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Standing Committee on Access to Information, Privacy and Ethics

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Chair

Mr. David Chatters

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Monday, December 6, 2004

• (1535)

[English]

The Chair (Mr. David Chatters (Battle River, CPC)): It looks like we have a quorum, so the meeting will come to order.

Pursuant to the motion adopted by the committee on Wednesday, December 1, 2004, we're conducting a study on the mandate of this committee. Our witness today is the Deputy Clerk of the House of Commons, Audrey O'Brien.

I guess we'll start out, Audrey, just to give you a chance to give us a statement. There seems to be a huge amount of confusion around this whole issue, and hopefully we can bring some clarity to it today. We'll just start with your statement and then we'll go right to questions. We'll go that way.

Ms. Audrey O'Brien (Deputy Clerk, House of Commons): Thank you very much, Mr. Chairman.

First of all, I would like to say that the Clerk of the House of Commons, Bill Corbett, sends his apologies; he is unfortunately at home ill today. And so whereas I was going to accompany him, I now find myself pinch-hitting for him. I hope you will bear that in mind as we go along.

I also want to say that we really appreciate the opportunity to come before the committee to explain the origin of the draft standing orders that we had prepared with regard to the mandate of the committee. As committee members will know, we drafted this in a certain context and it was in the context of providing some appropriate, as we viewed it, wording to be included in the Standing Orders that would capture the mandate of the new committee on ethics, information and privacy, as we understood it to be, in keeping with those mandates that were already in the Standing Orders.

I'll go through my opening remarks, or what were to have been the Clerk's opening remarks.

[Translation]

Then, I will gladly answer your questions.

[English]

I wish to thank the committee for inviting me to appear today to speak to the draft standing orders we've submitted, setting out the mandate of this committee and others, in relation to the Office of the Ethics Commissioner and the Lobbyist Registration Act.

Let me, at the outset, explain that the draft we prepared and which the committee has before it reflects our attempt to translate into the Standing Orders the realities of this complex situation, involving, as

it does, three separate ethical regimes administered by two different individuals.

First, there is the Lobbyists' Code of Conduct arising from the Lobbyists Registration Act, which operates under the registrar, who in turn operates under the Registrar General of Canada, and that is currently the Minister of Industry.

Second, there are the Conflict of Interest Code for Members of the House of Commons and the Conflict of Interest and Post-Employment Code for Public Officer Holders, often referred to as the Prime Minister's code, which operates under the Ethics Commissioner.

The registrar and the Ethics Commissioner produce different types of reports that are submitted and dealt with in accordance with the provisions of the enabling legislation that governed these regimes. Accordingly, I will approach the subject in a step-by-step fashion.

First, let me refer you to the documents marked appendices A and B, those tables set out for the registrar and for the Ethics Commissioner, the types of reports they prepare, where those reports are submitted, and what role the House of Commons or its committees may play in relation to these reports. I believe the clerks of the committee have given you those. Appendix B is on a single sheet of paper and appendix A runs to about three pages. Basically that sums up what I'm about to tell you now in the opening remarks.

First of all, let's consider the registrar and the Lobbyists' Code of Conduct. With the adoption of Bill C-4 in the last Parliament, the registrar became the individual responsible for the Lobbyists' Code of Conduct and all of the functions relating to it, including investigations. The current incumbent is Mr. Michael Nelson, who heads the lobbyist registration branch of Industry Canada and reports to Parliament directly through the Registrar General, currently the Minister of Industry, as I said earlier.

Under the Lobbyist Registration Act, the registrar investigates an alleged breach pursuant to subsection 10(4), prepares a report, including the conclusions and the reasons for those conclusions, submits the report to the Registrar General of Canada, who in turn presents it to the House. In addition to reports following an inquiry, the registrar must present an annual report within three months of the end of the fiscal year.

The draft standing orders we proposed provide that both these types of reports from the registrar, that is the investigative reports and the annual reports, would fall within the mandate of and would therefore be automatically referred to this Standing Committee on Access to Information, Privacy and Ethics.

[*Translation*]

The Ethics Commissioner is responsible for the administration of two separate ethical regimes, namely: the Conflict of Interest Code for Members of the House of Commons, which was adopted by the House in the last Parliament and forms part of our Standing Orders; and the Conflict of Interest and Post-Employment Code for Public Office Holders, also known as the Prime Minister's Code, which is established by the Prime Minister pursuant to section 72.061 of the Parliament of Canada Act.

Let me take a few minutes to describe the two groups affected by these codes and the procedures for reports that might be tabled by the Commissioner in relation to each of these. Here again, I would refer you to the document I tabled earlier.

● (1540)

First, let us consider the Conflict of Interest Code for Members of the House. This affects all members of the House of Commons when they act as members of the House.

This Code therefore covers ministers of the Crown, ministers of state and parliamentary secretaries when they are acting as members of the House. Let me offer a brief explanation on that score. When a complaint is made to the Ethics Commissioner concerning a minister or parliamentary secretary, the Ethics Commissioner has to make a threshold determination of whether the individual was acting in a ministerial capacity or in the capacity of a parliamentary secretary. If the answer is no, the complaint will be handled under the Conflict of Interest Code for Members; if the answer is yes, it will be dealt with under the Prime Minister's Code.

I understand the Ethics Commissioner will be appearing before this committee on Wednesday. Dr. Shapiro is obviously better placed than I am to answer your questions about his mandate and the operations of his office. Please be assured that I am raising these matters only in so far as they have affected how the draft Standing Orders on your committee's mandate has been prepared.

[*English*]

There are three mechanisms through which an inquiry related to the Conflict of Interest Code for Members of the House of Commons may be undertaken. First, an individual member can make a complaint against another member when he or she has reasonable grounds to believe that the other has not complied with the code. Second, the House, by way of resolution, can direct the Ethics Commissioner to conduct an inquiry. Third, the Ethics Commissioner may, on his own initiative, conduct an inquiry into a given situation.

Having completed any of these types of inquiries, the Ethics Commissioner reports his findings to the House of Commons by presenting those findings to the Speaker. There are four types of report under section 28 of the code: the commissioner may find no contravention has occurred; he may find there has been a mitigated contravention and recommend no sanction; the commissioner may conclude that a member has not complied with the code and may recommend a sanction; or finally, when a complaint has been made that the commissioner judges to be frivolous or without sufficient grounds, he may report that he has dismissed the complaint.

In each of these cases, the commissioner reports his findings to the Speaker, who presents the report in the House of Commons as soon as it sits. In each instance, within five sitting days after the Speaker tables the report, the member who is the subject of the report has the right under section 28 to make a statement in the House of Commons following question period.

It is crucial to note that there is no provision in the code for any of these investigative reports to be referred to a committee. A report from the commissioner regarding the MPs code is dealt with in the House of Commons itself. Accordingly, the draft mandate that has been submitted for your consideration does not mention these reports.

The way in which the House considers concurrence in these reports depends on the commissioner's findings. Where the Ethics Commissioner finds that a member has not contravened the code or that a mitigated contravention has taken place, if no member has moved concurrence in the report within 10 sitting days of its tabling, a motion to concur in the report will be deemed to have been moved and adopted at the expiry of that time.

Where the commissioner has concluded that a member has contravened the code and may have recommended sanctions, members have the option of moving concurrence during routine proceedings. This will result in a debate of no more than two hours after which the Speaker will interrupt the proceedings and put, without further debate or amendment, every question necessary to dispose of the motion. If no concurrence has been moved on the 15th sitting day after the report was tabled, the Speaker immediately puts every question necessary to dispose of the motion. The code also provides that the House may refer any report back to the commissioner.

● (1545)

[*Translation*]

The second regime applies to public office holders who are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders, also known as the Prime Minister's Code. This group, previously administered by the ethics counsellor, Howard Wilson, includes: ministers of the Crown, ministers of state and parliamentary secretaries when they are acting in that capacity; political staff of ministers of the Crown or ministers of state; governor-in-council appointees, with specified exceptions; and full-time ministerial appointees designated by a minister of the Crown as public office holders.

The complaints procedure for the Public Office Holders' Code is set out in section 72.08 of the Parliament of Canada Act. When a complaint is made to the Ethics Commissioner by a member of Parliament under that section, the Ethics Commissioner examines the case and reports to the Prime Minister. The Commissioner provides a copy of the report to the member of Parliament who made the complaint and to the subject of the complaint. The report is also made public but it is not tabled in the House.

Here again, it must be noted that there is no provision for these reports to be referred to a committee. I should also point out that section 72.05(4) of the Parliament of Canada Act states specifically—in the words of the act, “for greater certainty”—that “... the administration of the Prime Minister's Code does not fall within the jurisdiction of the committee established by the House to direct the work of the Ethics Commissioner in relation to members of the House of Commons.”

[English]

On the annual reports of the Ethics Commissioner, as in the case with the registrar, the Parliament of Canada Act requires that the Ethics Commissioner report annually on his activities to the House. The act requires that two separate reports be tabled, a report on the commissioner's activities in relation to the functions of members of the House of Commons, and a report of his activities in relation to the mandate of the Ethics Commissioner in relation to public office holders and to requests for inquiries related to public office holders made by Parliamentarians.

Here again, the draft standing orders that we have prepared provide that the annual report dealing with the commissioner's functions in relation to members of the House of Commons qua members of the House of Commons be referred to the Standing Committee on Procedure and House Affairs. The rationale for this is that the committee was the one that developed the code of conduct for members of Parliament and is also the committee that, under the provisions of the code, is charged with undertaking a five-year comprehensive review of the code's provisions and operations.

By contrast, the draft standing orders provide that the Ethics Commissioner's annual report relating to public office holders—that is, the Prime Minister's code—would be referred to this committee, the Standing Committee on Access to Information, Privacy and Ethics.

The estimates of the Ethics Commissioner. The Parliament of Canada Act, in subsection 72.04(7), provides that the Ethics Commissioner prepare the estimates of his organization and submit them to the Speaker, who will then transmit them to the Treasury Board. The draft standing orders provide that the mandate of this committee, the Standing Committee on Access to Information, Privacy and Ethics, will include the review and report of the effectiveness, management, and operation together with the operational and expenditure plans relating to the Ethics Commissioner.

In closing, I hope these documents that have been tabled with the committee and my opening remarks have assisted members of the committee to understand how we approach the task of drafting the mandate of this committee for inclusion in the standing orders. Thank you again for the opportunity to speak to you.

I am now ready to take your questions.

The Chair: Thank you, Ms. O'Brien.

Just before we go into questions, we do have copies of the act and the code and the standing orders here if anybody wants them. We can distribute them if you wish. They are extracts only and we'll distribute them.

I assume appendix A and appendix B were drafted from the act.

●(1550)

Ms. Audrey O'Brien: That's right. It was an attempt, really, to put down in a simpler form the provenance of these various authorities as well as the role that committees play in the eventual study of reports from these various bodies, either the registrar or the Ethics Commissioner. The one that might be especially easiest to follow is the one that is the flow chart process. It's a single page.

The Chair: But according to that, just for clarity, no committee of the House of Commons has a role in relationship to the estimates of the Ethics Commissioner or reports either on the MP code or the public office holder code. There's no role for a committee, any committee of the House of Commons, in either of those cases.

Ms. Audrey O'Brien: I have a slight correction, Mr. Chairman. There's no role for any committee on the investigative reports of the commissioner, whether that be an investigative report on an MP or an investigative report on a cabinet member or parliamentary secretary; but—although I notice now, with some dismay, that it is not actually stated on this sheet—the estimates are considered as going to this committee.

The Chair: The estimates will go to this committee.

Ms. Audrey O'Brien: Oh, it is on the back. It is on the last page of appendix A, but I fear my flow chart that I was so pleased with is missing a box. It's just one of those days.

The Chair: Okay.

Ms. Audrey O'Brien: But thank you for clarifying that, Mr. Chairman.

The Chair: Yes, okay. Thank you.

I think we'll start with questions.

Mr. Hanger.

Mr. Art Hanger (Calgary Northeast, CPC): Thank you, Mr. Chairman.

I just have a point on the function of this committee dealing with the code of conduct for MPs generally, as well as cabinet ministers. There's been some indication that there's going to be a split here, that half of us will be handled by this committee—the cabinet ministers—and the members themselves will be under scrutiny of procedure and House affairs.

Now, I don't quite understand totally how either committee will handle information dealing with the members themselves, but maybe you can clarify some of that for me.

Ms. Audrey O'Brien: Through you, Mr. Chairman, Mr. Hanger, you raise a very interesting point. I confess I'm not sure how the committee would go about studying these matters either. However, the Ethics Commissioner is mandated to report in two separate reports, one on his activities relating to the Prime Minister's code and one on his activities relating to the code that governs MPs as MPs. Those are two separate documents.

One document we have, under the draft that we've prepared, going to the Standing Committee on Procedure and House Affairs. The other report we have going to this ethics committee. We have the estimates going to this ethics committee because we feel that the question of estimates is in fact an operational one. It's the set-up of the office, and in the same way that you're looking at privacy and at the Information Commissioner's set-up and budgets, then there would be no reason why you would have to split that up in terms of looking at the estimates.

But we ended up creating this dichotomy for the study of the reports because of the inclusion in the code itself. The code itself, at subsection 30(1), states that "the Ethics Commissioner shall submit any proposed rules for the administration of this code to the Standing Committee on Procedure and House Affairs".

And then again at section 33, it says: "The Standing Committee on Procedure and House Affairs shall, within five years of the coming into force of this code and every five years thereafter, undertake a comprehensive review of its provisions and operation...".

We felt that, because procedure and House affairs, as its name suggests, is the committee that looks at the estimates of the House, at the budgets of MPs, at the programs and policies and everything that concerns the operation of an MP and an MP's office, and because of these provisions here that state that any changes to the code of conduct as it concerns MPs is going to be going to procedure and House affairs, the annual report concerning MPs, the operation of the Ethics Commissioner's office as it relates to the MPs, should also go to procedure and House affairs.

• (1555)

Mr. Art Hanger: What do we do?

Ms. Audrey O'Brien: You would have the estimates, that is to say the budget, for the whole operation, and you would have the annual report as it concerns public office holders—that's ministers and parliamentary secretaries—in those particular roles. You would also have the lobbyists' registration. The registrar of lobbyists would also be reporting to you.

Mr. Art Hanger: I'm still at a loss here. Why wouldn't the MPs themselves still come under the same committee and the same, if you will, kind of scrutiny that this committee might give them? I still don't understand the distinction here.

Ms. Audrey O'Brien: Well, the provisions of the code itself...for one thing, it was drafted by the Standing Committee on Procedure and House Affairs, which made itself the reference point. The existence of this committee was still a glint in people's eyes at that time. It had not come into being.

It may well be that you, in looking at this, want to change the provisions there. It's just that we were going with what we had. That is to say, we have a procedure and House affairs committee that looks at the estimates of the House of Commons, at individual members' estimates and associations, and all of those kinds of things.

The code specifies that the procedure and House affairs committee is going to be looking at any change to the administration of the code that the Ethics Commissioner is going to do. So we figured, okay, we'll leave everything to do with members, then, in the procedure and House affairs committee, and absolutely everything else will be

in the ethics committee, which is also looking at privacy and at access to information.

But as I say, that was based on the way the code is written now. That was the 25th report of the procedure and House affairs committee in the last Parliament.

The Chair: What would be the process to change that to treat them all the same?

Ms. Audrey O'Brien: This is now appendix 1 to the Standing Orders, the conflict of interest code. I'm assuming you will want to keep under one committee...whoever it is the Ethics Commissioner submits any proposed rules to for the administration of the code and the five-year review. You're going to want the committee that does that to also be the committee that looks at the way this operates.

If that's the case and you decide you want to be that committee, you would ask for an amendment to the code itself in terms of the sections that refer things to the procedure and House affairs committee. That's one thing you would need to fix, basically. Then we would adjust the mandate of the committee accordingly.

Mr. Art Hanger: How far away are we from the arrangement you're spelling out in your interpretation—or whoever's—of the present orders, the present act? It was split off according to the interpretation of the act.

Ms. Audrey O'Brien: Truth to tell—and I know the law clerk would have my head for daring to suggest that I'm offering some kind of interpretation of the act. But as this stands as an appendix to the Standing Orders, if you were to effect a change to this, it could be done by a motion in the House.

Mr. Art Hanger: Okay.

The Chair: Your time is up, Mr. Hanger.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

I understand. If we want to deal with the Ethics Commissioner's work and with his relationship with members of Parliament, the code needs to be amended. That much is clear.

• (1600)

Ms. Audrey O'Brien: Yes. At least, that's what I would suggest, because I feel that... I'm sorry, I do not want to use up your time.

Mr. Mario Laframboise: Please, go ahead.

Ms. Audrey O'Brien: I suppose it would make sense for one committee to do the work based on the commissioner's reports when they are submitted to a standing committee and when they involve any draft rules with regard to the application of the code. In my opinion, you can't have one committee do that work and have another committee do the actual study on the issue. That doesn't seem to make sense.

Mr. Mario Laframboise: That's right, and because when the code was drafted, our committee did not even exist.

Ms. Audrey O'Brien: That's exactly right.

Mr. Mario Laframboise: Therefore, under the act, the committee which has that responsibility is the Procedure and House Affairs Committee. I have no problem with that. If we wanted to, we could overhaul the entire code. We don't have any choice but to make that recommendation.

As for you, you did not say which committee you thought would be better suited to the task. I read your brief. We could ask the ethics commissioner, who could tell us about the work he does and whether he has a preference.

Ms. Audrey O'Brien: Yes, because, for our part, we worked with the situation of the time, which is to say that the code referred to the Procedure and House Affairs Committee. We respected that, but if you want to change it, you can present your own arguments.

Mr. Mario Laframboise: Excellent.

Following the same logic, clearly, any report produced by the commissioner on a member of Parliament will be sent directly to the Speaker. It will not be sent to the committee, that's what you're saying. Specific cases are always referred to the Speaker.

Ms. Audrey O'Brien: That's perfectly right, and that would not change even if you were responsible for the code as regards individual members of Parliament. Reports on inquiries on members of Parliament are dealt with in the House itself.

Mr. Mario Laframboise: Anything falling under the Prime Minister's code is referred to the Prime Minister.

Ms. Audrey O'Brien: That's right.

Mr. Mario Laframboise: You say it's made public. By what means? You say that the report is made public once it has been presented to Parliament. Is the decision alone made public? What about the analysis? Is it up to the commissioner to decide?

Ms. Audrey O'Brien: Again, I would not venture an answer. Indeed, it is up to the commissioner to decide whether only the decision will be made public or the facts of the inquiry as well. At this stage, I cannot venture a guess as to how that would play out.

Mr. Mario Laframboise: So the recommendations you are making are in line with existing statutes. I think that makes a lot of sense.

Ms. Audrey O'Brien: Thank you, Mr. Laframboise.

[*English*]

The Chair: Thank you.

Madam Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Mr. Chairman.

Thank you very much, Ms. O'Brien, for your presentation and for having agreed to appear on behalf of the clerk on such short notice.

Do you have any idea what the ethics commissioner's annual report will say with regard to the conflict of interest code for members of the House of Commons? Is that an issue you are dealing with?

Ms. Audrey O'Brien: No. Again, I have no idea what the report might say. I imagine, if, for instance, you look at the reports of the

privacy commissioner or even those of the access to information commissioner, that it will be a similar report, which will indicate how many complaints have been dealt with and so on. Again, Mr. Shapiro will probably be able to tell you more on Wednesday. Then again, he might not know yet because he is still waiting to discover how things will ultimately unfold. Therefore, I don't know.

Hon. Marlene Jennings: Fine.

You mentioned that under the Standing Orders of the House, the main estimates will be studied by this committee. Do you believe that the mandate of this committee, as stipulated by the House, also includes that it will study the supplementary estimates?

Ms. Audrey O'Brien: Yes.

Hon. Marlene Jennings: Would you be surprised to learn that the supplementary estimates with regard to the ethics commissioner were not referred to this committee, but to another one? Do you believe that this is in line with the Standing Orders of the House?

● (1605)

[*English*]

The Chair: On November 4, to be specific.

Ms. Audrey O'Brien: Right, and it was referred to—

Hon. Marlene Jennings: Another committee.

The Chair: Procedure and House affairs.

Hon. Marlene Jennings: Notwithstanding that, from what you just told us, the Standing Orders creating this committee and giving this committee its mandate also give this committee the mandate over the supplements, the estimates, and one would then presume supplementary estimates as well.

Ms. Audrey O'Brien: I think that presumption would be correct. At the risk of contradicting myself in another incarnation—

Hon. Marlene Jennings: Before another committee.

Ms. Audrey O'Brien: —on November 4, I suspect what might have happened there is the fact that, saving your fine presence, your committee is busy meeting, but it is without a mandate to date. So until such time as the mandate question is sorted out, I think they may have gone with the default position of sending it off to procedure and House affairs.

My sense of the thing now is that in the draft we've prepared, we thought the estimates ought to come to you because the estimates are a completely separate thing from the conflict of interest code. It's the operation of the office, and so forth. It is logical that it would be here with the other officers—privacy, access to information.

So I suspect on November 4 it went with procedure and House affairs simply because your mandate had not yet been spelled out.

Hon. Marlene Jennings: How much time do I have left, sir?

The Chair: You have another three minutes.

Hon. Marlene Jennings: There's another question I would ask of you, and again it's a hypothetical question, but I'm sure you're used to dealing with hypotheticals.

Ms. Audrey O'Brien: I think we're supposed to bat those back viciously, but I'm already too far in now.

Hon. Marlene Jennings: As Deputy Clerk of the House, I'm sure you'll be more than able to handle this question and not put yourself in hot water. You're a very intelligent woman. I've had the opportunity and honour of watching you work since 1997.

A voice: Watch what's coming.

Ms. Audrey O'Brien: I know. I shudder to think.

Hon. Marlene Jennings: So I think you would be in a very good position to be able to imagine the logic or the arguments to defend or justify why the annual report of the Ethics Commissioner regarding members of the House of Commons, under paragraph 72.13 (1)(a) of the act, would be deemed to be referred to the Standing Committee on Procedure and House Affairs under the mandate of this committee, let's say the Standing Orders, etc. What would be the argument for that?

Once you have a Standing Committee on Access to Information, Privacy and Ethics, I would be interested in hearing what your creative mind would come up with as a reason why the Standing Orders and the act would refer that to the Standing Committee on Procedure and House Affairs rather than to our committee.

Ms. Audrey O'Brien: Well, in for a penny, in for a pound.

Hon. Marlene Jennings: Go for it, girl. You go.

Ms. Audrey O'Brien: I think it's important to recognize that the title of the standing committee on procedure is the Standing Committee on Procedure and House Affairs. In its capacity as the committee that regulates House affairs, it looks at the estimates of the House of Commons. It makes recommendations on programs, how moneys are spent on projects, and those kinds of things that come under the Board of Internal Economy.

I suppose there was an internal logic seen to that, in the sense that the conflict of interest of members might come with regard to how members' operating budgets are spent in relation to the ethical considerations of one member and another. Maybe it seemed there would be a certain cohesiveness to putting that under the umbrella of the same committee.

Again, looking at the particular expertise of members, they would be familiar with the terms of House affairs, that is to say, how things work, the budgets, how all that is set, what kind of by-laws you're dealing with, etc., whereas in the ethics committee you would have the operations of the Ethics Commissioner, which you could then look at in parallel with those of the Privacy Commissioner and the Information Commissioner.

I confess that ultimately really it's up to the House and members to decide where they feel there would be the best scrutiny and where it would be the most logical place to lie. Again I suspect part of the difficulty here lies in the fact that this committee did not exist either when the law was amended or indeed when the conflict of interest code was adopted. But I still think there is a certain internal logic to saying the House affairs committee deals with the House as the House, and ethical considerations when you get into the parliamentary secretaries, ministers, and so forth, is a separate issue.

• (1610)

The Chair: Your time is up.

Just as a follow-up on that one, if this committee in its report recommended an amendment to the code to put ethics under the one umbrella in the committee, am I not correct that the report would go to the Standing Committee on Procedure and House Affairs?

Ms. Audrey O'Brien: Yes, it would.

The Chair: So that appears to me to be a bit of a problem.

Ms. Audrey O'Brien: I say yes, and Mr. Broadbent, with his long experience, reminds me, "Why would it have to go to procedure and House affairs?" Usually one committee doesn't scrutinize another committee's report. So it would go into the House, and you might move concurrence in that. I suspect you would want to talk to your colleagues in procedure and House affairs.

But I'm venturing out so far on thin ice now that I'll never be heard from again.

The Chair: Okay.

Mr. Broadbent.

Hon. Ed Broadbent (Ottawa Centre, NDP): First of all, I want to join my colleagues in thanking you for your logical and coherent interpretation of our complex reality here.

I'll begin my comments by saying there was something that I think was certainly true for me, but I think is true for all of us. In earlier discussions we were under the illusion that particular cases involving MPs could end up at some committee or another. We spent a lot of time in previous meetings of this committee deciding whether those particular cases should come here or go to the procedure and House affairs committee. That has certainly been cleared. So you say that no individual case will go to any committee.

Ms. Audrey O'Brien: No, that's right.

Hon. Ed Broadbent: That removes it as an issue for us to deal with—at least, I think it does—unless somebody wants to open that interesting little bag of worms again.

As for the other points of view that have been discussed as to whether one committee should deal with all these codes and so on, you've clarified the factual reality, and I don't have anything to add to that. It seems to me that at some point, after you're no longer with us, so to speak, at this committee, perhaps later today, we just have to make a recommendation one way or another on that.

I have nothing to add, and I just want to thank you for clarifying the situation for us.

Ms. Audrey O'Brien: I'm glad it helped rather than hindered. Thank you, Mr. Broadbent.

The Chair: Okay.

Mr. Tilson, a three-minute round.

Mr. David Tilson (Dufferin—Caledon, CPC): I'm going to pass to Mr. Hanger.

Mr. Art Hanger: This is more a question on procedure here, as noted in your presentation, the House considering concurrence on reports, depending on the commissioner's finding. You note here, on page 4 at the top, where a member has been deemed not to have contravened the code, or there was a mitigated contravention. If no member has moved concurrence on the report within ten days from the time it was tabled, the motion to concur in the report will be deemed to have been moved and adopted at the expiry of time. If there has been no contravention, why would there be a report on which it would be necessary to have concurrence in the House?

•(1615)

Ms. Audrey O'Brien: Actually, I don't think it would be necessary to have concurrence in the House. I think what they wanted to do was create a fairly straightforward procedure that applied to everything, so that in order to put a final line under every inquiry, there has to be a decision of the House that the report of the commissioner has been accepted. That's my reading of it. Therefore, where he finds no contravention has occurred, it just automatically, as a matter of housekeeping, winds up that there has been concurrence; that is to say, the House has formally accepted the report. Once again I'm inventing hypotheticals now, but as I noted in here, one of the powers that the House has is to send a report back to the commissioner. So conceivably, there could be a case where the commissioner reports that there's no contravention, but there's a great deal of controversy about that and the House decides it wants to sent it back, maybe with new evidence or something like that. It really is a question of concurring automatically as a way of saying, fine, that's been dealt with.

Mr. Art Hanger: Finalizing it, yes.

You spoke of sanctions. I don't see any note on what those sanctions could involve.

Ms. Audrey O'Brien: No, and I'm happy to say I have no clue.

Mr. Art Hanger: That's yet to be defined?

Ms. Audrey O'Brien: They are not defined, as far as I know. The commissioner can fill you in on what he thinks.

Mr. Art Hanger: Where they might be going.

Ms. Audrey O'Brien: Indeed.

Mr. Art Hanger: Fine. Thank you very much.

Ms. Audrey O'Brien: Some days it's good to be a clerk and not a commissioner.

The Chair: I think we're actually getting to the end of what we need, but did you want to get in on this, Derek?

Mr. Derek Lee (Scarborough—Rouge River, Lib.): No, thank you, not at this time.

The Chair: I think we've got the clarification we needed, and we know where we need to go now. I think we'd better understand what our role in regard to the Ethics Commissioner is to be. We appreciate your coming in and bringing that for us, because as Mr. Broadbent said, we had quite a different idea of what our role was. So that's very helpful, and I do appreciate it.

Ms. Audrey O'Brien: I'll go back to where all good gargoyles come from and await your instructions. Thanks very much.

The Chair: Thank you very much.

The Chair: I guess now we have to make a decision as a committee. Do we want to wait until we hear from the commissioner on Wednesday before we pass any motions concerning this, or do we want to move ahead and pass a motion adopting, I assume, the draft the clerk presented us with? We have the other draft as well, but given what we know now, I'm not sure the October 13 draft is appropriate.

Go ahead.

Hon. Marlene Jennings: The October 13 draft was the one that dealt with the mandate of this committee?

The Chair: Both of them actually do. The October 13 draft was simply an attempt by me to move this issue forward and get the House leaders and the procedure and House affairs committee to focus on this issue. When the clerks saw that draft, they came back with their draft, dated November 8, at the request, apparently, of the House leaders. But in view of what Mrs. O'Brien presented us with, I think their draft is probably the appropriate one at this point.

•(1620)

Hon. Marlene Jennings: I do as well, but I would like to have the opportunity to hear from the Ethics Commissioner, particularly on the issue of the annual report regarding members of the House of Commons, under the code, going to the Speaker of the House of Commons and being deemed to be referred to the Standing Committee on Procedure and House Affairs, as opposed to the annual report regarding public office holders, because we're still dealing with the issue of our mandate.

Deputy Clerk O'Brien has clarified a major piece. Reports on investigations regarding complaints, whether they concern a member of Parliament or a public office holder, do not get referred to any committee, they're dealt with in the House itself. So that has been clarified, as Mr. Broadbent said. But now the question is this issue of the annual report. So I would like to hear from Mr. Shapiro before the committee, given all of that information, looks again at what we think our mandate should be and whether we wish to make a request to the House to amend so that the annual report concerning members of Parliament comes to this committee.

The Chair: Okay, that's reasonable. If everybody agrees, we won't make the motion at this point.

The third item on our agenda is the motion of Mr. Hiebert, but I think that's a bit redundant at this point.

Go ahead.

Mr. David Tilson: Mr. Chairman, I just want to clarify something in the exchange between you and the deputy clerk, that the report from this committee will go to—was it the procedure—

The Chair: If we recommend an amendment to the code, that could go to—

Mr. David Tilson: What are we? Are we a subcommittee? What is all that about?

The Chair: Well, we're a committee of the House, but on procedure—

Mr. David Tilson: We are indeed a committee of the House.

The Chair: Drafting the Standing Orders is the responsibility of the procedure and House affairs committee, and that's what we would have to amend, but—

Mr. David Tilson: There's something very funny about that, Mr. Chair.

The Chair: —it doesn't have to go there, and I think I would make every effort to see that it doesn't go there, that it's dealt with elsewhere, because it seems to be a bit of a conflict.

Hon. Marlene Jennings: I may be mistaken, but I've been on other committees in the past where the committee has adopted a resolution proposing that Standing Orders be changed, and it gets sent to the procedure and House affairs committee, because that's where any Standing Order amendment or whatever is dealt with before it comes to the full House. So it's not because we're access, ethics, and privacy. If we were the industry committee and we were proposing a change to the Standing Orders, that's the committee of the House it gets referred to.

Mr. David Tilson: Mr. Chairman, I understand that, and that makes sense. What doesn't make sense, however, is that there may or may not be a debate as to whether this committee is going to have certain functions that the procedural committee may want. If that's the case, guess what's going to happen? If I understand what was said in the exchange between you and the deputy—

The Chair: Under the Standing Orders, one of the responsibilities of the procedure and House affairs committee is to review and report on the Standing Orders, procedures, and practices of the House of Commons committees, so we probably couldn't prevent it from being referred there, but we can make sure it comes to the House for concurrence.

Mr. David Tilson: Notwithstanding what the procedural committee does.

The Chair: Yes.

• (1625)

Mr. David Tilson: Okay.

The Chair: Ed.

Hon. Ed Broadbent: I'm looking for clarification and understanding of this, as I guess we all are. My understanding is that we can report directly back to the House. We don't have to report to that committee.

The Chair: We would for sure report to the House.

Hon. Ed Broadbent: But then the question for me is, if we recommend a change, when the House sends it to the committee on procedure and House affairs, does it send it with instructions pertinent to the change we're recommending?

The Chair: I'll have to ask the clerk. I don't think so.

Mr. David Tilson: He'll have to appear before the procedural committee to....

The Clerk of the Committee (Mr. Bernard Fournier): I'm not aware of a case where a committee made a recommendation for a change to a standing order and then, instead of adopting that change or rejecting it, the House referred that report to another committee. When the House is considering a report of committee, they should either adopt it, reject it, or send it back to the committee that made the report. So it should come here.

The only problem I can see is that the House leaders may not agree totally with the wording suggested by this committee and there would be some kind of agreement to send the wording to the procedure committee. Then it would be an open game.

Hon. Ed Broadbent: Then, if I understand it, they may...“play around” is not exactly the right word, but—

The Clerk: They may change the intent.

Hon. Ed Broadbent: They couldn't change the intent. If we make a recommendation that goes to the House and the House adopts it, then that's it, folks. But it may refer it then to the procedure and House affairs committee for more precise wording or whatever parliamentary language is attached to the issue, right?

The Chair: But we certainly have the ability to have the debate in the House of Commons if there's debate required on a concurrence motion.

Hon. Ed Broadbent: Exactly.

The Clerk: Then, as you know, like any other debate on a motion, a motion to concur in a subcommittee report after an interruption of proceedings, such as lunch, goes under government orders and cannot be touched by anyone, except maybe the procedure committee, which has a mandate to look at overall Standing Orders.

There has to be consent of all parties to get it adopted after a short debate. Otherwise, it goes under government orders.

The Chair: Mr. Hanger.

Mr. Art Hanger: I think the concern—and it has been expressed here indirectly—is that procedure and House affairs wants part of this split.

The Chair: It would appear that way.

Mr. Art Hanger: I guess the committee is looking for some sort of assurance that if it does get over there, this is not going to be squashed in some form or another.

The Chair: Go ahead.

Hon. Ed Broadbent: On the same issue, Mr. Chairman, we're hearing different things from our House leaders and so on, but just from speaking to our House leader, I think she too was under the illusion that the central issue of possible dispute was dealing with the accusations about individual MPs. Some people thought if that was going to go to a committee, it should be the Standing Committee on Procedure and House Affairs.

But if no individual cases are going to go to the committees anyway, then maybe we're talking about something that's no big deal. If we make this recommendation, for a sense of coherence, back to the House, and then informally we speak to our own House leaders about this, there wouldn't be any problem, as I've understood the issue so far.

The Chair: I was just getting some information on another point, but certainly if we choose to go that way—and it appears the committee wants to wait until we hear the Ethics Commissioner—if we make the report with that recommendation, then with the help of the clerk and our researchers I would certainly do everything we can to go to the procedure and House affairs committee, if that's where it ends up, to make the argument.

● (1630)

Mr. David Tilson: They get the vote.

The Chair: Yes. Well, they do, but we can use some procedural tricks, if you will, to get it into the House for debate. I think if we can determine the will of the House, it's pretty hard for them to ignore that as well.

Go ahead, Derek.

Mr. Derek Lee: I gather then that most of the colleagues around the table here just accepted that reports on the conduct of an individual MP would be disposed of by the House.

The Chair: It would appear that way.

Mr. Derek Lee: In my experience, it's never happened. The House would be incapable of dealing with a report on an individual MP.

What do we all think would happen? The report would be tabled and it would sit there. There would be no motion. There would be no study, and there would be no deliberation. We'd just have a debate ad infinitum about what was in the report. I don't think so. A report about the ethical conduct of an individual MP would almost certainly be referred to a committee for the committee's views and a report back to the House with a motion.

Now, I may have missed some of the earlier proceedings, but I don't think the Ethics Commissioner is going to be crafting a motion for the House. I don't think he's going to be telling the House what to do. In this particular context, those decisions would be made by party whips and House leaders acting informally.

My views earlier were for that very reason. They would want those matters to reside with the procedure and House affairs committee, where the House whips and party leaders have much closer formal contact. But clearly, it would be a part of the weekly House leaders' meetings, which happen routinely.

The Chair: Yes, I don't—

Mr. Derek Lee: Have I touched a nerve here?

I'm content to have the MP ethical things go off to the procedure and House affairs committee. I'm not in the business of making work for me or my colleagues here. But did we decide what we were going to do with reports dealing with ministers as MPs or ministers as ministers?

The Chair: Did you get a copy of this appendix B, Derek?

Mr. Derek Lee: Yes, I have it here.

The Chair: Section 28 of the code does not have any provision for reports and inquiries on members of Parliament or public office holders to go to any committee. That doesn't happen.

Mr. Derek Lee: No, the reports are given to the House.

The Chair: They're given to the House, and there's a process in the House that deals with them. The member who is the subject of the report has a right to make a statement and so on. But there is no provision to go to the procedure and House affairs committee whatsoever.

So if the Speaker in the House decided that a committee should deal with that issue, it could send it to this committee as easily as to the procedure and House affairs committee, because there's nothing in the code that suggests that the procedure and House affairs committee has any more authority on those issues than we do.

Mr. Derek Lee: Okay.

The Chair: Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: I would like to insist on that fact, because I spoke about it with officials from my party. A little earlier, I was listening to a colleague who was saying that the Procedure and House Affairs Committee wanted to appropriate... Our committee certainly does not want to appropriate anything. However, issues facing members of Parliament are very complex. Since the report must be presented to the Speaker, debate usually happens in the House of Commons, where procedure must be followed. So in that respect I somewhat agree with what Mr. Lee said.

Since under the act it is the Procedure and House Affairs Committee which is responsible for this matter, we will have to ensure that there is a follow-up. Otherwise, the Procedure and House Affairs Committee should do the follow-up, since it is in a position to do so. However, procedurally, it will be a very complex matter.

Finally, questions of privilege were raised with regard to the actions of a former member of Parliament. The issue was very complex and procedural issues arose. We could give ourselves that authority, but it's not clear whether we have the right to do so.

● (1635)

[*English*]

The Chair: Without specific amendments to the code, we don't have the ability to be involved in that. If the House, in its wisdom, decides they want a committee to work on it, we are just as eligible to be that committee as any other committee is, and we might want to make that argument at the time. But as it stands now, those issues will not come to any committee. I think that's fair.

The other issue is the motion by Mr. Hiebert. Because today was the deadline for reporting the estimates, obviously we're not going to be able to deal with them. If we do adopt the mandate from the clerk, in the future those estimates will automatically come to us and we will deal with them, so we would in fact have the issue of the motion anyways. So it would be my judgment that we let the motion lapse, because it's really quite redundant. We can't deal with it because of the timeline anyway, and the clerk said we would have that in the future.

We'll adjourn the meeting until Wednesday at 3:30 p.m.

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