



House of Commons
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 027 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, June 2, 2005

—
Chair

Mr. David Chatters

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Access to Information, Privacy and Ethics

Thursday, June 2, 2005

• (0905)

[English]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call to order the meeting of the Standing Committee on Access to Information, Privacy and Ethics.

The order of the day, pursuant to Standing Order 108(3)(h), is a study on the legal issues relating to the non-publication of the report of the Ethics Commissioner on the Sgro inquiry.

We have before us today as a witness the commissioner, Mr. Bernard Shapiro.

Good morning, Commissioner.

Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner): Good morning.

The Acting Chair (Mr. David Tilson): I see two people with you who I have met before, but for the purposes of the record, could you introduce them, please?

Mr. Bernard Shapiro: Yes, I'm glad to introduce them.

With me is Robert Benson, who is the deputy commissioner; and Micheline Rondeau-Parent, who is in charge of communications and parliamentary relations.

The Acting Chair (Mr. David Tilson): Commissioner, I know you do not have a written opening statement, but perhaps you could start the process off by making some comments, and members of the committee may have some questions for you.

Mr. Bernard Shapiro: I'm glad to do that.

I'm pleased to be here today following the issuance of my press release on May 11. As I said in my press release, I've tried to proceed as expeditiously as possible to resolve the matter at hand, and I have in fact positive developments to report to the committee.

There will be a full public report in the near future on the examination requested by Ms. Ablonczy in relation to the former Minister of Citizenship and Immigration, Ms. Sgro. However, there will not be any comment by me on the substance of the Sgro report today or any time in advance of its actual release.

The press release that I issued on May 11, which followed the meeting we had, relates to a legislative issue that needed to be resolved, or a legislative question, I suppose, might be a better way of putting it. That is, our lawyers pointed out to us that there might be an apparent contradiction within the Parliament of Canada Act between subsection 72.08(4) and subsection 72.1(5). Subsection 72.08(4) reads:

The Ethics Commissioner shall, even if he or she discontinues the examination of a request, provide the Prime Minister with a report setting out the facts in question as well as the Ethics Commissioner's analysis and conclusions in relation to the request.

Subsection 72.1(5) reads:

The Ethics Commissioner, and every person acting on behalf or under the direction of the Ethics Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

(a) the disclosure is, in the opinion of the Ethics Commissioner, essential for the purposes of this section; or

(b) the information is disclosed in the course of a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made to the Ethics Commissioner.

The difference of opinion that people had was about which of these sections ruled in this particular case. And as this was the first major examination undertaken by my office and there was some element of risk in providing information obtained under subpoena in support of the finding, we looked for clarification on the following two key questions. One was the interpretation of the possible contradiction between the two sections, and the other was advice as to what to do in relation to critical comments made about certain individuals within the upcoming report.

In addition, there was also a corollary question of comparison within the same legislation between my powers as Ethics Commissioner and those of the registrar under the Lobbyists Registration Act with respect to the disclosure of information gathered within investigations in order to establish the grounds for any finding or conclusions contained in a report under subsection 10.5 (2). That's in the actual Lobbyists Registration Act, a provision that is not found in subsection 72.08(4), which I've already outlined briefly.

So what we did in response to this was to request legal opinions. From Borden Ladner Gervais LLP we had David Scott, who was our lawyer in this particular case. From Goodmans we had Judge Sydney Robins, formerly with the Ontario Court of Appeal. And from Stikeman-Elliott we had Mr. T. Bradbooke Smith.

We also got an unsolicited opinion from the Privy Council Office in consultation with the Department of Justice, and my deputy also had a preliminary consultation with the law clerk and parliamentary counsel, Mr. Robert Walsh. We obtained all these opinions on May 11, 13, 18, and 30. It took us through the month to get those responses.

The opinions provided were equally divided, as people did not agree as to what the actual interpretation was. A summary of these range from the Ethics Commissioner cannot disclose anything provided to him, etc., to the Ethics Commissioner can use his discretionary power under section 72.1 to disclose information to support his findings, and the Ethics Commissioner can therefore disclose information obtained under subpoena.

In response to this, I have in fact taken a decision to issue the report as drafted although slightly amended following official notification of some individuals named in the report. There doesn't seem to be any legal requirement to do that—that is, to give people who are mentioned in the report an opportunity to respond before we publish the report—but we decided it would be wise and prudent to provide notice to individuals to be named and about whom any comment was made regarding their conduct as it relates to the allegations. That is, it seemed a question of natural fairness, or natural justice, that we do this, so we are in the midst of that process at the moment.

We have already notified selected individuals who were named in the report that in setting out the facts in question I make findings of their conduct in relation to allegations made against the former Minister of Citizenship and Immigration, Ms. Sgro. I have provided them with a seven-day period to respond. We are doing the same thing with Ms. Sgro, as required by the legislation itself under section 72.09.

• (0910)

So for our purpose we've resolved the problem of how to cope. It seemed to us it would make the entire act an absurdity if we could not, in fact, give the facts about which we were asked to make comment. We try to be careful about people, but nevertheless we are going ahead as we originally intended and will publish the report in the near future. Therefore, with respect to the Sgro inquiry at this stage, and certainly from my point of view, no further action is required from Parliament.

We intend to proceed on the same basis for any future examination. Furthermore, we'd be interested to pursue, however, with the appropriate officials whether legislative amendments are necessary from some people's point of view. It doesn't seem to me to be necessary from my point of view, but a comparison with the Lobbyists Registration Act might be fruitful to pursue if this committee or Parliament decided it would be helpful.

You have with you the bilingual press release issued on May 11 and the letter provided to Mrs. Sgro for publication purposes in response to a November 15 confidential request for advice. You also have extracts of the Parliament of Canada Act with respect to examination powers of the ethics commissioner and the registrar of lobbyists.

Thank you.

The Acting Chair (Mr. David Tilson): Commissioner, before we go to questions, I just want to be clear. Is your position that you consider what you do—these reports...? Are these reports quasi-judicial?

Mr. Bernard Shapiro: I don't know what the term means, so I can't answer.

The Acting Chair (Mr. David Tilson): Well, maybe I don't either, but I suppose comparing it with an administrative tribunal or something like it that makes actual decisions.

Mr. Bernard Shapiro: No, I do not make actual decisions. I can recommend something.

The Acting Chair (Mr. David Tilson): So you're not making a decision?

Mr. Bernard Shapiro: I'm not making actual decisions; that's correct.

The Acting Chair (Mr. David Tilson): So a report is not a decision.

Mr. Bernard Shapiro: That's correct.

The Acting Chair (Mr. David Tilson): We discussed before, some time ago when you were here, the making of this report public. Does the public ever receive this report?

Mr. Bernard Shapiro: Yes, it will be available to the public on the day it's released.

The Acting Chair (Mr. David Tilson): I'm now slightly confused. You make a report and now you're asking some of the people you're making the report on to comment on it?

Mr. Bernard Shapiro: Yes, I've given everyone.... I've not given anyone except Mrs. Sgro a copy of the actual report. What I have done is notify people about whom a critical comment is made. I've indicated what the critical comment is—not the report itself—and I've given them seven days to respond as to whether they have any particular issue with this comment. I don't need to take their advice; I'm just giving them a chance to—

The Acting Chair (Mr. David Tilson): I just don't understand why you'd do that.

Mr. Bernard Shapiro: Why...?

The Acting Chair (Mr. David Tilson): I don't understand.... You make a report. What I don't understand is why you would then ask for an opinion from the person you're making the comment on.

Mr. Bernard Shapiro: Well, I think the reason is—

The Acting Chair (Mr. David Tilson): Does that mean you could possibly change your mind?

Mr. Bernard Shapiro: Well, it could be. It can be the case, if someone says something that convinces me to make a change. I think it's unlikely, but I think it's a matter of natural justice—not required by the legislation—to give them some opportunity to respond. Again, they haven't seen the full report. All they've seen are the comments made about them in particular.

The Acting Chair (Mr. David Tilson): We're now going to proceed to questions and comments from members of the committee, and we will deal strictly with this legal issue.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, and thank you, Dr. Shapiro, for appearing again today.

The first question, Dr. Shapiro, if you wouldn't mind, is this. You had sought outside legal opinion on whether or not there was a conflict in the act and whether or not you'd be able to release this report publicly. May I ask whom you sought legal opinion from?

● (0915)

Mr. Bernard Shapiro: We sought it from several people, partly in response to the issue that was raised at this committee a couple of times. We asked David Scott; we asked Mr. Smith; we asked the retired judge, Judge Sydney Robins; and we received, unsolicited, an opinion from the Privy Council Office.

Mr. Tom Lukiwski: I'm particularly concerned with your comment that you'd asked Mr. Scott again to provide a legal opinion, when at the last meeting at which you appeared before this committee you indicated you had perhaps erred in judgment in contracting Mr. Scott's law firm, because of their close connections to the Liberal Party of Canada, particularly to the former prime minister. Had you contracted this law firm to provide an opinion before or after your last appearance?

Mr. Bernard Shapiro: No. It was not before; it was in addition. I can't remember whether we asked him just before.... I guess it was just before the meeting of the committee, when the issue came up. I felt that it was helpful to ask him for two reasons. One is that I have faith, as I said the last time, in his actual capacity as a legal source of advice. The second is that he was very familiar with the case from the previous work that he had done for us, obviously.

The reason I went to further legal opinions was relative to what was raised at the committee. I didn't want to rely simply on that, so I decided to ask other people as well to make sure that I proceeded on relatively reasonable grounds.

Mr. Tom Lukiwski: Could you give me the names of the other firms, in addition to Mr. Scott's firm?

Mr. Bernard Shapiro: Yes. It was Stikeman Elliott for Mr. Smith, and Goodmans for former Judge Sydney Robins.

Mr. Tom Lukiwski: Would we be able to look at those legal opinions as well? I know you're going to be releasing the final report and making it public.

Mr. Bernard Shapiro: I'll have to think about that. I'm not sure. I'd like to just take that under advisement.

Mr. Tom Lukiwski: Okay.

Mr. Chair, I'd like to split my time with one of my colleagues here, Mr. Hiebert. So perhaps I'll give it over to Mr. Hiebert now and I'll come back a little later.

The Acting Chair (Mr. David Tilson): Okay.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

In your opening comments, Mr. Shapiro, you stated that a full public report will be released in the near future. I wonder if you could be more precise as to when this report will be released.

Mr. Bernard Shapiro: That is a question that has been posed thousands of times in the last few months, for good reason. I don't object to the question. I've always had a standard response: as soon as possible. The day it comes back from the printers is the day we

will make it available to the public. I expect that to be in the very near future, but I don't like to promise what I can't be sure to deliver.

Mr. Russ Hiebert: Are you saying it will be within the next few weeks? Should we expect to see it sometime in June?

Mr. Bernard Shapiro: I cannot promise, but I would expect to see it within the coming weeks, not months.

Mr. Russ Hiebert: Okay.

You mentioned that you have provided notice to the individuals named with a critical comment. You're saying you did it out of fairness. I agree with the chair that I question perhaps the motive in doing that, but you said you've given them a seven-day period in which to respond. Has that seven-day period now lapsed, or are we in the midst of that seven-day period?

Mr. Bernard Shapiro: We're in the midst of it. It will lapse this week for those individuals other than Ms. Sgro, who will see the final report later this week for the first time.

Mr. Russ Hiebert: So the report will be final by the end of this week.

Mr. Bernard Shapiro: It will be final. She may have a comment to make that might cause me to change the odd thing—I'm not sure—but I'm expecting that will be it.

Mr. Russ Hiebert: Are you suggesting, then, that you're giving Ms. Sgro final editorial comment on the report that's meant to...?

Mr. Bernard Shapiro: No, but the legislation requires that I show the final report to her and take her comments into account. That doesn't mean I'll change a thing. I don't know.

Mr. Russ Hiebert: Has she seen a preliminary report?

Mr. Bernard Shapiro: No.

Mr. Russ Hiebert: So the only copy that she will see will be the final report after all these other people who are named in the report have had a chance to comment on it.

Mr. Bernard Shapiro: That's correct.

Mr. Russ Hiebert: You get a chance to digest their comments and perhaps modify your report in response to those.

It sounds like a fairly back-and-forth experience. I'm quite surprised that it's quite as open with the people named as it appears to be. Can you explain to us why that's the case?

● (0920)

Mr. Bernard Shapiro: All I can say is that the advice we got when we sought it was that it would be wise for us to enter that process. I cannot comment on the legal status of the process. I'm not a lawyer.

Mr. Russ Hiebert: Can you tell me which legal opinion gave you that...?

Mr. Bernard Shapiro: It was more than one. I don't remember exactly which it was, but it was more than one.

Mr. Russ Hiebert: Again, it comes back to my interest, as my colleague has, in getting an opportunity to review some of these legal opinions. It seems to me odd that, in an ethics investigation, everybody who's being implicated potentially in the investigation gets a chance to edit the document before the public gets to see it.

It's not like when you go to criminal court and the persons who are convicted get a chance to confer with the judge on what their sentencing might be in advance of the ruling.

Another comment you made was that you expect the report to be amended. Are there any amendments other than those that would perhaps originate in the revisions that might come from these comments from the people who are named?

Mr. Bernard Shapiro: First of all, I did not say I expect the report to be amended. I said it was possible that it would be. I actually expect it not to be amended, but I'll wait that out and see.

Your second question was....

Mr. Russ Hiebert: Excuse me, but let me clarify my question. I think I heard you say the final report that will be released to the public will not be the exact report you've put together but will be slightly amended.

Mr. Bernard Shapiro: It might be. It's not that it will be; it might be.

Mr. Russ Hiebert: Can you please elaborate on those comments? Why would a final report released to the public be slightly amended from the final version of your report? It gives me the sense that there's going to be a final report and that the public will see a slightly different report.

Mr. Bernard Shapiro: Let me try to clarify; perhaps I've been unclear. I have now what I would regard as a penultimate version of the report. People are being given a chance to comment in the way I've suggested. I may make a change because of those comments; I may not. Someone might point out an error in fact, for example, and I would make that change if I was satisfied it was an error in fact. But once that process is over, then the final report and the public report are exactly the same; there are no distinctions between them.

Mr. Russ Hiebert: I'm wondering if you could further—

The Acting Chair (Mr. David Tilson): Mr. Hiebert, we're out of time for you, and you'll have to wait for another round.

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): Thank you, Mr. Chair.

My respects, Commissioner.

As I was attending another meeting, I missed the beginning of this one. I was informed that you intend to release your report, that your decision on it has been made now and that you are going to check beforehand with the people named if they have an objection to make on the wording of the report. Is that correct?

[*English*]

Mr. Bernard Shapiro: It's almost exact. I'm not asking people whether they object to the report or not. I'm asking them to point out

whether there are errors in fact or things I've missed, perhaps, they might wish to comment on.

I'm not giving these people the full report. I'm only giving them the extract that relates to them and only if a critical comment is made. It turns out to be, I think, three or four people who are thereby involved.

[*Translation*]

Mr. Michel Guimond: We often try to foresee the unforeseeable. What will happen if there is disagreement between your appreciation, your reading of the facts, and that of the person named? How will we get out of the deadlock? I am pleased to see that you will have her read exactly the extracts which relate to her. I think it is logical.

[*English*]

Mr. Bernard Shapiro: I don't feel it's necessary for me to reach agreement with the people about whom this report is written. My interpretation of what's happened will be my interpretation of what's happened. My only concern is to give them an opportunity to point out if there are errors somewhere in this document. If there are, I should correct them; if not, I won't. I can't imagine that when the report is published everybody will agree with it; there will be different points of view.

[*Translation*]

Mr. Michel Guimond: You know that Mr. Walsh will testify after you. Did you read his notes when you decided to make your report public as drafted? Did you consult with the Law Clerk and Parliamentary Counsel? Do you have an idea of the subject about which he will talk to us?

[*English*]

Mr. Bernard Shapiro: I certainly have an idea. The material Mr. Walsh provided this morning I've not yet read, but it's front of me right at the moment. The deputy commissioner did have a preliminary conversation about this with Mr. Walsh, and we believe we are on the same page and proceeding in the appropriate way.

● (0925)

[*Translation*]

Mr. Michel Guimond: I want to raise another point about which I've already had an opportunity to talk with you in private at another meeting. This is why I feel comfortable to repeat it in public. I want to talk about the deadline to submit your report. Considering that this is your first report, does this create a precedent? Should we expect it to be always this long?

Mr. Bernard Shapiro: I hope not. I'm not sure about it but I hope not.

Mr. Michel Guimond: So the delivery was complicated.

[*English*]

Mr. Bernard Shapiro: No, it is. It's been a very long time.

I think only part of it is due to the fact that this was the first time, but it is part of it. Part of it is that we were trying to find a system to use in order to produce these kinds of reports, and it will be far simpler in the future. Part of it was that the initial allegations were very long; there were 13 of them, and almost in each case there was a disagreement as to the facts. Therefore, the longest part of the time was taken trying to sort out, in my own mind at least, who was the most credible source of this information.

But I do agree that it's not timely. It has taken far too long, and I hope to be much more responsive. I believe I've been responsible, but I hope to be much more responsive as the future reports start coming in.

[*Translation*]

Mr. Michel Guimond: I have one last question, Mr. Chair.

Will the approach you are going to favour be to give mandates to outside lawyers? Considering that your appointment to this position is a non-partisan appointment coming from all the parties in the House, your credibility, as far as we are concerned at least, is not challenged. Thus we think that you are honest and professional. However, the fact of using outside lawyers who might sometimes, in a recent past, have been closely connected to some political parties or might have made electoral contributions to some parties could, to a certain extent, taint the credibility, the objectivity of a report.

You will understand that I don't want to name the liberals but this is exactly what I'm doing now.

I make this general comment deliberately. I don't want this report to be labelled as such. My question is broader. Are you getting us used to an approach which consists in using the services of outside lawyers? Do you want to send the message that your budget is inadequate, that you have so much work that you will have to hire a team of jurists made of 15 additional lawyers?

[*English*]

Mr. Bernard Shapiro: I could say a couple of things. First of all, it will not always be the case, relative to these inquiries, that we will need external help. It will depend on the nature of the cases being brought to us. For example, in the case we're working on right at the moment, in addition to the Sgro case, we are not seeking any help outside the office itself. It will depend on the nature of the case, how complex it is, what our resources are, and so on. As I said the last time, I have appreciated the comments repeatedly made about how to select appropriate legal help, whether it is a lawyer or another kind of legal help. Ms. Jennings raised the issue last time about what kind of help might be useful. Sometimes law enforcement help might be more helpful than, for example, attorneys.

Let me put it this way. In selecting who would be the most appropriate help for us, I will take more care than I might have before this experience. At the same time, I want to say I believe absolutely in the professional integrity of the help we did get.

The Acting Chair (Mr. David Tilson): I believe you have finished, sir.

Ms. Jennings is next.

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

Thank you, Commissioner.

Am I wrong in thinking that you appear to be quite nervous and uncomfortable this morning? Are we daunting?

Mr. Bernard Shapiro: I don't find it that way.

Hon. Marlene Jennings: That's good to know. Reading your body language, I sensed a certain discomfort. It may simply be because this is the first time you're dealing with this kind of issue in the course of your mandate.

I want to make sure that I clearly understand. You did use your authority under section 72.1 when you summoned witnesses and you constrained them or required them to give declaration statements under oath. Did you do that, in the course of your investigation or inquiry?

● (0930)

Mr. Bernard Shapiro: That's correct.

Hon. Marlene Jennings: In the final report, you will be providing all the facts of the case and your interpretation of those facts which allow you to come to a conclusion. That report will be made public, with no extirpation of text.

Mr. Bernard Shapiro: That's right.

Hon. Marlene Jennings: Okay, so I don't know what the problem is.

The Acting Chair (Mr. David Tilson): You're going to continue anyway.

Mr. Bernard Shapiro: The problem may have risen simply in my own mind, for example. As we looked at the report and saw what we were saying, and then looked at the legislation—again, I'm not a legal analyst, so I can't do that very well—I wondered whether or not there was a contradiction in the law, inadvertent as it might be. I couldn't have been totally crazy, because the lawyers we asked split on the issue. I have become convinced, as I said earlier, that the law would make no sense whatsoever under the provision that you couldn't say anything about what you learned under oath; therefore, I proceeded on that basis.

Hon. Marlene Jennings: Excellent.

Did you have an opportunity, or your legal counsel have an opportunity, to look at the transcripts of the debates and the proceedings of the House and its committee when the whole issue of the code of ethics and creating a parliamentary officer...?

Mr. Bernard Shapiro: They did.

Hon. Marlene Jennings: Then you became aware of the fact that the issue of confidentiality was an issue that was discussed fulsomely, if I can use that term. The issue was in fact that parliamentarians were going to be required to disclose information that normally would be confidential; that they would under no circumstances, unless it was in a court of law or under a court judgment, be required to divulge; and that therefore, if that individual became subject to an inquiry following a complaint, could not be divulged by the commissioner without the prior consent of the parliamentarian to whom that personal information belonged.

Mr. Bernard Shapiro: That does not in fact appear in the legislation itself. When we actually examined under oath, we told each person who was about to give evidence under oath that this would be confidential at the discretion of the ethics commissioner in writing the report—just going back to the legislation itself. We did tell them in advance that some of this might be revealed, depending on the discretion of the ethics commissioner, to provide the basis on which judgments could be made in a public arena.

We did tell them that, but I understand what you're saying. That was in fact discussed and didn't appear in the legislation.

Hon. Marlene Jennings: I'm not talking about the witnesses you might have sent subpoenas to. I'm talking about the parliamentarian whose conduct was the object of the complaint and therefore the object of your inquiry.

If I take myself as an example, as an MP and as a public office-holder I'm required in both positions to disclose information, much of which is confidential and personal. If I became the object of a complaint and some of that confidential information I provided to you could exculpate me, my reading is you would not be able to divulge it unless I gave you authority to divulge it.

Mr. Bernard Shapiro: In this case it would be Ms. Sgro we're talking about.

• (0935)

Hon. Marlene Jennings: I know, but because we're now on the issue of—

Mr. Bernard Shapiro: I think that's correct. I think that's why the legislation provides for the review by the person against whom the complaint is made.

Hon. Marlene Jennings: Yes, but given that there are areas of this legislation that have not been tested; given that you yourself have stated that when you came to these sections there was some doubt in your mind as to what the interpretation should be, and as a result of that what your authority would be and your powers, you consulted fairly widely. Now I'm bringing another issue that you may wish to start thinking about and consulting on, so that if it ever does come up you already have a mindset and an interpretation. That is, for instance, there are certain things we are required as parliamentarians, and other parliamentarians who are also office-holders are required, to disclose to you under the code, and that's personal information that normally is confidential and may not be disclosed without prior consent of the individual.

What I'm saying is that if, for instance—it's hypothetical—I am the object of a complaint, you investigate, and in the course of your investigation realize that in my disclosure statement there's information that could show that in fact I did not violate the code of ethics, you would not be allowed to disclose it without my permission. That puts me in a position where if you can't disclose it—you can not say that Ms. Jennings did not violate the code of ethics—I have the choice of remaining with a cloud over my head or allowing you to disclose that personal information.

Mr. Bernard Shapiro: That is correct. I didn't realize you were referring to the disclosure statement. I thought you were referring to the one that was given under oath.

Hon. Marlene Jennings: No, to the disclosure statement.

Mr. Bernard Shapiro: You would be entirely correct.

The Acting Chair (Mr. David Tilson): Mr. Broadbent...? There you are.

Mr. Broadbent.

Hon. Ed Broadbent (Ottawa Centre, NDP): Yes, I'm here, Mr. Chair, listening carefully as ever.

I want to pursue the question about sending your proposed final document to someone whose behaviour has been called into question for response before you release it. You're not calling this a draft document. You're calling it, as I understand it, an—

Mr. Bernard Shapiro: Penultimate report, is what I said.

Hon. Ed Broadbent: An ultimate or penultimate?

Mr. Bernard Shapiro: Penultimate.

Hon. Ed Broadbent: Penultimate, okay, I get the distinction. It's your penultimate, but this is the final step—to get a response from the person in question—and then you in turn make a judgment on that response before you do the ultimate report. This is not required of you to do by an act, is it?

Mr. Bernard Shapiro: Not as far as I know. As far as I can tell, this is not required by the legislation. It was suggested to me it would be advisable, just in terms of natural justice, that I proceed in this way.

Hon. Ed Broadbent: Speaking as a layman, I've said in many other contexts—

The Acting Chair (Mr. David Tilson): A point of order, Mr. Broadbent.

Yes, Mr. Epp.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): I'm really reluctant to do this and to interrupt the flow, but I think on a point of order, this is an in-camera meeting—

The Acting Chair (Mr. David Tilson): No, it's not in camera, Mr. Epp. This is a public meeting.

Mr. Ken Epp: Okay, I apologize.

The Acting Chair (Mr. David Tilson): We'll continue, Mr. Broadbent.

Hon. Ed Broadbent: You'll leave those 30 seconds on my time, I'm sure.

• (0940)

The Acting Chair (Mr. David Tilson): Indeed, I wouldn't dare take it away from you.

Hon. Ed Broadbent: So this discretionary act on your part is a courtesy, and since serious matters are involved, you think the person whose behaviour is being called into question is entitled to see your report. I personally find an aspect of what you said subsequent to that strange, and for me it seems not desirable. I want to elaborate and then get your response.

I could see, for example, if I were the subject under question, your sending a document to me to view for any alleged factual errors that might be there. So you send it to me and ask my opinion as to whether in this document there are any facts that I call into question, which could well be the case, as a good editor of the *New Yorker* magazine, for example, would do with articles coming to the *New Yorker*. It is famous for its fact checks. I would think that this is quite appropriate as a courtesy. For example, especially in a serious situation like this, if a significant alleged fact was not a fact, then I think your act of this penultimate report going out is not only acceptable but is also desirable, I would say.

Beyond that, though, I cannot understand why further consultation about anything else should be made, and I'd like to get your response. For example, you did say with regard to the judgment you would be making that the person in question could comment on that. My view on this would be that you're engaging then rather directly in debate. You're engaging not in disagreement on facts, but you're engaging in a debate about your own judgment. So you're going to allow the input of the person in question, in fact, to argue with you about your judgment.

If I may make a reference to the Judy Sgro letter on this, when you found out that it was going to be released, you made, again I assume in good faith, a judgment to remove certain material from it—

The Acting Chair (Mr. David Tilson): Mr. Broadbent, remember that the committee agreed that this meeting would be divided into two sections.

Hon. Ed Broadbent: No, I'm not getting into the Sgro case. I'm using the Sgro example to deal with this issue.

The Acting Chair (Mr. David Tilson): I understand. Just try to remember, though, we're not going to deal with the Sgro letters at this time. We may later, but at this time we're just dealing with this issue of the conflict of—

Hon. Ed Broadbent: I'm not dealing with the substance of Sgro. I'm just talking about this exchange between the commissioner and a subject under question. I'm saying in that case the consultation led to the withdrawal of the changing of a letter that substantively affected the final judgment, and it was part of a judgment.

What I really am asking you is why you think it's appropriate to engage in what I would call debate about your judgment before you release the report. You're allowing that person to change your mind, to have a private opportunity, as opposed to your having looked at all the facts, considering what he or she did before, and making your judgment.

I repeat, a factual check, I understand; a judgmental check, I don't. Would you comment on that?

Mr. Bernard Shapiro: I'd like to make two comments. One is to repeat something I said earlier: I do not send any of these people the report. I send them just the excerpts that relate to the comments made about them—

Hon. Ed Broadbent: Including judgments, though.

Mr. Bernard Shapiro: Yes. But I don't engage in a negotiation with them afterward. If they make a comment, they make it. I don't reply to it. I just accept the comment. I just put it aside, or if it's a factual problem, I will probably check to make sure I've got it right,

but I don't engage in a negotiation over what I should say. I think that's inappropriate and I wouldn't do it.

Hon. Ed Broadbent: My point is that you do give them the opportunity to make a counter-argument, with which you may or may not agree.

Mr. Bernard Shapiro: They're entitled to make any comment they like. What I do next is what I do next; I don't contact them.

Hon. Ed Broadbent: Do you know offhand if any of the other commissioners or officers who are accountable to Parliament in the way that you have followed this practice of consultation, of getting input on judgmental matters, before they issue reports?

Mr. Bernard Shapiro: I don't know. I did inquire with some of my provincial colleagues at the very beginning of this whole process in terms of how they deal with it. I was trying to get myself some better background on how to proceed. Their response at the time was simply that they don't usually get cases like this, so I didn't pursue it further, and I don't know the answer to that.

Hon. Ed Broadbent: Okay. Thank you.

The Acting Chair (Mr. David Tilson): You don't need your extra 30 seconds.

Next is Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

I'm just wondering if we have resolved the complexities of the disclosure prohibition. Have you in your own mind now seen it as a complete non-issue?

Mr. Bernard Shapiro: That's correct.

Mr. Derek Lee: It requires no statutory amendment?

Mr. Bernard Shapiro: For me, it doesn't require it. Other people obviously have a different opinion, so you may want to look into it more carefully, if you like, and I'd be glad to cooperate. For me, I'm satisfied the matter has been resolved.

Mr. Derek Lee: No, that's pretty good. It's a question of learning how to walk and chew gum at the same time. If your staff and advisors understand it, then that's fine; I don't have to dwell on it. Thank you.

The Acting Chair (Mr. David Tilson): Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

The question I was going to ask at the end of my last round dealt with your comments on the Lobbyists Registration Act. In your opening statement you mentioned there was some sort of conflict. Could you expand on that for us, please?

● (0945)

Mr. Bernard Shapiro: I can only expand on it slightly, because I'm not deeply familiar with the act, but I did notice in looking at it that with respect to the disclosure of information, it includes the statement that with respect to disclosure of information gathered in investigations, in order to establish the grounds for any findings or conclusions contained in a report under section 10.5, etc., it more explicitly states that this information can be disclosed.

Now, I am satisfied for myself that the current act does it. I have become satisfied, as I've just said in response to Mr. Lee. The Lobbyists Registration Act includes that extra phrase; whether anyone wants to introduce that phrase into the other legislation, so to speak, is not a matter of concern to me at the moment, but it might be of concern to you.

Mr. Russ Hiebert: If I understand correctly, you're stating that another act that doesn't directly apply to you states that there are restrictions on the disclosure of confidential information, and you're wondering if the Lobbyists Registration Act should apply to you...?

Mr. Bernard Shapiro: No. I'm just asking whether the wording included in the act... I don't need to deal with the Lobbyists Registration Act. I'm just... The only point I had in raising the issue was I have become satisfied the current act will do perfectly well and will allow appropriate disclosure of information, so I have no further issues to raise. I raised the other one just to say that in case you should have a different view—if you aren't convinced that it does—the Lobbyists Registration Act offers another option to amend the legislation. That's all. But I don't regard it as necessary.

Mr. Benson?

Mr. Robert Benson (Deputy Ethics Commissioner, Office of the Ethics Commissioner): I'd like to make a comment.

The Lobbyists Registration Act is cited or reviewed because when the Parliament of Canada Act was amended to establish the Office of the Ethics Commissioner and the Senate Ethics Officer, there were consequential amendments at the back of that legislation, which is chapter 7, *Statutes of Canada 2004*, so the specific provision the Ethics Commissioner is referring to in the Lobbyists Registration Act is contained in the piece of legislation that created the Office of the Ethics Commissioner.

There were consequential amendments made because they had to remove any reference in the Lobbyists Registration Act to the Ethics Counsellor and replace that with the registrar, the one who would conduct inquiries or investigations under the Lobbyists Registration Act—so within the back of the legislation that established the new Office of the Ethics Commissioner, there is a consequential amendment relating to the Lobbyists Registration Act. That's why, right within the same legislation, the parallel observation was made by counsel.

Mr. Russ Hiebert: I was also wondering if you could comment further on your authority to release the report to the individual in question in advance of the public release of the document.

Mr. Bernard Shapiro: From what I recall... I don't have it right in front of me, but from what I recall, I'm required to do so. I'm trying to sort of make it available; “releasing” it is not quite the right word to use. I will not allow the report to leave my office. The person in question will come to the office and be able to read the report, and that's it.

Mr. Russ Hiebert: Perhaps Mr. Benson could provide us with the citation for that authority.

Mr. Robert Benson: The provision that allows the individual against whom the complaint is made to review? That's section 72.09 of *Statutes of Canada 2004*, chapter 7.

The Acting Chair (Mr. David Tilson): Ms. Jennings.

Hon. Marlene Jennings: I just want to touch very briefly on the issue of providing the individual whose conduct is the object of the complaint and of the inquiry with a copy of the report, and other individuals who have provided statements to you the section that concerns their statements, in order to verify whether or not they agree with the conclusions.

How is your report physically actually developed? In reports of public inquiries I've seen over quite a few years now—I've seen literally hundreds of them—you have the first section, *le préalable*. It is the complaint, and it actually summarizes the complaint. Then it's *la version de faits*; it provides the facts as recounted by the various witnesses. Then it's the conclusion or interpretation of the facts by the individual, with recommendations following.

What shape does the actual design or format of your report take?

• (0950)

Mr. Bernard Shapiro: I don't want to describe it in detail, because I'll forget some of the sections, since I don't have it with me. But it isn't quite that shape.

The report begins by just citing what the legislative authority is for the inquiry that's about to be undertaken. It then provides a brief history of how it is that this came to the office's attention, who wrote whom about what, and how the report therefore was undertaken. There is a section on the context in which this report was undertaken, and then a section on the process—what steps we took in order to pursue this investigation.

I think what will be of more interest, perhaps, is a section called “findings”. These are not... In that section there are 13 different allegations, in the request, and each one is handled separately. They are subdivided into types of certain kinds, and then each one is handled separately. The facts underlying each allegation are given, the judgment made, and then you go to the next set. You go through all 13 that way. There is a variety of appendices at the back to try to provide some illustrative material, and then there's a quite brief concluding section.

Hon. Marlene Jennings: Just for your information, because you were asked whether or not it is the practice of other officers of Parliament or other agencies that have investigative powers to provide the section of the report on the findings or facts to the individual concerned by it, if one looks at the Auditor General's reports, all of them provide the response by the minister or the department whose program Mrs. Fraser—or previously, Mr. Desautels—audited. They are provided with a draft final report and are permitted to comment on it, and their comments appear in the report.

I know as well that with the Public Service Commission the exact same thing happens. The final draft report is provided to the agency or the head of the agency, and that individual or a representative comments on it, and those comments are provided in it.

The Acting Chair (Mr. David Tilson): You're well over, Ms. Jennings. Unless you can finish in a few moments... But you're well over.

Hon. Marlene Jennings: I was just going to say that I don't believe it would be appropriate, in your particular case, to provide the response of the party in the report.

The Acting Chair (Mr. David Tilson): You know what? We're going to have to follow some sort of order here.

Mr. Epp.

Mr. Ken Epp: Thank you.

Mr. Shapiro, I have a question with respect to this whole process. I was involved in actually coming up with this code originally, and I questioned it at the time. I still do. It seems to me there's an inherent conflict between your investigation of a member of Parliament, who is not a public office-holder and is not subject to the rules of conduct established by the Prime Minister, and, on the other hand, one who is a public office-holder under those rules.

The rules for confidentiality are stated explicitly in the legislation. You are required to give confidential advice to the Prime Minister. Is it a source of conflict when you have a person who is both a member of Parliament and, say, a minister of the Crown or a parliamentary secretary?

Mr. Bernard Shapiro: I'm not really prepared to respond to that issue today. It is an issue, however, and it will appear, and it will be flagged as such, in my report. There is a potential conflict of interest, I think, although I haven't worked it out carefully, between being asked to give confidential advice to a person and then being asked to do an inquiry on the same person. That can emerge as a conflict, I think, but I haven't worked it through carefully, so I don't want to pretend I know more than I know.

Mr. Ken Epp: It seems to me there's a sort of two-tiered system here, that the amount of information that can be divulged, or on the other hand is not required to be kept confidential, is greater in the case of a member of Parliament than for a parliamentary secretary or a minister of the Crown. I'm just wondering, does this restrict your ability to actually issue a report? We have here the issue that's before us today, that you are claiming there's a conflict, and you have to resolve that before you can issue your report. Is that the problem?

• (0955)

Mr. Bernard Shapiro: I don't think it is. I think those are two different problems, not the same problem. As I say, one has been resolved from my point of view, and the report will be issued. The other is something I just have to take under advisement for further thought.

Mr. Ken Epp: Okay.

The other thing I want to ask about is the actual timing. The legislation does not say what time should be taken to give a report. I think there's reference to it being as soon as possible, or something like that. You indicated today that you were going to issue a report "as soon as possible".

What is it that actually prevents you from responding to these things? We have this one case, which we're not discussing right now, that is seemingly taking an inordinate length of time. What is the actual holdup?

You keep saying, "I have to take this under advisement". Well, I think you've already had a long time to do that, and I'm surprised that this is still dragging on so long.

The Acting Chair (Mr. David Tilson): Mr. Epp, I would just remind that you we're dealing with the issue of a conflict in legislation.

Mr. Ken Epp: I know; I'm asking—

The Acting Chair (Mr. David Tilson): You're going beyond that. I think we're going to have to move on to Mr. Powers. It's a legitimate question, but we agreed that this is what our terms would be at this particular point of the day.

Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): Thank you, Mr. Tilson.

Mr. Shapiro, in terms of some of the challenges you're experiencing, I think the process is pretty well laid out, but in doing this investigation you've encountered some challenges, which, as you've indicated, either in the tabling of the report on this particular issue...will come back to us for our consideration. We may be required to involve ourselves as a committee in helping the process evolve in the future. But from this, correspondingly, there must be fairness in dealing with this.

I have three very quick questions. You have developed what I would consider the draft of a likely final report. When was that developed, sir?

Mr. Bernard Shapiro: I don't remember exactly when it was fully developed, but it was sometime in May.

Mr. Russ Powers: You indicated that you've provided two or three individuals the opportunity to react—I'll use that terminology—to the statements you made. Was there a clear delineation in the process that you could do this, or was there an instance that prompted you to feel this needed to take place?

Mr. Bernard Shapiro: There was no clear delineation in advance. I had not in fact thought about this issue in advance; it just occurred to me as I was reviewing the report and looking at what I was saying that this might be an issue. I was making critical comments about a few people and I wondered whether they should have some opportunity to react to those before I went to publication.

It seems to me a reasonable and fair thing to do, so I've done it. As I said in my opening statement, it's not required by the legislation.

Mr. Russ Powers: You've provided them with a deadline to respond and you said that's almost imminent. Have any of them responded within the time period at the moment?

Mr. Bernard Shapiro: Yes.

Mr. Russ Powers: On the basis of that, you've indicated you will be releasing a report for public consumption soon, or you're anticipating it will be within a number of weeks.

Mr. Bernard Shapiro: Within just a few weeks I said, rather than months.

Mr. Russ Powers: Thank you, Mr. Chair.

The Acting Chair (Mr. David Tilson): Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

I don't want to overstep the parameters of this level of discussion, but I want to follow up on Mr. Powers' line of questioning.

My understanding is that the draft report, if we want to call it that, has gone to individuals, and they have—

Mr. Bernard Shapiro: Not the draft report, but the excerpts from it relating to the particular individual, so no two people got the same thing.

Mr. Tom Lukiwski: So my understanding is that they have seven days in which to respond, and they are in the middle of that seven-day process.

Would it be correct to assume that once they have responded within the seven days to the excerpts you've provided them with, you would then be in the process of creating the final report?

• (1000)

Mr. Bernard Shapiro: Right.

Mr. Tom Lukiwski: That's the final step, basically.

My issue is again one of timing. We are probably going to be adjourning for our summer break within a couple of weeks—perhaps earlier, perhaps later—and I think it would be incumbent upon your office, sir, to have that report presented prior to the dissolving of this current session. As you know, there are a number of issues currently in the public purview that are creating some uncertainty in the minds of the Canadian public as to the propriety observed by many members of Parliament. To try to reassure Canadians that members of this House are acting in a proper fashion, I think it would be incumbent upon your office to try to get that report released prior to our adjourning for the summer break.

If you only have a few days left before the individuals in question have a chance to respond to the excerpts of the report, would you agree, sir, that it would be incumbent upon your office to do everything within your power to have this report released publicly before we adjourn for the summer?

Mr. Bernard Shapiro: I guess I can answer in a couple of ways. One is to say that it's not possible for me to do these reports in conjunction with whatever the parliamentary calendar happens to be. It is what it is, and it's independent from my office and I'm independent from it. I can't always accommodate other people or other institutions' needs; it's a report that has to stand on its own and be developed in an appropriate way.

On the hand, I do agree with you that every day that goes by is a day that shouldn't go by and that we ought to get it out as quickly as we can. I will try very hard to accomplish the objective you've got in mind, but I won't promise until the day I'm sure I can deliver.

Mr. Tom Lukiwski: Let me rephrase that then. Have you had any discussions with any individuals that would make you anticipate a delay in the release of your report?

Mr. Bernard Shapiro: Not so far.

The Acting Chair (Mr. David Tilson): Before we go to Mr. Broadbent, to use that old maxim, justice delayed is justice denied, not only for the individual you're reviewing, but also for the general public and the House of Commons, who are depending on your decision.

Do I understand now that you believe these sections have been resolved?

Mr. Bernard Shapiro: Yes, to me, the issues we were discussing this morning have been resolved. I'm perfectly satisfied with the legislation as it is.

The Acting Chair (Mr. David Tilson): So presumably your decision was made before that time, and therefore there shouldn't be any problem releasing that decision fairly quickly.

Mr. Bernard Shapiro: I expect that's correct.

The Acting Chair (Mr. David Tilson): Mr. Broadbent.

Hon. Ed Broadbent: Thank you, Mr. Chairman.

I want to go back for a final time to this judgment you exercise, that you're going to get the opinion of the person in question, upon whom you're passing judgment, on the sections in your penultimate report that refer to him or her, and not simply in terms of what I will call good *New Yorker*-style fact-checking but the judgments you made about them.

You also said a minute ago that you've heard back from a couple of those people—

Mr. Bernard Shapiro: I was asked if I had heard back from any, and I said yes.

Hon. Ed Broadbent: More than one?

Mr. Bernard Shapiro: Not so far.

Hon. Ed Broadbent: So you've heard back from one. Could I ask you, when you heard back, did this affect what you were going to do in the report, as it affects that person?

Mr. Bernard Shapiro: No.

Hon. Ed Broadbent: No. Okay.

Then I just want to get it again on the record that you've exercised this judgment, that you're not required to indulge in this consultation. I won't repeat it, but I will assert it briefly: good to fact-check, but in my view, not good at all for you to ask them to respond to your judgments before you issue a penultimate report. The Auditor General's reports, for example, contain responses, but to my understanding they are responses to what the Auditor General had to say, not to influence the Auditor General in changing her or his opinion. It was Ms. Jennings who in fact brought up that example, saying it shouldn't apply, in any case, to your position. I agree in spades that it shouldn't apply.

That's all on this issue.

• (1005)

The Acting Chair (Mr. David Tilson): Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Chair.

You stated that, based on your discretion, not as required in your governing legislation, you've decided to allow those named in the report to have a chance to reply to those sections in which they are named. It's also been mentioned by a colleague here that the Auditor General finalizes her report and then provides for the department in question to comment. These additional comments are then appended to the report without impacting the original version of the report. The Auditor General writes the report and the comments made by the departments are appended.

You did not get a chance to reply to her question and her statement in that regard, and I'm wondering if you could comment—briefly, because I have a few more questions—on what you think of this approach, of writing your final report, and then, if necessary, appending any comments from any of the persons named as a separate portion of your report. So your original stays intact.

Mr. Bernard Shapiro: I think it's worth thinking about. I hadn't thought about it, so I haven't rejected it. It's an interesting idea to consider as I do the future reports.

Mr. Russ Hiebert: Okay.

You mentioned that you went to a couple of other firms besides Borden Ladner Gervais and David Scott. You went to Goodmans and former Judge Sydney Robins, and also Stikeman Elliott and Mr. Smith. What process did you use in deciding to go to those two additional firms, or those two individual lawyers?

Mr. Bernard Shapiro: The process I used was to ask some people I had some faith in—people I knew on grounds different from my position here—who they would recommend. I got various names, and I started to call them up. I did check this time to see what possible political issues might arise, to make sure I didn't fall into the same difficulty I had in the first instance, and I eventually went from one to another. You know, you contact one person, they're not available, but they suggest someone else, and you have a conversation with them. It's a kind of network.

Mr. Russ Hiebert: Did any of these people from whom you requested advice have any relation to the PCO or to the Prime Minister's Office?

Mr. Bernard Shapiro: Not that I know of, or not that I was able to find.

Mr. Russ Hiebert: Okay.

Now, I did have another question...if I can get my screen to work here.

How much advance notice will you give to Parliament of the date on which you will release your final report to the public?

Mr. Bernard Shapiro: I'm not expecting to give notice.

Mr. Russ Hiebert: So it's going to be one day we wake up, and suddenly there it is.

Mr. Bernard Shapiro: And there it will be. That's right.

Mr. Russ Hiebert: Surprise, surprise.

Mr. Bernard Shapiro: Right.

Mr. Russ Hiebert: Well, as mentioned by my colleague, I do hope it's done in a timely fashion such that Parliament will still be in session. I do hope it's true that, as you stated, you did not speak to anybody with regard to delaying the release of this report until after Parliament was adjourned for the summer. Is that correct?

Mr. Bernard Shapiro: That is absolutely true, and I want to emphasize this, because I would regard any such approach as totally unacceptable for anybody in my position, and I would not stand still for it. But no one has tried.

Mr. Russ Hiebert: I'll pass the remaining portion of my time to my colleague Mr. Lukiwski.

The Acting Chair (Mr. David Tilson): Your time is up, so he's....

Mr. Tom Lukiwski: Thanks for your consideration.

The Acting Chair (Mr. David Tilson): Mr. Lukiwski.

Mr. Tom Lukiwski: I just want to follow up on your comment in response to a question by Mr. Hiebert.

The practice the Auditor General has suggested, where she would make her final report, ask for comments, and append the comments to the final report—as opposed to your practice of asking for comments, and perhaps those comments would help influence the final report—correct me if I'm wrong, but I believe you stated you would consider the practice of appending reports to the final report for futures. Why for futures? Why would you not do that for this report?

Mr. Bernard Shapiro: Well, for one thing, it would delay the report, and since something could go on for—

Mr. Tom Lukiwski: I would think, sir, it would have the opposite effect. If you had your final report drafted and you're just appending comments, it would....

Mr. Bernard Shapiro: You do have to remember that it's not a question of me just writing a report. It's also a question of having it translated, getting it ready for printing, doing the printing, etc. These things take time. They aren't done in a second. They're talked about in a second. To be quite frank, I'm really not anxious to change the nature of what I'm planning to do in the middle of doing it, because I think it would end up in delay. I'm not expecting there will be significant changes to the report, but—

Mr. Tom Lukiwski: But my point is.... Sorry for interrupting.

Mr. Bernard Shapiro: If you like, I'll think about it.

• (1010)

The Acting Chair (Mr. David Tilson): Let's let the commissioner finish.

Mr. Tom Lukiwski: And I apologize for that.

Mr. Bernard Shapiro: That's all right.

I'm glad to think about it. It's a possibility, let me put it this way, but I don't want to promise. First, I'm not sure I like the idea; I'll have to wait and see. And secondly, I don't want to delay the report any longer than I have to.

Mr. Tom Lukiwski: Again, my point is, sir, I assume that by only appending the comments, rather than taking the comments and perhaps considering whether that should alter your final report, that should speed up the process rather than delay it. If it's simply a matter of translation, that can be done already.

Mr. Bernard Shapiro: But I do have to think of whether I like the idea. I have to consider whether that's a more appropriate form than another form that might be used—that's all. I don't just do things on the spur of the moment. I try to think them through in terms of what the future would be like, etc. However, I will take it under advisement, and I may turn out to do it.

Mr. Tom Lukiwski: Again, without asking you to.... I know you're fairly set in your opinion that you're going to take this under advisement, but do you see anything that would be particularly wrong with the Auditor General's practice of just appending comments, or detrimental to—

Mr. Bernard Shapiro: Not that occurs to me at the moment, for sure—not that occurs to me now.

The Acting Chair (Mr. David Tilson): That appears to be it for the questions, sir.

Since you've drawn these two sections to our attention, I have one question with respect to section 72.1, subsection (5), which talks about the confidentiality issue, paragraph (a): "the disclosure is, in the opinion of the Ethics Commissioner, essential for the purposes of this section".

You've obviously studied this section, because you said the conflict in the two sections was the reason for your delay. Now that you've looked at it, how do you determine your opinion?

Mr. Bernard Shapiro: I think, and then I develop it.

The Acting Chair (Mr. David Tilson): You develop it?

Mr. Bernard Shapiro: Yes. An opinion is.... You have a set of facts in front of you or things you regard to be facts. In fact, there are a variety of different kinds. You've got evidence from a variety of different sources and then you develop an opinion about them. Then you ask yourself what....

Let me put it another way. I did start from the very beginning by trying not to include the name of anyone in the report who I didn't think was essential for the report, so that when the report is read there are not lots and lots of names. Hundreds of names came to my attention during the investigation, but you will find very few in the report. I just say, what is the minimum number of references I need in order to establish the rationale for the judgment I'm making? There's no algorithm for that. It's just a way of proceeding.

The Acting Chair (Mr. David Tilson): Okay.

Mr. Lee.

Mr. Derek Lee: I just have two comments, and I invite a response.

Firstly, I didn't want to let the record not contain some views of my own on the suggestions of Mr. Hiebert and Mr. Lukiwski. I think it has to be thought of carefully, and I think we're looking for finality and clarity in the judgment of the Ethics Commissioner. To allow or require the appending of an alternative view to the report would, in my view, potentially detract from the finality and clarity of his or his successor's judgments. I can envisage a report where he has made a finding, and then the person about whom he's made the finding would add a comment: I think the Ethics Commissioner is a bag of dirt, and he's made some terrible errors, and the whole system is stacked against me, and I'm going to sue you. If we want to have that kind of a report with an appended comment, it would detract, in my view.... I know I'm being pretty hypothetical about it, but that's my first comment.

My second one—and I'll invite a response to it—is about the wording of the section you think would have overly restricted your ability to make public disclosure of things. If you read that section, Mr. Commissioner, you couldn't even make a speech about what happens in your office, because any and all information that comes to you in connection with the performance of your duties and functions is therefore confidential, and you can't make it public. As I said before, don't you think that's a framework of confidentiality for

you and your staff, so your staff doesn't go out talking about what's going on in your day-to-day work? You have to work within that framework of confidentiality to accomplish the goals of the statute and to make a report that has enough information to be real.

• (1015)

Mr. Bernard Shapiro: That is correct, which is why I proceeded the way I'm proceeding.

Hon. Ed Broadbent: On a point of order, Mr. Chairman, do I infer correctly from your earlier comment that we're about to move to part two of our agenda?

The Acting Chair (Mr. David Tilson): Well, we seemed to have stirred something up, because we have one more question to go. Of course, Mr. Broadbent, we had invited counsel Walsh to appear before us to deal with this first order of the day and to give his opinion on this issue, so we're not quite finished with the first order.

Mr. Hiebert.

Mr. Russ Hiebert: You started your comments this morning by stating that you've come to a new revelation of our interpretation of the conflict and why it's no longer a conflict. This committee called you to speak before us, I guess with a couple of days' notice, on the purpose of this committee on this particular issue. When did you make the final decision that there was no longer a conflict? Was it after the committee asked you to come to appear, or was it before the committee asked you to come to appear?

Mr. Bernard Shapiro: I think it was probably before, but I don't actually remember the exact calendar of events. I think it was probably before; I can't be sure.

Mr. Russ Hiebert: I think we made the request in the last two days.

Mr. Bernard Shapiro: It was certainly before that. I certainly knew about the committee meeting before the notice came out, because I got notified well in advance, but I can't recall exactly which day was which in the process.

Mr. Russ Hiebert: Was there anything in particular that struck you on that particular day as far as why you came to the decision that you did?

Mr. Bernard Shapiro: I think revelation is probably the wrong word to use; it's not a road-to-Damascus experience, but a question of trying to think through the various issues and looking at the various opinions you've got and saying what would make sense. I finally convinced myself that what would make sense.... If I'd imagined the legislation as barring the release of the report, it would have made the legislation itself pointless, and that couldn't have been right. I went back and looked at the history and the debates and the various kinds of things that occurred, and it seemed convincing, to me at least, that this was not what was intended.

Mr. Russ Hiebert: Okay.

My last question is that you've commented on the format of the report that you're going to be putting out, but is there not a standard report format that Parliament uses for offices like yours, and did you not at least consider taking one of those precedents and following its format?

Mr. Bernard Shapiro: I see a variety of formats. There isn't a standard format, from what I can tell, though I may be wrong. I've seen a lot of different reports, and they have different formats. I felt the format I've chosen is particularly apt for illuminating this issue, and therefore it makes sense to use.

Mr. Russ Hiebert: Do you think you'll use this format in the future?

Mr. Bernard Shapiro: I might use something quite different. For example, in the future you might only be dealing with one allegation. In this case, you're dealing with thirteen, and that imposes its own consequence on the kind of report that would be helpful.

The Acting Chair (Mr. David Tilson): Mr. Lukiwski appears to be the last person to ask you a question.

It may be my problem of distinguishing the difference between a report and a decision. Maybe I haven't thought this out. I just find the process very foreign to me. I realize the Auditor General does this. The Auditor General makes comments and sends them off to ministries. You see it right in the Auditor General's report, and there may be others that do it, and maybe that's what a report is. I just find it strange that we're talking about the conduct of a minister, and you're asking for the minister's comments, whether this minister agrees or disagrees with your report. It's just an observation, and I may have already answered it, because we're saying that it's a report rather than a decision.

• (1020)

Mr. Bernard Shapiro: It is required by the legislation.

The Acting Chair (Mr. David Tilson): Yes, I appreciate that.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chairman.

It's not really a question. It's a motion, Mr. Chair.

The Acting Chair (Mr. David Tilson): It depends what it is.

Mr. Tom Lukiwski: May I read it? Then you can consider it.

The Acting Chair (Mr. David Tilson): Sure.

Mr. Tom Lukiwski: I move that the Ethics Commissioner provide all legal opinions received for the legality of issuing reports regarding the conflict of paragraphs 72.1(5) and 72.08(4) of the Parliament of Canada Act. These opinions are to be given to the clerk of this committee for distribution to the members.

The Acting Chair (Mr. David Tilson): It seems to me it's a substantive motion, and we probably should have notice of it.

It's just been pointed out that unless there's unanimous consent the motion would be out of order.

Commissioner, that appears to be all the questions on this particular issue. As you know, we have a second order. Perhaps we can ask you and the other witnesses to wait until the committee has had an opportunity to enter into discussions with Mr. Walsh. This may or may not be redundant at this stage, but that's what we're scheduled to do. Perhaps I could ask you to step aside as we pause for a moment to allow Mr. Walsh to come to the table. Thank you.

Mr. Lukiwski, just to clarify, I've ruled your notice of motion out of order. It is out of order at this time unless you're taking the position that you're going to give notice that—

Mr. Tom Lukiwski: I'd like this to be considered my notice, Mr. Chair.

The Acting Chair (Mr. David Tilson): Mr. Walsh, thank you for coming and waiting this amount of time.

You know the issues before us. It's the interpretation of the two sections. You have given us some material. I don't know whether you wish to read that or whether you just refer to it from time to time, but the floor is yours.

Thank you for coming, sir.

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chairman.

I would first like to introduce Ms. Melanie Mortenson, legal counsel in my office, who has been assisting me on this matter. Ms. Mortenson wasn't scheduled to be here, but I'm very pleased that she is able to be here with me.

I did distribute material, but I learned, a bit to my surprise, that some material got ahead of me, so some members may have two versions of my legal opinion. The official one, if you like, bears my signature, although it bears the same date as the earlier one. It's about three pages in length.

I don't propose to read that opinion. Frankly, the principal issue that opinion addresses appears to have been resolved, as the Ethics Commissioner, Dr. Shapiro, indicated he has resolved the question in his mind. He is about to make public his report as soon as other matters are taken care of. I think it was made abundantly clear that he has resolved that question, if memory serves, in his response to a question from Mr. Lee.

If I may, however, I would like to make a few comments about the legislation. I think it would be improved by some amendments. I don't think the problem is in section 72.1. That is the provision that sets out the powers that the Ethics Commissioner has in terms of investigation. It's in section 72.1 that Dr. Shapiro first had difficulties, it would appear, regarding the inconsistency between paragraph 72.1(5)(a) and his obligation to provide a report.

In my view, the more problematic inconsistency is found in subsection 72.08(4), where the Ethics Commissioner is required to provide a report setting out the facts in question, as well as his analysis and conclusions. Then in subsection 72.08(6), the report can't include confidential information. That subsection, in my view, requires clarification. When you read it you would naturally ask, as one reading statutes, required to keep confidential by whom or where? That may have led the Ethics Commissioner back to subsection 72.1(5), where he's required to not disclose information that comes to him in the course of his duties.

In my view, section 72.1 should be read as relating to his powers, and ought not to be taken beyond that. It's not an uncommon provision that where persons acquire information in the course of their duties, information is to be treated as confidential and not shared with third parties, except as subparagraph indicates, as may be essential for the purposes of that section. You have to give information to get information, arguably, in some circumstances. So it may be necessary in the course of an investigation to share some of the information you've acquired in order to elicit further information. That provision, in my view, should be left within section 72.1 relating to powers.

The bigger problem is section 72.08, where it has this conflict between subsections (4) and (6). Having spent a lot of time on this, the sort of amendment I would make to subsection 72.08(6) would be to add an exception after "require to keep confidential", in the English version, and say, "except as may be required for the purposes of subsection (4)". Then you've given the release. Whatever confidential information he has, he's entitled to disclose it for purposes of subsection 72.08(4), which is one on making a report and setting out the facts and questions. That would be very clear. I think the act would be improved by offering that kind of clarity.

In light of some of the comments made earlier, I would just draw to the committee's attention two aspects of the legislation. Section 72.09, which was referred to, requires the Ethics Commissioner to provide to the public office holder concerned in the investigation a reasonable opportunity to present his or her views. In my view, that section does not require providing to the public office holder a draft report or extracts from the report. I'm not saying it prohibits that; I'm saying it does not require that. It's the Ethics Commissioner's judgment, obviously, in each case, as to whether that's how he wants to carry on. I'm not here to tell the Ethics Commissioner how to do his job; I just want to point out as a matter of statutory interpretation that the practice the Ethics Commissioner appears to be adopting is not one that's required by section 72.09, but at the same time, it is not prohibited by section 72.09.

Lastly, I would just draw the members' attention to something that has not been mentioned. That is subsection 72.12(2), which I believe is in the extracts I gave to the clerk to distribute. It gives immunity to the Ethics Commissioner from any criminal or civil proceedings against him by reason of anything he has done in good faith.

• (1025)

It occurred to me, in reviewing this matter, that consultations the commissioner might undertake with third parties mentioned in the report might be done because he was concerned about any claim or cause of action those third parties may have for defamation or the like were they to be mentioned unfavourably in the report. While assuming—and I think justifiably assuming—that the Ethics Commissioner is acting in good faith at all times, I would think he has a complete defence against any action of that kind by reason of what he said in his report.

The last comment I'll make arises in connection with some comments that I believe came from Ms. Jennings. One has to look at confidentiality in the context of members of Parliament differently from how one looks at confidentiality relative to public office

holders—ministers of state and parliamentary secretaries. They're not the same.

I don't propose to add anything more, Mr. Chairman. I'm at the committee's disposal as to any questions they may have.

• (1030)

The Acting Chair (Mr. David Tilson): Thank you both for coming. We do have some questions.

Mr. Lukiwski.

Mr. Tom Lukiwski: I just have a very quick one, Mr. Walsh. Again, thank you very much for coming.

It seems that we have got it resolved now, because the report, we understand, will be released. But you had suggested, I think quite correctly, that perhaps amendments could be made to the act so that this situation doesn't occur again in the future.

Would you be prepared, sir, if requested by this committee, to draft some proposed amendments for our consideration that we could bring forward?

Mr. Rob Walsh: Mr. Chairman, that is the function of my office, to draft legislative text in support of committees and private members. And I'd be very happy to provide that service to this committee.

Mr. Tom Lukiwski: Thank you very much.

The Acting Chair (Mr. David Tilson): Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): I have a simple question. In his remarks, Mr. Shapiro mentioned that he might have some slight changes to make to his report. Are there things, in the comments he made, which appear to you to be or not to be in compliance...? Everything seems perfect to you?

Mr. Rob Walsh: In my view, Mr. Chair, Mr. Shapiro has the power to make the decisions which are needed for the drafting of his report. If he thinks it is necessary to have consultation with a third party, it is up to him to decide. In my view, it is not required by the legislation, but it is allowed.

[*English*]

The Acting Chair (Mr. David Tilson): Ms. Jennings.

Hon. Marlene Jennings: Thank you very much for appearing here.

I agree with your interpretation of the articles, the sections of the legislation, as to the release of the report, confidentiality, etc., and I'm pleased that Mr. Shapiro came to the same viewpoint for interpretation. You've pointed out an anomaly or a contradiction that could require clarification, so I agree with my colleague. Yes, do bring forward draft amendments that you feel could clarify this.

My only question now comes from the issue of providing excerpts of the report to individuals who have provided statements to the commissioner in the course of his investigation or inquiry. And I'm not talking about the individual parliamentarian whose conduct is the object of the complaint; I'm talking about individuals who were required to provide statements.

I've never, in the course of my practice prior to coming into politics.... When I was a commissioner, I did conduct public inquiries into complaints about police conduct across the province of Quebec. In all of my years, I've never seen that, where the excerpt of the report would go to a witness.

I just want to ask, do you know of a similar practice in any other fora, excluding the two that I mentioned? Those are completely different and, as Mr. Broadbent agreed with me, not at all appropriate to the kind of forum we're discussing here. I have a concern about it. I'm very uneasy about the idea of doing that.

Mr. Rob Walsh: Mr. Chairman, in my view this is a judgment call, if you like, a question of better practice, if you like. Far be it from me to tell the Ethics Commissioner how to do his job, and I don't purport to do that at all.

You made reference earlier, Mr. Chairman, asking Dr. Shapiro whether his report was quasi-judicial. That was the term you used. As I recall, Dr. Shapiro replied that, in the sense that he's making decisions, he's not recommending any sanctions or making any determinations of liabilities as a court might; but he is, as the sections on legislation indicate, making conclusions on the facts. I guess in a sense that's a decision, and in some respects anyone who's having to assess facts has to make decisions about which facts are more true than others. Sometimes—

Hon. Ed Broadbent: Is there such a thing as an untrue fact?

The Acting Chair (Mr. David Tilson): Mr. Broadbent, please, let's let Mr. Walsh continue.

Mr. Rob Walsh: That's an interesting philosophical discussion, Mr. Chairman, but perhaps we shouldn't go there now.

To answer the member's question, Mr. Chairman, it's not the custom, as the member indicates, for a court or a board to draft a decision and send out extracts to affected parties or witnesses and ask them what response they have to it. Ostensibly these individuals have had every opportunity directly or through counsel to make their views known to the arbiter or to the court, and the time comes when the court or the judge has the lonely job of sitting down and writing his or her judgment. That stands on its merits, and affected parties can respond to it.

If I could offer this correlation, it's an entirely arguably minor situation but it relates directly to my experience. I have a job here at the House as a level-three grievance officer. Sometimes when a decision is being taken on an internal grievance, I'll forward to the employee an opportunity to appreciate where I'm going on this. I don't send extracts of a report as such because there isn't one in existence at that point, but I think it's important that persons affected, the griever in particular and sometimes the manager, have an opportunity to make their views fully known. As things arise in the course of the inquiry you want to go back and ask if they're aware of this and aware of that, so everybody feels at the end of the day they've had an opportunity to make their views known and to be fully understood.

Where that stops is the judgment call, as opposed to getting into what some members call a debate. You don't want to get into going back and forth perpetually or just at undue length. There comes a point where the music stops and a decision has to be taken as to what

the facts are and a report must be made. That's a judgment call. I fully respect Dr. Shapiro's judgment in this respect, and I don't think there's any hard answer, Mr. Chairman.

• (1035)

Hon. Marlene Jennings: Thank you.

The Acting Chair (Mr. David Tilson): I noticed you used the word "decision".

Mr. Broadbent, do you have any questions?

Hon. Ed Broadbent: I've been so impressed with the witness—I agree with everything he said, including the proposed amendments—that I have no questions, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Mr. Lee, go ahead, please.

You want to reconsider?

Hon. Ed Broadbent: I see that my successor here won't duplicate my action.

Mr. Derek Lee: I wish I could oblige. In any event, we're grateful for the legal views of our counsel.

I want to ask a question about the length of time the process is taking at this time. It's a legal perspective.

Would you be prepared to comment now on whether or not there would be any material legal reason why we should not have some deadlines or timeframes, extendable or not, in this process?

This falls under the rubric of "justice delayed is justice denied", as mentioned by the chair. I always thought that colleagues in the House, in this ethics area had hoped that by having an ethics commissioner and a process we'd be able to grab an issue and deal with it reasonably quickly so that the cloud doesn't hang ad infinitum. Keep in mind here that a cloud hanging over one member of the House actually probably hangs over all of us.

I realize if you put a deadline on something you may force the procedure in a way that you don't want to, but are you aware of any legal reason or standards or references to other statutes that would allow us to either change the statute or encourage Dr. Shapiro to adopt a procedure that would compress the process so that we could have a start and a finish within—I hate to mention a period even—three months, four months, six months? We could just deal with it, and that would allow everybody in the process to say hurry up, let's go, we can't wait for another week or two weeks for the lawyer to write us back. If the lawyer's not available then we'll get another lawyer. It would be that kind of thing. Could you comment on that?

Mr. Rob Walsh: Mr. Chairman, as I'm sure many members are aware, and certainly those who have had occasion to read statutes a lot will be, there often are provisions for a deadline for a decision to be rendered. However, one has to consider in this case where an important element is that the decision-maker, if I could use that word again, not meaning to put too much weight on the element of decision—

The Acting Chair (Mr. David Tilson): It's unfair of you to make that remark. It's so tempting.

Mr. Rob Walsh: The responsible officer here is meant to be an independent officer. Of course, Mr. Lee, as he is a lawyer, might be amused as well to think about at the end of his submission to a court in early June saying to the court, "Would you please hurry up. I'd like to have this decision before I go to the cottage." That would not help your case at all. At no time does anyone ever suggest to a court that they'd like the decision sooner rather than later.

But it could be the case, Mr. Chairman, that this act may be modified to require a report within say 60 sitting days, allowing the commissioner to seek an extension—seek an extension perhaps of the committee of the House, or just obtain an extension, say, from the Prime Minister, and disclose that an extension has been provided because of the complexity of the matter for another 60 days. So in that sense, Mr. Chairman, I think there could be some delimitations given.

Clearly, if the Ethics Commissioner gets a request at this time of year, he's not going to be able to answer, in all likelihood, before the summer adjournment. I understand, and I think Mr. Shapiro fully understands, that timeliness is important to members of Parliament, but he also recognizes he has a duty to function independently of any other considerations except his judgment on the facts.

• (1040)

The Acting Chair (Mr. David Tilson): Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

The Acting Chair (Mr. David Tilson): We're running out of time, I think, so...please.

Mr. Russ Hiebert: Okay.

In Mr. Shapiro's opening comments, he stated that he consulted a number of different law firms and lawyers, including your office. Do you recall when he consulted your office, and whether or not the opinion that you gave him is the same as what's been submitted to us? Was there any additional information you provided to him?

Hon. Marlene Jennings: I have a point of order.

The Acting Chair (Mr. David Tilson): You have a point of order.

Hon. Marlene Jennings: Yes.

My understanding—and I stand to be corrected, as I'm sure I will be by some of the members—is that when one seeks a legal opinion, and this is an officer of Parliament or a parliamentarian, a client-lawyer relationship is then established, and any counsel that is provided is confidential and may not be released unless the client permits it.

I think Mr. Walsh is being put in a difficult position because he provided legal counsel to Mr. Shapiro. I think to disclose the nature of that, other than to say that he provided legal counsel, would put him in the position of violating that confidentiality.

Mr. Shapiro, however, is in a position, if he so wishes, to release Mr. Walsh, but I think the question should then be asked of Mr. Shapiro, not of Mr. Walsh.

Mr. Rob Walsh: Mr. Chair, if I could just briefly respond to this—

The Acting Chair (Mr. David Tilson): If you could get me out of this, that would be great.

Mr. Rob Walsh: It was evident, I suppose, in my body language that I wasn't comfortable with the question, but that's not because I find myself in what Ms. Jennings calls a "solicitor-client relationship". Dr. Shapiro, or his office, was never a client of mine or a client of my office, but I do certainly attempt to respect confidentiality in any consultations I have. Dr. Shapiro has indicated publicly here that he consulted my office, and I can confirm that he did consult my office, since he has disclosed that.

As to when it was, all I recall is that Mr. Benson of his office called me, and today is Thursday... And my memory is getting weaker as the years go by. I think it was toward the end of last week, but I could be mistaken on that. I just don't recall what I said, if anything, about my own views on the matter. As a matter of fact, I recall discussing views that they had acquired, but I don't recall indicating my views. But I may have done that.

The Acting Chair (Mr. David Tilson): It's a great topic. There's no question that a legal opinion with respect to the former minister is privileged; it's confidential. However, what we're doing this morning is interpreting two sections. The committee is asking for advice from the commissioner and from you as to what these two sections mean. I don't know whether it's almost a question of law as to whether interpretations of those sections... I suppose an interpretation for the commissioner is one thing, and that may or may not be privileged, as is being suggested by Ms. Jennings. On the other hand, the committee is entitled to know; they're all officers of Parliament.

Mr. Rob Walsh: Well, Mr. Chairman, I'm here to address the legal question. But in terms of conflict, one can't apply the conflict rule that lawyers usually apply in this parliamentary context. After all, I'm faced with conflicts every day of the week, but I do try to respect confidentiality; otherwise I wouldn't be consulted, obviously.

• (1045)

Mr. Russ Hiebert: Indeed. I think the relationship is not a solicitor-client relationship.

My additional question follows your comments about section 72.09 not requiring a final report to be released to the minister in question or to those to whom sections were released for their comment. You stated that it was not, from your experience, a practice known in courts, or perhaps it was managerial experience. But I'm wondering further, do you foresee any consequences of taking this approach? What are the possible implications of releasing the report to the minister or to those named in the report in advance?

Mr. Rob Walsh: Well, in terms of statutory interpretation, I don't think Dr. Shapiro said this, but just taking your question as you put it about releasing the report or parts of the report to some of the people in advance, that would fly in the face of subsections 72.08(4) and (5), according to which the four persons who are to get the report are to get the report at the same time. I assume that's probably there because these matters might understandably be the subject of some public debate—controversy—and no one or two of the four principal parties should be afforded an advantage by seeing the report earlier than the others. So they all should see the report at the same time.

To the extent that the provision is enshrined in the statute, for any part of the report—however much identified as a draft—to be shared with any one of these four individuals and not the others ahead of the whole report being made available puts in jeopardy the intention behind my view of subsections 72.08(4) and (5).

I'm responding in those terms because that's the way you put your question. I don't think it's the case that Dr. Shapiro said that's what he does.

The Acting Chair (Mr. David Tilson): Very briefly, Mr. Hiebert, because I think we've come to an end here on this.

Mr. Russ Hiebert: I do want to follow up. Much of my time was taken by some interventions.

So are you now saying that it's not appropriate for this report, in part or in whole, to be released to anyone other than the entire list of people set out in that section, including the public?

Mr. Rob Walsh: You used the word “appropriate”. Let me use the word “inconsistent”. It seems to be inconsistent with the intention, as I read it, behind subsections 72.08(4) and (5), which require that all four parties get the report at the same time. I would think that might well apply to any part of the report, but that's a matter of judgment. I'm just saying it's inconsistent with what I see to be the intent of subsections 72.08(4) and (5).

Mr. Russ Hiebert: So it's potentially against the legislation for him to use his discretion to release it in advance. Is that what you're saying?

Mr. Rob Walsh: To release a report in advance to some, but not all, would be inconsistent with subsections 72.08(4) and (5).

Mr. Russ Hiebert: So how could it be at his discretion if it's against the legislation?

Mr. Rob Walsh: The discretion he's exercising is with respect to what he's describing as text he may want to include in a report that pertains to a certain individual, and he's affording that individual an opportunity to comment on that text, which he describes as a draft text, which may or may not form part of the report.

Mr. Russ Hiebert: This looks like it's getting rather dicey, but—

The Acting Chair (Mr. David Tilson): You're on a roll, but this is the last question.

Mr. Lukiwski, very briefly, because we're going to be kicked out of here.

Mr. Tom Lukiwski: Sure, very briefly, Mr. Chair.

Mr. Walsh, you've made some other excellent suggestions with respect to the entire act, not just the section that was under question here, and I'm wondering whether you would be prepared to bring forward any other amendments or changes to the entire act or enabling legislation for our consideration.

Mr. Rob Walsh: Mr. Chairman, may I suggest that I be asked by the committee to do this, but in doing so, to engage in consultations with the Ethics Commissioner, because I'm sure he has some very useful suggestions to make, given that he's had the experience of working under the act now for a year. The one-year anniversary date was only a few days ago, I believe.

Then I will report to the committee in due course following those consultations.

The Acting Chair (Mr. David Tilson): If you're volunteering to do it and the commissioner agrees to do it, that's fine.

Mr. Russ Powers: I think he's asked for direction from us.

The Acting Chair (Mr. David Tilson): Everybody's nodding. So ordered.

Thank you, Mr. Walsh, both of you, for coming.

That concludes item number one on the orders of the day.

About the second order of the day, Dr. Shapiro, could you approach us again? Unfortunately, we've run out of time to proceed with the second order. We would ask you to return to the committee on Tuesday to deal with the second order of the day.

• (1050)

Mr. Bernard Shapiro: Mr. Chairman, I will not be available on Tuesday, since I will be out of the country, but certainly my colleagues could appear and be helpful to the committee.

The Acting Chair (Mr. David Tilson): Are you available on Thursday?

Mr. Bernard Shapiro: Yes. I will back in Ottawa on Thursday, for sure.

The Acting Chair (Mr. David Tilson): With all due respect to Mr. Benson, I think we'd love to have both of you here.

Mr. Bernard Shapiro: Mr. Benson will not be here Thursday, but I will be.

The Acting Chair (Mr. David Tilson): Then we'll love to have you here, sir. So we will arrange for Thursday, to continue on with the second item. And we thank you, sir, for staying so long today.

As far as Tuesday is concerned, we have business to conduct.

The meeting is adjourned until Tuesday at nine o'clock.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.