of concern. These areas can range from public spending and elections to the protection of certain rights or values, like privacy or ethics. As Hurtubise-Loranger notes, "there is no statutory definition of what constitutes an officer of Parliament in Canada" (2008: 71). However, key features of the

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position include: independence from the government of the day, a means of appointment, a mandate and term in office that is defined by statute, and a reporting obligation to one or both houses of Parliament. We consider eight federal officers to fit this baseline criteria: the auditor general, the official languages commissioner, the privacy commissioner, the chief electoral officer, the commissioner of lobbying, the access to information commissioner, the conflict of interest and ethics commissioner, and the public sector integrity commissioner.

Officers of Parliament assist with and improve government accountability by providing parliamentarians with independent expert information, analysis, and oversight. However, some scholars are concerned that these officers go too far, and are actually supplanting members of Parliament in their accountability role. These authors cite the recent proliferation of officers, and their willingness to expand their original mandate to encompass significant political and policy-making powers (Smith 2013: 117; Sutherland 2002; Savoie 2003: 274; 2008: 167). These analyses are often inserted as sections titled “Officers of Parliament” within larger works (see, for example, Savoie 2010: 76–82; Smith 2013: 115), and are frequently homogenizing in their discussion of the role and impact of officers. For example, Savoie writes:

New officers of Parliament have been created in recent years without any effort to define a constitutional niche or to clarify how they fit into the existing constitutional framework. It is not at all clear how they are to be held accountable or by whom. They all have one thing in common – they are independent and are free to voice their views even when they may be serving the interest of their organizations. For the most part, they answer to themselves and play to the media (2010: 80–81).

At the same time, however, many of the discrete criticisms levelled against the offices are about issues like mandate creep, and are made in relation to specific officers, like the auditor general. Savoie writes that, “pronouncements from the auditor general on general policy and program effectiveness are ‘all too often interpreted by the opposition, the press and attentive publics to have the same claim to professional “objectivity” as financial compliance audits’” (Savoie 2003: 274, citing Aucoin 1997). Sutherland similarly notes that the auditor general’s mandate has been “flipped on its head,” where committees of the House of Commons are now referred to as “stakeholders” and “clients” rather than “the source of [the auditor general’s] role and authority” (2002: 2). She notes that the office’s vision for itself “seems even to overtake the role of the opposition parties” (ibid). Notably, other officers have begun to circumvent Parliament entirely, by informing the media first of their findings or, as in the case of the privacy commissioner in 2002, by launching constitutional court challenges without first consulting Parliament (Savoie 2003: 248–49).

By contrast, some commentators maintain that officers provide a function that members of Parliament are simply unwilling or unable to perform themselves, and that the officers therefore *supplement*, rather than supplant, Parliament's accountability role (Stillborn 2010; Bell 2006). Bell notes that several officers have "insinuated themselves in their own mandates" and "crossed from commenting neutrally on the administration of certain values, to actively advocating for these same values in the political sphere" (2006: 19). Nonetheless, he argues that "mandate creep" is neither surprising nor problematic, claiming that it represents "the rational maximization of public expertise" (2006: 19). Still other authors argue that the role of officers within the broader institutional and constitutional context needs to be clarified (Thomas 2003; Chaplin 2011a; Whyte 2011). These debates over the precise role of officers of Parliament raise fundamental questions, not only about Parliament's ability to ensure democratic accountability, but also about how these non-elected actors are exercising policy-making power.

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While scholars recognize the varied and distinctive roles inhabited by each officer of Parliament – the breadth of their activities varies considerably in scope and content, and some officers focus exclusively on government activities while others "have mandates that are primarily directed at people who are outside the government" – the literature's tendency to study them as a group is noteworthy, and has been actively defended (Chaplin 2011b: 3–5). For example, Chaplin notes that the nature of their independence and expertise, consistency in appointing and reporting, and their broadly-shared public role as oversight authorities or "ethical regulators" all suggest that "what unites them becomes more important than the distinctions between them" (2011b: 5).

Yet, despite the tendency to analyze the officers as a single group, it remains unclear whether the institutional concerns raised in the extant literature can apply to all of the officers of Parliament equally. Notably, a comprehensive study of the officers of Parliament in Canada has yet to be conducted (Smith 2013: 116). In recognition of this substantial gap within the literature, this article offers a case study of the conflict of interest and ethics commissioner (CIEC). There have only been a handful of relevant analyses focused on ethics commissioners in the Canadian context prior to

the establishment of the CIEC (Greene 1991; Saint-Martin 2003) and, as far as we can identify, only one since the office was created (Fournier 2009).

This article contributes to the developing literature on officers of Parliament by providing new empirical data on a little examined officer. It finds that, contrary to many of the concerns raised in the literature about officers of Parliament, the CIEC suffers from relatively weak formal powers and influence, with opposition members of Parliament being generally critical of the commissioner's restrained approach to her mandate. By examining the CIEC's reports and recommendations, incorporating information from participant interviews, and by conducting a content analysis of the commissioner's appearances before relevant parliamentary committees, this article sheds new light on a little-studied officer of Parliament and on the broader debates regarding the role of these institutional actors in Canada's democratic system.

Background and methodology

The office of the CIEC is a relatively nascent addition to the officers of Parliament. It emerged from a series of increasingly formal institutional arrangements primarily related to conflict of interest. The genesis began in 1973 when conflict of interest guidelines were first issued for cabinet ministers (including, for example, restrictions on outside activities and divestment or public declaration requirements). The rules surrounding conflict of interest were consolidated into a formal code of conduct, the *Conflict of Interest and Post-Employment Code for Public Office Holders*, in 1985. The current *Conflict of Interest Code for the Members of the House of Commons* (the Code) was adopted in 2004, and the *Conflict of Interest Act* (the Act) – which established the CIEC as a full-fledged independent officer of Parliament – was passed into law in 2006 (Fournier 2009: 10). As Fournier notes, Parliamentary ethics regimes began in the provinces and territories well before the Senate and the House of Commons, with the first independent ethics commissioner established in Ontario in 1988 (2009: 10).

Mandates of officers are normally outlined by statute, and the CIEC is no different. In applying the Act and the Code, the commissioner is charged with “helping appointed and elected officials prevent and avoid conflicts between their public duties and private interest” (CIEC 2016). The commissioner provides confidential advice to the prime minister about the application of the Act, as well as offering advice to individual office holders about their personal obligations. The commissioner, who for the period of this study has been Mary Dawson, is free to open an investigation on her own initiative or following a request made by a member of the House of Commons or the Senate. In both situations, the investigation may have been spurred by comments or concerns expressed by the public.

In an interview conducted for this study, Dawson describes four complementary roles that her office incorporates. The first is an advisory role, where the office receives “declarations from members of public office holders as to their holdings and as to their activities,” and may include putting “compliance measures in place, such as if they [public office holders] hold something they need to divest or they have to put a screen between them and people coming in.” The office also regularly fields questions from MPs or public office holders on rules under the Act or Code. The second role is investigatory, as outlined above. The third is a “broad reporting role, including publishing the annual reports we do and the reports on sponsored travel under the Code, for example.” Finally, the commissioner has an educative role, ensuring that people understand the rules administered by the office, both within government and among the public. An important aspect of this role is dealing with the media. As Dawson states, “we’re careful to keep ourselves open to answering media calls with deadlines and we take that as a very important part of our [mission]” (interview, March 6, 2017).

Using the CIEC as a case study allows us to address core issues in the extant literature regarding the impact of the officers of Parliament on government – namely, the effect they have on institutions, actors, and public policy. Analyzing the reports and recommendations produced by the CIEC is crucial in this respect: it allows us to better understand how the government and parliamentarians respond in the context of a specific officer. One necessary analytical approach in examining these reports and recommendations is to examine whether new laws, statutory amendments, regulatory changes, or institutional processes are enacted or reformed following a report.

The committee appearances and the annual reports produced by the CIEC offer invaluable insight into the relationship between the CIEC and Parliament

An examination of the CIEC’s appearances before relevant parliamentary committees provides insight into the relationship between the commissioner and Parliament. This empirical examination can help to answer the more normative questions raised by critics concerning whether the influence enjoyed by officers exceeds their intended role and gives them too much political power. Critically, because it can be difficult to attribute policy change (it is not always clear, for example, whether legislative or policy changes are the direct result of a recommendation from an officer), committee transcripts can sometimes serve to verify policy influence.

From 2007–2015, the CIEC released a total of 18 general reports – one each year under the Act and the Code, respectively, as well as a five-year review of both pieces of legislation. These reports outline the major activities of the office, what investigations the CIEC has engaged in, and offer suggestions for improvement. During the same period, the commissioner also appeared 17 times before the Access to Information, Privacy, and Ethics (ETHI) committee to review the Act, and five times before the Procedure and House Affairs committee (PROC) to address issues related to the Code. In 2013, she also appeared in front of the Standing Committee on the Status of Women.

The committee appearances and the annual reports produced by the CIEC offer invaluable insight into the relationship between the CIEC and Parliament. In analyzing the reports, we focus on two primary areas: the recommendations made and the investigations requested and conducted. With regard to the recommendations, we note each individual recommendation and whether it falls under the Act or the Code. We then track the number of times that recommendation appears within a single report, as well as across different reports. Finally, we record whether there is any indication that the government has addressed or acknowledged the recommendation. Regarding the investigations, we track the year the investigation was opened, and whether the investigation falls under the Code or the Act. We then note the number of complaints made about that issue, and who requested the investigation (or whether the commissioner self-initiated it). Finally, we record the results of the investigation and under which report it appeared. Tracking the investigations of the commissioner is complex; the reports do not always provide the details necessary to adequately document an investigation. Moreover, the commissioner sometimes discusses the same investigation multiple times in a single report, making it difficult to avoid double counting. Similarly, once an investigation was open, it could remain open for several years; keeping track of those ongoing investigations is challenging.

We also conduct a systematic content analysis of transcripts of all of the commissioner's committee appearances from 2007 through 2015. For each meeting, we note the date of the session and who from the office of the CIEC was present. Beyond establishing these and other general details about the committee appearances, including the purpose of the meeting and the number of topics discussed, we analyze the questions posed by the committee members. We note the total number of questions, as well as the number asked by the government and opposition MPs, respectively. Questions are then sorted by content. This is done to assess which matters are of interest to members of Parliament, to examine the impact of the commissioner's recommendations, and to trace the lines of accountability and the relationship between the CIEC and Parliament. Questions are divided into

six categories, relating to: 1) the CIEC's mandate; 2) specific policies/issues; 3) the role or impact of the office; 4) procedure and administration; 5) the governing legislation (the Act or the Code); 6) the priorities of the committee itself. We collect all questions directed towards the commissioner, including those that are clarifying or repeating questions. While some discretion is required when incorporating questions that take the form of statements, we determined that if any response is expected from the commissioner, the statement qualifies as a question.

Finally, we conduct a qualitative assessment of the interactions between the commissioner and the committee members. This involves tracking whether there were any interactions that demonstrated:

1. *A disagreement with or a challenge of the commissioner's interpretation of her mandate.* This category encapsulates those moments where MPs push back against how the commissioner views the limitations or expansiveness of her mandate. For example, in 2011 the NDP was being criticized for accepting donations from big labour unions. A Conservative MP challenged the commissioner's claim that the NDP's behaviour was under the jurisdiction of Elections Canada, rather than falling under the mandate of the CIEC (5th meeting of ETHI, 41st Parliament: 5).
2. *A disagreement or challenge on a specific policy recommendation.* The commissioner often makes policy recommendations, and rules on investigations. This category tracks how often MPs express disagreement with a commissioner's recommendation to amend the Act or the Code, or where an MP finds a particular ruling unsatisfactory. These disagreements can range from wondering whether a particular financial penalty is sufficient (31st meeting of ETHI, 40th Parliament: 11), to disagreements with broader recommendations, such as the rules governing the cooling-off period under the Act (64th meeting of ETHI, 41st Parliament: 5).
3. *Agreement with a recommendation or finding.* This category attempts to determine how often MPs agree with the recommendations or investigative findings of the commissioner. There are very few clear indications of agreement from any members, regardless of party affiliation. However, one example is the agreement expressed by the Conservatives regarding the importance of conflict of interest screens, particularly in regards to the Raitt report (5th meeting of ETHI, 41st Parliament: 10).
4. *Notice of actions taken or in progress to address a recommendation.* This category tracks how often the government makes reference to actions taken to address the commissioner's recommendations. These references can be taken as an indication of whether the government takes the

work of the commissioner seriously. Notably, there are almost no cases where the government acknowledges having taken action to address a recommendation. However, one example occurs in a PROC meeting, where a Conservative MP informs the committee that some forms recommended by the commissioner have been approved by the relevant subcommittee and that the subcommittee's recommendation is that they should be accepted by PROC (3rd meeting of PROC, 40th Parliament: 3).

5. *The intent to score partisan points.* Often the commissioner's investigations act as fodder for one party to criticize the integrity of another. We track how often the MPs frame their questions and comments in partisan terms. A straightforward example of this kind of language is the NDP's claim "that the Conservatives have come on gangbusters to sabotage and undermine legitimate work of the committee" (5th meeting of ETHI, 41st Parliament: 7).

This systematic approach to the committee meetings allows us to consistently track the interactions of the commissioner and MPs across each meeting. The following section reviews the results of our research and outlines the three key findings that were generated. Our first finding elaborates on the constrained nature of the commissioner's mandate and her focus on transparency over ethics. The second finding points to the lack of response the commissioner's recommendations have received. Finally, our third finding nuances the different ways in which the opposition and government MPs respond to, and make use of, the commissioner's work.

Findings

The first finding concerns the relatively constrained nature of the commissioner's mandate. Our analysis of the commissioner's recommendations (summarized in Table 1) demonstrates that she is primarily preoccupied with issues of conflict of interest, rather than ethics. Each of the categories noted in Table 1 points to the commissioner's concern with transparency of process. Recommendations regarding gifts were primarily focused on the monetary value at which gifts must be declared, and what qualifies as a gift. Compliance/disclosure is a broader category concerned with when real or potential conflicts of interest must be declared, as well as the disclosure of assets; compliance relates to disclosure because the commissioner's concerns around compliance are largely oriented towards helping public office holders meet disclosure deadlines. Similarly, the travel category counts those recommendations that relate to when travel needs to be declared, while post-employment recommendations ensure that employees respect a cooling-off period once they leave their position as a public office

Table 1. *Summary of the CIEC's Report Recommendations by Category (2007–2015)*¹

<i>Recommendation Category</i>	<i>Act</i>	<i>Code</i>	<i>Total</i>
Gifts	5	4	9
Compliance/Disclosure	14	6	20
Travel	2	2	4
Post-employment	7	0	7
Soliciting of funds/fundraising	3	2	5
Political/partisan	1	1	2
Furthering private interests	1	3	4
Governing legislation	40	8	48
Mandate	7	3	10

¹Data gathered from the CIEC's 2007–2015 Annual reports for the *Act* and the *Code*.

holder. These post-employment requirements ensure that former public office holders cannot use their previous position as a means of advancing private interest.

The soliciting of funds/fundraising category counts those recommendations that attempt to limit the capacity for public office holders to personally solicit funds that advantage themselves or their family and friends, while the political/partisan recommendations revolve around clarifying the relationship between public servants and political parties. Furthering private interests is again a broader category that catches those generic recommendations that attempt to limit public office holders from gaining private advantage from their public position, without reference to a particular area of concern that falls under one of the other categories. Finally, the category for governing legislation covers those recommendations that seek to change or clarify the language of the Act or the Code, while mandate recommendations refer to those proposals made by the commissioner to change the scope or definition of her mandated powers.

As noted above, of particular interest to the commissioner are issues of transparency with regard to the benefits associated with holding a government position; she is not especially interested in regulating the partisan behaviour of MPs, or commenting on issues of moral substance. As the commissioner notes:

[The] Office is primarily concerned with situations of conflict of interest as set out in the Act and in that regard my mandate is clear. My title also includes the word "ethics", which suggests broader responsibilities beyond conflict of interest. My mandate in this latter regard is less clear, as the term "ethics" is not used anywhere in the Act. . . I do not believe I have a mandate to address all ethical issues (CIEC 2009: 5).

The commissioner's mandate, then, is structured to address administrative concerns and is not meant to be a resource for moral arbitration. This narrow mandate is reflected in the lack of punitive powers available to the commissioner. While the CIEC can provide monetary penalties for administrative issues, such as a failure to comply with deadlines, the office lacks the resources to punish substantive violations of the Code and the Act. As noted by the commissioner, "the Act provides for penalties for administrative breaches, but does not do so for clear substantive contraventions" (CIEC 2011a: 23).

Beyond her inability to punish substantive breaches, the commissioner lacks the authority to address ethical concerns regarding partisan conduct, despite frequent requests to do so. Of the eighteen reports released by the commissioner, seven make reference to the requests received by the commissioner to investigate partisan behaviour. The commissioner states that: "I believe that partisan political conduct is largely beyond the scope of both the Act and the Code, despite the many related complaints that my Office receives in this area" (CIEC 2012: 3). That belief is affirmed in recommendation 19 of the five-year review of the Code, in which the commissioner suggests: "That the House of Commons consider implementing a separate code of conduct to address the political conduct of Members and their staff" (CIEC 2013: 16). The frequency with which the commissioner receives complaints regarding partisan conduct suggests that the mandate of the commissioner is not sufficiently defined. Based on the investigations noted in the commissioner's annual reports, roughly ten percent of the requests she receives fall outside the scope of her mandate. These requests can range from issues of partisanship, to concerns regarding the appropriate use of public funds (CIEC 2011a, 2011b), hiring practices in federal organizations (CIEC 2012), and the amount of money spent on election advertising (CIEC 2013).

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The lack of clarity in the CIEC's mandate places the commissioner in a difficult position. Often, scholars criticize officers of Parliament for overstepping their prescribed role and engaging in mandate creep (Bell 2006: 20; Thomas 2003: 308). The CIEC, however, is often criticized for the opposite problem of defining her mandate too narrowly. Frustration with the commissioner's narrow interpretation of her mandate is reflected in interviews conducted with members of Parliament. When asked how often they

disagree with findings presented by officers of Parliament, MPs on both the government and opposition side frequently say “never” or “rarely.”¹ The CIEC, however, is an exception to this general approval, with several MPs expressing concern that the commissioner has interpreted the scope of her mandate and the conflict of interest rules too stringently. Others complain that the commissioner is not vigilant enough. Admittedly, however, in the words of one MP, “that’s probably because I submitted the complaint to begin with. I was hoping for a different outcome. And obviously, I submitted it because I thought there was a breach of ethics.”

Parliamentarians express similar frustrations with the commissioner’s limited interpretation of her mandate during committee hearings. For example, in one PROC meeting, a Liberal MP suggests to the commissioner that she needs to be more self-motivated in looking for breaches, rather than simply waiting for complaints to come her way. The MP states:

I think there’s a lack of initiative that could come from your office in looking at these situations. I don’t want to label you as a police officer as far as MPs are concerned; however, if somebody were to make a prohibited lefthand turn in front of a police officer, he wouldn’t need anybody to tell him, but would go after that particular person. (20th meeting of PROC, 40th Parliament: 6).

These examples demonstrate an obvious dissatisfaction – particularly from the opposition – with how the commissioner has interpreted and exercised her mandate.

Contrary to the preferences of some parliamentarians, however, Commissioner Dawson does not think any changes to her mandate are warranted. In an interview she states that: “There’s a number of people that say we should have penalties, significant penalties. I have administrative admonitory penalties for failures to get deadlines met, things like that. But I don’t have penalties to pose for contraventions of either the Act of the Code. And I personally think that’s alright. I think the reporting is enough. So I wouldn’t change that.” Dawson notes that the office tries to prevent problems rather than punish for problems (interview, March 6, 2017). While Dawson views her current powers to be sufficient, one key rationale in favour of increasing them is to ensure greater compliance and to provide further deterrence. This was the underlying logic of recommendations to augment the office of the privacy commissioner with the ability to levy fines and other order-making powers (Houle and Sossin 2010: 166).

Our second major finding is that most of the recommendations made by the commissioner have not been addressed by Parliament. For example, in her five-year review of the Act, the commissioner made seventy-five different recommendations to the ETHI Committee. In response, the committee forwarded only nineteen recommendations to the government; of those, only a handful responded directly to the recommendations made by the

commissioner (Canada 2013: 69). This minimal engagement with the CIEC's recommendations is in part the result of a lack of interaction between her office and the Parliamentary committees. Notably, the commissioner has not been called to appear before either ETHI or PROC to discuss her annual reports since 2010 (CIEC 2015a: 41). Instead, the commissioner's appearances have largely been confined to discussing financial estimates and conducting the five-year reviews of the Act and the Code. Furthermore, the commissioner did not appear in front of PROC between May 2012 and February 2015. Although the five-year review of the Code was initiated in 2012, it was suspended until early 2015 (CIEC 2015b). As such, the commissioner's recommendations for the Code remained largely ignored during that time period. Nonetheless, the review of the Code was eventually re-opened, and the commissioner was asked to submit a new set of recommendations (CIEC 2015b: 22). "The Code was amended in June 2015 in consequence of that review and the amendments took effect on October 20, 2015. Those amendments reflect 10 of the [23] recommendations that Commissioner Dawson made in her written submission to the committee" (J. Brisebois, personal communication, April 20, 2016).

The absence of significant media attention and the attendant public pressure suggests that the CIEC's ability to effect policy change is limited to the efficacy of her reports and recommendations in convincing parliamentarians or the government to act

Critically, the commissioner has little recourse when serious constraints are placed on her appearances before the two key standing committees. Contrary to the assertion noted in the previous section that officers of Parliament routinely bypass Parliament by dealing directly with the media or using other forms of communication, there is little evidence to suggest that the CIEC engages in such tactics in a regular manner. The CIEC apparently lacks the informal status granted to some officers of Parliament who maintain a level of popularity with the media. For example, there is a significantly lower volume in media coverage of the CIEC's activities when compared to that of the auditor general.² The CIEC issues news releases on a semi-regular basis; however, a review of these show that they are usually *pro forma* to the extent that they typically coincide with the submission of reports. Furthermore, media statements are relatively rare, and have been issued to provide comments on parliamentary take-up on recommendations. Since the CIEC office was established in June, 2007, Canada's two national newspapers – the *Globe and Mail*, and the *National Post* – have published 88 and 85 news articles, op-eds, or editorials referencing the CIEC,

respectively. Of these 173 total articles, only 41 report on the office's reports or recommendations, an average of less than five per year in two of Canada's most notable newspapers. The lack of both formal power and informal status suggests that the principal means available to the commissioner to advance and fulfill her mandate is through issuing reports. The absence of significant media attention and the attendant public pressure suggests that the CIEC's ability to effect policy change is limited to the efficacy of her reports and recommendations in convincing parliamentarians or the government to act.

Our third and final major finding is that the commissioner's committee appearances reveal important differences in the relationship between the CIEC and government MPs, and that which the commissioner has with opposition MPs; this is reflected most immediately in how the parties engage in partisanship during the committee meetings. Notably, opposition MPs are twice as likely as government MPs to ask questions or make comments to score partisan points. Partisan statements are identified as comments made to attack or belittle the other side. Such statements can include making derisive comments about other parties, or flaunting successes.

Since opposition MPs are more likely to use the commissioner's investigations as partisan fodder – indeed, to hold the government to account – they are more inclined to ask about specific policies, reports, and issues than government MPs. While the opposition MPs in ETHI asked 200 questions regarding specific policies, reports, and issues, the government raised only 61 questions. Similarly, while the opposition MPs in PROC asked 114 questions about specific policies and issues, the government asked only 36. The opposition MPs' interest in specific policies, reports, and issues makes sense because they are trying to draw attention to any findings that might embarrass or call the government to account. For example, in a single ETHI meeting, the opposition MPs ask about the investigations of Lisa Raitt, Rick Dykstra, Stockwell Day, Jim Flaherty, and Dean Del Mastro (5th meeting of ETHI, 41st Parliament). Conversely, the only controversy government MPs point to is the NDP's acceptance of union sponsorship for their convention (5th meeting of ETHI, 41st Parliament). The opposition gains significantly more political and partisan leverage from the commissioner's reports than do government MPs, who largely maintain a defensive stance to opposition attacks.

Beyond partisanship, however, there are also some clear trends and similarities that can be seen in the types of questions asked by the government and opposition parties (summarized in Table 2). Specifically, both the government and opposition MPs in ETHI focus the majority of their questions on issues of procedure and administration. Procedural and administrative questions tended to focus on the functioning of the office. Examples

Table 2. *Summary of Questions Asked by the Government and Opposition during ETHI and PROC Sessions with the CIEC*²

<i>Category of Questions</i>	<i>Government (ETHI)</i>	<i>Opposition (ETHI)</i>	<i>Government (PROC)</i>	<i>Opposition (PROC)</i>
Mandate	15	41	0	7
Specific policies/issues	61	200	36	114
Role/impact of the office	36	45	7	10
Procedure/administration	231	258	21	48
Governing legislation	65	94	17	23
Committee role/priorities	6	10	9	2
Category of Comments				
Challenging mandate	2	17	2	2
Challenging policy recommendation/finding	4	10	4	9
Agreement with recommendations/finding	7	1	3	2
Notice of actions taken/in progress to address recommendation	0	1	2	0
Comments/questions to score partisan points	17	31	3	9

²Data gathered from the 2007–2015 PROC and ETHI meeting transcripts. Table 2 incorporates only those meetings where a member from the office of the CIEC was present.

include asking about the criteria used to judge whether an investigation should be initiated (28th meeting of ETHI, 41st Parliament: 5), questions about the budget and resources (31st meeting of ETHI, 41st Parliament), and how investigations are processed through the CIEC's office (9th meeting of ETHI, 40th Parliament).

Opposition MPs, in particular, seem to push back against the CIEC's narrow mandate (or the commissioner's narrow interpretation of it), and are more likely than government MPs to ask questions about the commissioner's mandate. Government MPs only asked 15 questions about the CIEC's mandate in her ETHI appearances, and did not ask any questions in the PROC meetings. Conversely, the opposition parties asked 41 questions regarding the CIEC's mandate in the ETHI committee meetings, and asked seven questions during PROC sessions. Similarly, there is evidence to suggest that the opposition MPs were more inclined than the governing party to challenge the commissioner on her mandate and policy recommendations.

There are also significant differences between the types of questions asked by the government regarding the commissioner's mandate, and

those put forward by the opposition. The government's questions focus mostly on clarification; they seek to confirm the CIEC's current mandate. For example, one Conservative MP asks the commissioner: "Do you feel that the budget that you have is providing you with the adequate resources to create your legislated mandate?" (31st meeting of ETHI, 41st parliament: 13). Another asks, "So you have the freedom to investigate pretty well anything that you feel is warranted?" (14th meeting of ETHI, 40th parliament: 7). These questions are, on the surface, neutral. They imply no approval or disapproval of the commissioner's mandate; they simply attempt to establish facts. However, a more cynical interpretation might suggest that government MPs have an incentive in encouraging the commissioner to confirm that she can conduct relevant investigations with her current resources and mandate. In other words, such questions may be geared to signalling that the status quo is functioning and adequate.

The opposition parties, by contrast, put forward more expansive questions. For example, a number of opposition members ask questions regarding whether there are more powerful ethics commissioners internationally from which the CIEC could draw inspiration (6th meeting of ETHI, 40th parliament: 3; 31st meeting of ETHI, 41st parliament: 7). The opposition MPs are also more concerned about whether the commissioner has the necessary tools to carry out her mandate. One opposition MP confirms: "So there's a mismatch between your mandate and the tools you have to discharge that mandate" (31st meeting of ETHI, 41st parliament: 13). Another MP seems concerned about the rigid limitations on the commissioner's capacity to investigate complaints. The MP asks, "If the complaint was poorly formulated or was not presented in the proper way, do you have the mandate, or the power, to change course and to investigate in a different way?" (9th meeting of ETHI, 40th parliament: 4). These questions imply that the opposition MPs envision a more expansive mandate for the CIEC, and a greater level of discretion.

Furthermore, differences are also reflected in the challenges made to the commissioner's mandate and recommendations. The challenges produced by the government are fairly limited and infrequent. Over the course of the CIEC's 23 committee appearances, the government only challenged the commissioner's mandate four times, and challenged her recommendations only eight times. The government tends to disagree that the CIEC should be given more interpretive and discretionary powers, and expresses frustration around the commissioner's attempts to limit the monetary value of acceptable gifts and prevent the furthering of private interests (31st meeting of ETHI, 40th parliament: 12; 70th meeting of ETHI, 41st parliament: 14; 40th meeting of PROC, 41st parliament: 8; 69th meeting of PROC, 41st parliament).

The opposition parties are much more critical. They challenge the mandate and the recommendations of the CIEC at least 19 times at each of the two committees. The opposition parties criticize the CIEC for being “toothless,” and question her ability to deter violations of the Act and the Code (27th meeting of ETHI, 40th parliament: 8); this is particularly true regarding the commissioner’s inability to enforce post-employment obligations (31st meeting of ETHI, 40th parliament: 9). They further request that the commissioner take more initiative in opening investigations (20th meeting of PROC, 40th parliament: 6). These challenges by the opposition reflect statements made by the commissioner in her reports, that the demands being placed on her office far exceed the actual scope of her mandate. Based on the types of questions and interactions we analyzed, the work of the committees is both substantive and inherently political or partisan. More significantly, our findings suggest that, rather than “supplanting” the opposition, the CIEC, her findings, and her committee appearances are used by the opposition as a foil against the government. In other words, the commissioner’s work is actively used by the opposition to (attempt to) hold the government to account.

Implications and conclusion

The ultimate authority of officers of Parliament to act, affect policy, and to represent interests can be limited by the willingness and ability of Parliament or the government to engage with their recommendations. This case study suggests that the impact and role of the CIEC diverges from the sometimes homogenizing portrayal of officers as a group. Tasked with monitoring compliance and providing advice to public office holders regarding the Code and the Act, the CIEC has relatively constrained methods of advancing her primary agenda; as noted above, she lacks the authority to punish substantive breaches of the Act and the Code. Under the Code, the commissioner cannot even compel third-party witnesses to be interviewed or produce necessary documents (CIEC 2011b: 13–14). The CIEC is limited by a narrow mandate (or a narrow interpretation of it), insofar as her mandate is gauged by the responsiveness of government and the desires of the opposition.

One major obstacle for the period studied has been that government control of the committee process has severely limited the CIEC’s presence in Parliament. As noted above, the commissioner’s activities under the Code were effectively ignored between 2012 and 2015 – at least as it relates to review work ordinarily conducted by PROC. Moreover, particularly in the case of the five-year review of the Act, there is little evidence to suggest that the commissioner’s recommendations have been seriously considered. While the CIEC has served as a valuable resource of advice to members of

Parliament, her broader policy role has been limited by infrequent interactions with the institution of Parliament itself. Barring occasions where significant controversies capture the attention of the media and public – for example, the commissioner’s 2011 report finding that former Conservative cabinet minister Helena Guergis violated the Code by making a recommendation in the best interests of her husband (Minsky 2011) – an officer of Parliament has few resources or influence in such an institutional climate. Despite this, it should be noted that Commissioner Dawson is not concerned about the quantity or quality of her interactions with Parliament. She states, “if they’re not calling on me, they must be happy enough with the report. They probably don’t have any heavy concerns with what’s going on in the office” (interview, March 6, 2017).

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Critically, however, the commissioner has begun to challenge elements of the governing legislation that limit her capacity to talk to media. In particular, the commissioner recommends in four separate reports that, when a request for an examination is rejected, she be allowed to publicly disclose the reasons for declining to investigate – particularly when there is misinformation or it is in the public interest to do so. Should the commissioner succeed in gaining approval for her recommendations, improved transparency and a greater status in the eyes of the media and parliamentarians could result. Despite the persistence of these and other recommendations, however, much of the CIEC’s significance seems to have been relegated to an educational and advisory role for public office holders and MPs. This is something that the commissioner observes throughout her reports and committee appearances, and was confirmed in our interview with Commissioner Dawson. However, the evidence outlined above suggests that opposition MPs are not satisfied with such a minimalist role. As one member of the NDP noted during an ETHI meeting: “I’m concerned because... These are serious breaches of conflict of interest, and yet you have no ability to assess penalties. You say your role is educational” (Ibid: 12). While interactions such as these demonstrate that the commissioner has been assigned a weaker role in comparison to some of the other officers of Parliament, they also suggest that opposition members would like to have more opportunities to engage with the commissioner. The issues under the CIEC’s purview have generally sustained the attention of members of Parliament, especially opposition members. Where the institutional lines of communication are

less than ideal, the commissioner's mandated powers to receive requests and complaints from individual members, and to pursue investigations, means that her core role remains fulfilled, even where broader policy recommendations go unheeded. In this sense, then, there exists a greater potential policy role for the commissioner.

The degree to which the CIEC's role is "too narrow" is ultimately a normative question. Further, it is difficult to empirically gauge the extent to which the relatively restrained activity of the CIEC is a product of the mandate itself or the general approach and style of the individual officer-holder, Commissioner Dawson. Our analysis suggests there is some reason to believe it is both. The lack of formal powers to sanction breaches and the near-exclusive focus on conflict of interest rather than broader ethical issues has been raised by parliamentarians and acknowledged by the commissioner herself. Yet, as noted above, Dawson states that she does not think an expanded role or increased powers are desirable. It is not difficult to imagine a different person in her role reaching the opposite conclusion, particularly in the face of complaints from members of Parliament. Similarly, a different individual in her position might be frustrated by the refusal of a committee to call on her for a significant length of time, as occurred with PROC during the period of study. This is not to suggest that one view is correct and the other is not; rather, our analysis suggests both that the CIEC has relatively weak authority compared to other officers and also that the commissioner has taken a fairly restrained approach to her role during the period of study.

The impact of the CIEC on responsible government remains to be seen. This article only examines the period of one government – the Conservative Government under Prime Minister Stephen Harper from 2007–2015; things might operate differently under the current Liberal government, including the commissioner's appearances before Parliament and government receptivity to recommendations. The CIEC stands at a crossroads. While the commissioner's work has sustained the interest of the opposition, her capacity to represent the interests of both the public and parliamentarians is limited by the scope of her mandate and the narrow range of formal powers extended to her. Confined largely to an advisory and administrative role, she possesses limited opportunities to influence policy or the political agenda. While her reports have served as fodder for MPs to raise questions of accountability, there are few available opportunities for the commissioner to address issues substantively. Moreover, the lack of engagement by parliamentarians and the media with the work of the CIEC limits the capacity of the office to exercise informal power. Ultimately, only the development of the office overtime and the shaping of its mandate by different commissioners will determine whether the CIEC will remain an

important outlier to the sometimes homogenizing portrayal of officers of Parliament within the extant literature.

Notes

- 1 A total of 17 interviews have been conducted for this article as well as part of a broader project on officers of Parliament.
- 2 In a separate component of a broader project on officers of Parliament, we collected news articles from Canada's two national newspapers – the *Globe and Mail* and the *National Post* – from 2006–2015. The Conflict of Interest and Ethics Commissioner garnered less than one-sixth the total media attention, in terms of number of articles, than the auditor general.

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