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# Standing Committee on Access to Information, Privacy and Ethics

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**Chair**

**Mr. David Chatters**

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## Standing Committee on Access to Information, Privacy and Ethics

Tuesday, June 28, 2005

• (0900)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good morning, ladies and gentlemen. We'll call the meeting to order.

This is the Standing Committee on Access to Information, Privacy and Ethics. The orders of the day are pursuant to Standing Order 108 (3)(h).

We are considering a motion of Ed Broadbent that the Standing Committee on Access to Information, Privacy and Ethics no longer has confidence in the Ethics Commissioner.

Mr. Broadbent, could you introduce your motion?

**Hon. Ed Broadbent (Ottawa Centre, NDP):** Did you want me to move the motion?

**The Acting Chair (Mr. David Tilson):** I do.

**Hon. Ed Broadbent:** Do you want me to do it at the end of my testimony or at the beginning?

**The Acting Chair (Mr. David Tilson):** I want you to introduce the motion now and then you can speak.

**Hon. Ed Broadbent:** I move that the Standing Committee on Access to Information, Privacy and Ethics no longer has confidence in the Ethics Commissioner.

**The Acting Chair (Mr. David Tilson):** Mr. Broadbent, you have the floor.

**Hon. Ed Broadbent:** Thank you.

Mr. Chairman, the Office of the Ethics Commissioner is one of the most important in the parliamentary system. Unlike his predecessor, Mr. Shapiro is responsible not to the government, but to Parliament. Coming as he did when his predecessor—in part because of his mandate, in part because of his performance—had lost all credibility, it was very important that Mr. Shapiro earn the full confidence of the public and of Parliament. To do this, his judgment over the past 14 months had to be competent and transparently fair. As with the value of justice, for public confidence his work had to have the appearance and the reality of sound judgment.

I did not believe that these standards were met before his recent report, *Many Shades of Grey*, nor were concerns alleviated by that report. Quite the contrary.

As I have said before in this committee, my judgment is based entirely on performance, not on character and motive. I believe Mr. Shapiro, who has had a distinguished previous career, is an

honourable man. Today I move a motion of non-confidence based exclusively on his action and non-action.

I will now give, Mr. Chairman and fellow members of the committee, a list of what I call unfulfilled promises and mistaken decisions.

1. Mr. Shapiro promised as a priority to review and update the list of policy decision-making areas that the Prime Minister must recuse himself from in cabinet. He made this promise last August. We are still waiting for the results.

2. When accusations about the former minister, the Honourable Judy Sgro, were first raised, instead of selecting among the many law firms not clearly identified with any political party, he hired Borden Ladner Gervais, a firm well known for its ties with the Liberal Party. This firm has three lawyers representing Liberals before the Gomery commission. It donated \$165,000 to the Liberal Party between 2002 and 2003, contributed \$25,000 to the Prime Minister's leadership campaign, and recently hired another former Liberal cabinet minister. Since hiring this firm, demonstrating the candour for which he is known, Mr. Shapiro has himself called this decision to hire this firm into question.

3. Unknown at the time by members of the House of Commons, Mr. Shapiro produced two versions of the May 11 letter to Judy Sgro. The second letter, significantly edited by the withdrawal of two names, was used by Ms. Sgro to suggest she had been completely vindicated. Mistakenly, based on the same letter, the Prime Minister at the time reached the same conclusion.

4. Mr. Shapiro has seriously mishandled inquiries as they pertain to Mr. Tim Murphy, chief of staff to the Prime Minister, concerning the Grewal-Murphy-Dosanjh tapes. Requests to include Mr. Murphy in his investigation were made in a series of letters sent by Yvon Godin, the whip of the NDP, letters that I made available last week. In his reply of June 2, 2005, Mr. Shapiro asserted that he did not have the authority to investigate Mr. Murphy. He cited only the Parliament of Canada Act subsection 72.08(1), which refers only to ministers of the Crown, ministers of state, and parliamentary secretaries. However, the Conflict of Interest and Post-Employment Code for Public Office Holders does apply to ministerial staff, and the Ethics Commissioner himself is the person charged with the administration of the code, including violations by ministerial staff. I quote from the code, subsection 5(1), on duties of the Ethics Commissioner pursuant to section 72.07 of the Parliament of Canada Act: the Ethics Commissioner “is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to public office holders”.

Mr. Chairman, public office holders, as defined in both the code and the Parliament of Canada Act, include ministerial staff. In each, a public officer holder is defined as “a person other than a public servant who works on behalf of a minister of the Crown, or a minister of state”. That is from paragraph 72.6(b) of the act and subsection 4(1) of the code. In refusing in his letter of June 2 to investigate directly the behaviour of Mr. Murphy, Mr. Shapiro ignored the specific mandate of the Ethics Commissioner to enforce the code.

● (0905)

5. In light of his refusal to investigate Mr. Murphy directly, in a subsequent letter dated June 9, 2005, Mr. Godin asked Mr. Shapiro to include in his inquiry Mr. Murphy's minister, namely the Prime Minister.

In his reply to Yvon Godin on June 16, Mr. Shapiro completely ignored the specific request to investigate Mr. Martin, who as a minister clearly comes within the ethics commissioner's purview; however, after discussing other matters in the letter, he did say that he did not “believe that there is any need to formally widen the inquiry that I had agreed to undertake in order to ensure that all active participants in the events under scrutiny be considered”, presumably referring to the Prime Minister.

In a subsequent letter to Yvon Godin dated June 20 of this year, Mr. Shapiro acknowledged both that “the Prime Minister is ultimately responsible to Parliament for the actions of Mr. Murphy” and that Mr. Murphy, as he went on to say, “is so clearly central to the issue” —i.e., the taped conversation—and that consequently he, Mr. Shapiro, changed his mind, noting that he now intends to include Mr. Murphy in the inquiry as soon as he is able to begin it. Once again, however, he asserts that it remains to be seen whether the Prime Minister should be included in the investigation.

This is a serious error in judgment by Mr. Shapiro. Mr. Murphy is accountable to the Prime Minister and is seen to be acting on his behalf. It is crucial to find out directly from Mr. Martin himself whether or not Mr. Murphy was acting on his behalf. If the inquiry excludes the Prime Minister, it is entirely conceivable that Mr. Murphy will simply claim he was acting without Mr. Martin's

authorization, thus exonerating the Prime Minister from any possible wrongdoing.

Furthermore, I find it disturbing that Mr. Shapiro acknowledged in the third paragraph of his letter to Yvon Godin of June 20 that he has not yet begun to investigate the Grewal-Dosanjh-Murphy tapes.

6. *Many Shades of Grey*, Mr. Shapiro's report, fails to clearly address the central question about the extent to which Ms. Sgro is responsible for ethical violations and whether her resignation from cabinet was appropriate in the circumstance.

In the report, Mr. Shapiro notes in numerous places that it was Ms. Sgro's staff who placed her in a conflict of interest situation. He also notes that with respect to the issuance of permits to individuals associated with the campaign volunteers, there was “clear violation of Principle 7 of the *Conflict of Interest Code for Public Office Holders*”. This is followed by his observation, “While the main burden of responsibility for this conflict of interest environment appears to lie with the Minister's staff, primarily with Mr. Ihor Wons, and while the Minister's reliance on her staff was not always well placed, this does not absolve her of major responsibility - after all, it was on her direct authorization that the TRPs were issued.”

Despite the evidence, Mr. Shapiro refuses to provide an adequate conclusion on the question of the minister's personal responsibility. “In this case, Ms. Sgro clearly was placed in a conflict of interest”—note the “was placed”, she didn't place herself—“with respect to the granting of Temporary Residence Permits (TRPs) during the latter half of the federal election campaign in general and with respect to Ms. Alina Balaican in particular. The Minister has already resigned, and without comment on that decision, I have no further recommendation to make”, he writes.

This is unacceptable. the minister did indeed resign as a result of the allegations relating to Mr. Harjit Singh.

● (0910)

Mr. Shapiro's report finds that the minister did not act improperly in this case; however, what about the other cases? Why were senior staff members working on her campaign while processing applications for TRPs for relatives of other campaign workers knowingly allowed to continue doing so by Ms. Sgro? Why was such a high percentage of successful TRPs in the month leading up to the 2004 election related to Liberal MPs?

A judgment is clearly—

**Mr. Paul Zed (Saint John, Lib.):** I have a point of order.

**The Acting Chair (Mr. David Tilson):** Excuse me, Mr. Broadbent.

A point of order, Mr. Zed.

**Mr. Paul Zed:** Mr. Chairman, correct me if I'm wrong, but I have been listening quite carefully to my honourable colleague. I thought you had ruled that we were not discussing the reports of the Ethics Commissioner.

**The Acting Chair (Mr. David Tilson):** No, if I recall, Mr. Zed, my ruling was that if an investigation is under way—Grewal, Dosanjh, perhaps Murphy—it would be most inappropriate for the committee to comment, ask questions. But once a report has been made by the Ethics Commissioner, as far as I'm concerned, there is no interference in the process of making that report and it is perfectly in order for members of this committee, or any other member of Parliament, to comment on a report that has been made. As far as I'm concerned, Mr. Broadbent is commenting on a report that has been made and not on a current investigation. If anyone makes any comments about the investigation that's under way, I would rule that out of order.

Mr. Broadbent, continue.

**Hon. Ed Broadbent:** If I may continue, I'll back up a sentence.

I'm saying, what about the other cases? Why were senior staff members working on her campaign while processing applications for TRPs for relatives of other campaign workers knowingly allowed by Ms. Sgro herself to continue? Why was such a high percentage of the successful TRPs in the month leading up to the 2004 election related to Liberal MPs?

A judgment is clearly required as to whether any of these actions related to the issuing of permits provide sufficient grounds for a resignation or whether Ms. Sgro should be cleared to return to cabinet. This is important both for Ms. Sgro and for establishing a precedent concerning ministerial responsibility and ethics. Without a clear judgment from Mr. Shapiro concerning the severity of such infractions, the question is tossed back completely to the political arena, effectively returning the process to where it stood prior to Mr. Shapiro's involvement. An individual who was working on the minister's election campaign and simultaneously applying for a TRP would constitute a conflict of interest position for the minister.

Mr. Shapiro, on page 21, acknowledges that she herself was aware of what was going on. With reference to a question about whether she thought one of the applicants, or the sponsor of an applicant for a TRP, was working on her campaign, she clearly said, and I quote, "I expect so". It is clear that Ms. Sgro allowed this practice to persist. At this point, in my view, Mr. Shapiro himself should have clearly concluded that she was knowingly in a conflict of interest, and it was not staff putting her there. His conclusion should have been that she was knowingly in a conflict of interest position and that this is unacceptable, and for this reason alone she should not be holding a cabinet position. Instead of such a conclusion, he provides a convoluted, double-negative sentence about her knowledge of such instances as being, and I quote, "not completely non-existent", the clear logic of which is, as Ms. Sgro herself stated, that she did know what was going on. If that is the case, she should not be holding a cabinet position.

For the above six reasons, Mr. Chairman, I have moved my motion.

• (0915)

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Broadbent.

We will now have debate.

Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, Mr. Chair.

I should state at the outset, as I mentioned in the last committee meeting, that clearly this is a very serious discussion, the motion itself expressing non-confidence in the Ethics Commissioner, one of the officers of Parliament and one of the individuals this committee has to work with on a very close and intimate basis. Any time we have a motion that speaks to the potential non-confidence of committee members, it should be taken seriously, and clearly, on behalf of the Conservative Party, we do take that seriously.

There was unanimity in this committee, as I recall, at the last committee meeting, that these discussions not be held in camera but in a public domain so that all Canadians and certainly all parliamentarians would be able to examine the rationale and the purpose behind each party's position on this very serious matter.

I want to say at the outset—again, representing the Conservative Party of Canada—that we are not attacking Mr. Shapiro personally. Many of the comments I have that will follow will echo my learned colleague's comments. This is not a personal attack on Dr. Shapiro. I think personally he's a good man, a learned man. The position of our party is such that we believe he has integrity and knowledge, but quite frankly, we believe he may be in a position that he is not suited for.

I think many of the examples Mr. Broadbent gave to this committee in his opening statement are ones that I agree with and are the position of the Conservative Party. It speaks to, I believe, more than anything else, lack of judgment or poor judgment, if you will, and I've always been a firm believer that judgment is something you cannot learn over a period of time. Good judgment or poor judgment is something, unfortunately, that people are born with.

There are many things you can learn in the course of a job. There is a learning curve, I understand, in any new position, but one of the key elements and perhaps the major element of this position is that the individual selected for the position of Ethics Commissioner must have good judgment, must be impartial, must be independent, but more than anything else, must exhibit and possess good judgment. It's on this issue that I think Mr. Shapiro has fallen below the benchmark that all committee members would have the Ethics Commissioner attain.

I should perhaps preface my remarks by saying, just going back in history a little bit, that one of the reasons I think the Ethics Commissioner position had been created was to overcome some criticism of the position that was held before the commission, which was one of ethics counsellor.

When speaking of judgment, I know Mr. Wilson had been criticized roundly and loudly by many—many members of the opposition and many members of the media—for what I would consider to be extremely poor judgment in matters of ethics concerning parliamentarians.

One in particular, I recall, goes back to 2001, when he ruled at the time that Alfonso Gagliano was not in conflict when he ruled that awarding of contracts to advertising firms who later subcontracted to Mr. Gagliano's son was not a conflict of interest. I think that's the type of judgment and poor judgment exhibited by Mr. Wilson that caused him to receive as much criticism as he had.

So I think everyone in this Parliament had high expectations when a position of Ethics Commissioner was established. Although there was some disagreement, I believe, at the time Dr. Shapiro was appointed into this position, I think there were expectations—and lofty expectations—from all members of the House that the position again would serve parliamentarians well, would serve Canadians well, but it is the position of the Conservative Party that the judgment exhibited by Dr. Shapiro in recent months clearly exhibits that he is not the person for this job.

● (0920)

Again, I'll give a few examples. Many of them, perhaps all of them, have previously been articulated by Mr. Broadbent. Again, for the record, I think these are examples of poor judgment exhibited by Dr. Shapiro that point to our position of no confidence in Dr. Shapiro in this position.

Perhaps the main problem with Dr. Shapiro, in our estimation, is his lack of experience and specific training. Once again, I think when the appointment was made, the appointment itself could have been better thought out at the time. This was certainly not Dr. Shapiro's doing. His appointment was made by others.

The job requires more than someone who is well-meaning and someone who has some personal integrity and perhaps experience in other areas of business or other professions. When anyone is making an appointment at this level, particularly to a position such as an officer of Parliament, you have to look at the skill sets that would be compatible with the mandate of the job itself. In this case, when the appointment was made, I don't think that the skill sets required for this position were carefully thought out. I think it is at least apparent that Dr. Shapiro does not possess the skill sets that would be compatible for this job.

Perhaps someone who has worked as a provincial ethics counsellor, perhaps a retired judge, someone who has intimate knowledge of the federal public service, or a lawyer, at the very least, have the types of skill sets that I believe would be most compatible in this position. Unfortunately, Dr. Shapiro seems to not have any of the skills required. I think that put him in a very unfortunate and uncomfortable position, and perhaps a position that was unfair to Dr. Shapiro.

That being said, the fact is that we do expect a certain level of expertise and a certain level of competence to be exhibited in the position of Ethics Commissioner. I'm afraid to say that in our estimation, at least, we find that expertise and competence to be severely lacking.

Specifically, on some of our concerns with Dr. Shapiro and some of the decisions and judgments that he has made that we question, many of these things, perhaps all of these things, have been discussed in committee before. Some questions and concerns that I'm going to be raising have been raised directly to Dr. Shapiro. Again,

there is nothing new in my testimony and in the Conservative Party's position on this.

But again, for the record, one of the concerns we have is that Dr. Shapiro quite clearly lifted lobbying restrictions for two former cabinet ministers without explanation. Once again, I think my learned colleague had questioned Dr. Shapiro on that two or three times. We received absolutely no declarative or definitive reason for why this was done. This was a clear violation of lobbying rules.

Once again, it was Dr. Shapiro's decision to make, yet he could not explain his decision to this committee, nor could he explain why there was the contravention in lobbying rules. Why did he give an exception to two former cabinet ministers with respect to lobbying? It's perhaps a serious breach of judgment. If one were overly partisan, one would perhaps say this was done for partisan reasons. I don't believe any member of this committee accused Dr. Shapiro of that, but clearly, at the very least, this was a decision made by Dr. Shapiro that appears to be in complete contravention of the rules of the day with respect to lobbyists.

As Mr. Broadbent mentioned, at least to the present time, Dr. Shapiro has failed to rule on when the Prime Minister's business interests make it necessary for the Prime Minister to withdraw from policy discussions. We had been assured by Dr. Shapiro that we would hear some ruling on this quickly, yet it has been several months, and we have heard nothing from Dr. Shapiro to indicate that he's taking the charge or request by this committee in a serious manner. The delay in time at least indicates that he has not perhaps spent the appropriate amount of time on this issue.

● (0925)

I think Dr. Shapiro has also exhibited lack of clear judgment, lack of good judgment, and perhaps one could argue lack of some competence in the handling of the two files he has dealt with to date in his tenure as Ethics Commissioner. Mr. Broadbent has articulated, I think extremely clearly, some of the problems he had found and some of the problems, quite frankly, the Conservative Party has found in his judgment of Ms. Sgro. I'll deal with some of those in a little bit more detail in a few moments.

Once again, it is not only the opinion, I suppose, of Mr. Broadbent and the New Democratic Party, and it is not just my opinion and that of the Conservative Party, but the lack of judgment and the lack of clear decision-making Dr. Shapiro has exhibited in the Sgro case has been widely reported and, frankly, widely criticized by members of the media from across Canada.

This is not to say that this committee, or any parliamentarian for that matter, should take the advice or the comments of media members as the be-all and end-all when it comes to an examination of a person's capabilities. My point is that, without question, of all the reporting I have read concerning Ms. Sgro's final report, and in all of the comments I have heard from individuals who have taken the time to study and carefully examine that report, the decision is unequivocal, clear, and unanimous that there were some serious lapses of judgment contained in that report.

Quite frankly, at the outset, I—and others, I think—questioned even the title of the report, *Many Shades of Grey*. What I and others were looking for were definitive decisions and definitive conclusions based on the examination by Dr. Shapiro in the Sgro matter, and we did not find that. In my opinion, *Many Shades of Grey* is an entirely appropriate title for this report because of the ambiguity contained in the report.

I do not think that type of reporting and that type of investigation is something members of this committee should tolerate. In my estimation, we should have a higher standard of reporting when we ask an officer of Parliament to do an investigation, particularly one as sensitive as an investigation of a now former cabinet minister. Yet it took over seven months for this investigation to be completed.

Also, the process by which Dr. Shapiro conducted his investigation, as articulated by Mr. Broadbent, is under question. The first major concern that we in the Conservative Party had with this investigation—and again, Mr. Shapiro was questioned in committee about this decision—was to hire, as it ended up, four law firms to assist him in his investigation.

The first concern I and others on this committee had was that we have appropriate legal counsel on hand to assist Dr. Shapiro, yet he did not use the legal counsel that was available to him. Under questioning from committee members, the answer indicated that the reason he went to outside legal counsel was that he was not aware that in-house legal counsel was available.

I think it is incumbent upon any officer of Parliament to totally understand the resources that he or she has at their disposal. For Dr. Shapiro to say, “Well, I wasn't really aware that legal counsel was at the ready. I could have used them and perhaps saved the cost of hiring these legal counsels. I didn't know that”, to me begs the question why did you not know that? Why did you not think it incumbent upon yourself to examine the resources that you have available to you before you started this investigation? Or at the very least, I suppose, one could question the need for law firms in general when one perhaps could have hired a private investigator at probably far less cost.

But even beyond that, if one could accept the rationale of Dr. Shapiro that it was necessary to hire outside counsel, the lack of judgment in hiring the law firm that he did, as Mr. Broadbent stated, “a well-known, highly connected Liberal law firm” that not only made serious financial donations to the Liberal Party of Canada and to the current Prime Minister's leadership campaign.... This was a law firm that had represented former Prime Minister Jean Chrétien in the Gomery proceedings.

● (0930)

If I recall, when we asked Dr. Shapiro in this committee about his rationale in determining and selecting that particular law firm, he stated that it's very difficult in Ottawa to find any law firm that doesn't have political connections. While that may be true, I think one could successfully argue that there are certain law firms that do not, and did not, have the level of political connections that the current law firm or the law firm that he finally selected had. To me, it is inconceivable that any individual who was making a judgment that is supposed to reflect a non-partisan manner could select this law firm and state with certainty at this committee that in his opinion it

made no difference because all law firms have some political connections. Clearly, this was poor judgment. Clearly, the law firm he selected had too many connections to the Liberal Party of Canada, too many connections to the current Prime Minister, and too many connections to the former Prime Minister to avoid criticism. He should have been criticized, and he was, but again, this speaks to the type of judgment exhibited by Dr. Shapiro, which we think is sorely lacking.

We also think—and Mr. Broadbent, once again, articulated this—Dr. Shapiro exhibited poor judgment, to say the very least, when, having written his initial letter to Ms. Sgro on the issue of what is commonly known as “strippergate”, he allowed Ms. Sgro to examine the letter and make comments. Dr. Shapiro said he received legal advice and, subsequent to writing the initial letter, omitted or eliminated key points of that letter. Specifically, he did not mention the names of the senior staff in Ms. Sgro's office at the time, who had been heavily, deeply involved with Ms. Balaican, the young woman in question who was central to this entire issue of “strippergate”.

So Dr. Shapiro saw fit to redraft the letter and send it to Ms. Sgro. It ultimately became part of the public purview, and a very key point of the letter that implicated one of Ms. Sgro's senior advisers was eliminated. We had questioned Dr. Shapiro extensively in committee as to whether he understood the relationship between senior staff and junior staff. After some hesitation, he said he understood the relationship and the difference between senior and junior staff, and we all know, being parliamentarians, the relationship between senior staff, particularly one like Mr. Wons. He would be one of Ms. Sgro's closest confidants. He would be one who probably shared everything, every decision he made, with Ms. Sgro, and yet Dr. Shapiro found it necessary to eliminate his name in the letter that he wrote to Ms. Sgro concerning this issue.

Without question—

● (0935)

**The Acting Chair (Mr. David Tilson):** Could I interrupt for a minute? This is a difficult issue. I stand by my position that it's appropriate for this committee to look at the process of how the commissioner works with respect to different decisions he's making. I don't want to get into saying whether he made the right decision or the wrong decision on the witnesses, or who he investigated. There's a fine area; you're getting close to that dangerous area.

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

With respect to that fine line you speak of, perhaps I was getting too close to the line or to the other side of the line, but the point I'm trying to make here is, again, it speaks to the judgment exhibited by Dr. Shapiro. I believe anyone who had a level of political acumen would have understood the fact that having a senior adviser make these decisions was in fact akin to having the minister make these decisions herself, yet Dr. Shapiro did not express that distinction or seem to understand the distinction when he redrafted the letter. I think that speaks to his lack of judgment. That is a point I make, and I leave that issue.

Also, I was disappointed that when he spoke of the issue of the TRPs in his final report, he did not seem to levy much blame. He did not seem to understand the distinction between partisanship and ministerial obligation and responsibility with respect to the issuance of TRPs. Again, this is a serious issue. Charges have been levied against the immigration department. The former and current ministers have spoken to this. It appears that in the latter half of the election campaign, as exhibited in the report on Ms. Sgro, 74 of 76 cases of issuance of TRPs went to Liberal-friendly individuals and MPs, yet the report itself was vague enough and the ambiguity exhibited in the report was such that these key points were blunted.

I say "key points" because, again, we're speaking about ethical matters and the appropriateness of the issuance of those TRPs. I think the final decision was lacking in clarity, and frankly, I think it also speaks to a lack of good political judgment on Dr. Shapiro's part.

Finally, Mr. Chair, what I can only suggest is that the flip-flop Dr. Shapiro has exhibited on the ruling on whether or not Tim Murphy should be investigated.... Now, quite frankly, I think the reality of this is that this is a case more suited for the RCM Police. I think it's a matter of potential criminality rather than ethics.

But that being said, Dr. Shapiro was asked to comment on this, and I believe he severely flip-flopped on several occasions. He first said it was outside of his ambit to investigate Mr. Murphy, yet when faced with the realities presented in letters by Mr. Godin and in a subsequent letter that was sent to Dr. Shapiro by John Reynolds from the Conservative Party of Canada, he then almost recanted. He reversed his position and said yes, I guess you're right; I guess I can investigate Mr. Murphy, and perhaps I will. When asked, will you or won't you, again he was very vague. At one time he said, well, I probably will, but I can't make a definitive statement on whether I will or not. Letters responding to Mr. Godin and Mr. Reynolds indicate he probably will, but he won't make any guarantees or assurances he will.

With respect to the Prime Minister, he said, well, I might investigate the Prime Minister. Then he said, well, I probably will not investigate the Prime Minister. And finally he reversed himself again and said yes, I probably will investigate the Prime Minister.

Mr. Chair and members of this committee, I think these examples alone would have us call into question the competence of Dr. Shapiro. At the very least, I think it makes us severely question his judgment, and I go back to the outset of my remarks: one of the key criteria this committee and Parliament itself should look for in selecting an Ethics Commissioner is that it be an individual who not only has experience and relative skill sets but possesses keen and good political judgment. And judgment is not something you can learn over a period of time, in my estimation. Judgment is something you have or you do not have.

● (0940)

It is the opinion of the Conservative Party of Canada that Dr. Shapiro has not exhibited good judgment. This lack of judgment has clouded his decisions and ultimately has produced a very flawed report, one that I don't think this committee should recognize as being up to the standards we expect. Therefore, Mr. Chair, the

Conservative Party of Canada will support the motion of Mr. Broadbent and express non-confidence in Dr. Shapiro.

Thank you very much.

**The Acting Chair (Mr. David Tilson):** Thank you, sir.

Mr. Zed.

**Mr. Paul Zed:** Thank you, Mr. Chairman and colleagues.

Obviously, what I'm going to say isn't going to come as a big surprise to anyone at this committee. I had waited with bated breath today thinking that Mr. Broadbent was going to come forward with some war crimes or some serious allegations other than those that have already been in the media. I was also waiting for Mr. Lukiwski and thinking there was going to be some new sizzling, exciting piece of information coming forward, particularly when this, to me, looks to be much ado about nothing. I want to make it clear that not only do I find this committee even contemplating an expression of non-confidence in the Ethics Commissioner at this early stage wrong-headed, but I think it damages all parliamentarians, and it damages the system, and it damages the credibility of the system that we, as members of Parliament, have put into place.

Mindful of my honourable colleague Mr. Broadbent's interest in not besmirching the name of Dr. Shapiro and in only dealing with the process, I had been expecting, Mr. Chairman, a number of allegations to come forward that Dr. Shapiro had done something inappropriate or something wrong. If he's made a decision that Mr. Broadbent or Mr. Lukiwski don't like, that's different. But I believe we are charged with being responsible for the process. Everyone realizes, I think, that this is not an ethics counsellor. This is not an ethics auditor. This is an Ethics Commissioner. And an Ethics Commissioner is an independent officer of Parliament reporting directly to Parliament. It's not a political office.

So when I heard Mr. Lukiwski talk about how we need somebody who has good political judgment, I winced a little bit, to be blunt, sir, because it should not be politicized for partisan purposes. And frankly, when I listen carefully to both of my honourable colleagues in the opposition talk about the two cases that are now public, all they did was go through the details of that case and had hoped, in fact, that there would now be a court of appeal. Frankly, I'm confused a little bit by what the chair has said because I thought the chair had ruled that the decisions of the Ethics Commissioner were, in fact, the decisions of the Ethics Commissioner and that those decisions are reports to Parliament.

Mr. Epp well remembers when we had an ethics counsellor, and there was a great amount of debate around the discussion of whether those decisions went to Parliament in a report so that they could be assailed or looked at or evaluated or discussed. Frankly, the process is of deep concern to me because I believe we have established the Ethics Commissioner's office and, as members of Parliament, validated his position. When I hear my honourable colleagues talk about standards and talk about precedents, what standard are they talking about? I often think about the expression, "let he who is without sin cast the first stone".



And I don't know what constitutes conflict. I don't know what could constitute a standard or a precedent that my honourable colleagues would find acceptable. Mr. Lukiwski talked about shades of grey. Well, in fact, it is quite grey. The reality is that we, as members of Parliament, when we created the legislation, gave Dr. Shapiro a standard. We gave him the legislation. So if there are concerns or problems with it, then I would suggest that they will need to be amended. We'll need to give him the requisite and necessary tools to do the job.

• (0945)

As many of you know, this area of ethics is not a new area. I had the honour of representing the Canadian Bar Association before the Holtmann commission in 1988 to talk about ethical standards, when the previous government was talking about establishing a lobbyist registration in 1988. Mr. Epp and I were the original members of the 1994 decision on rebuilding trust, which talked about the process. We talked about the standards of how to build trust and how to legislate integrity. That's a very difficult thing to do.

As a Parliament, we have moved beyond the concept of an ethics counsellor. I believe that was the right thing to do.

One of my concerns is that I think Mr. Broadbent, Mr. Lukiwski, and perhaps others are fanning the fires of the ethics debate, when we in fact have an Ethics Commissioner. The question is this. What's the point, Mr. Chairman, of having an independent Ethics Commissioner as an officer of Parliament if we're going to politicize his office? What is the point of having an independent Ethics Commissioner if we're trying to achieve political ends every time the Ethics Commissioner makes a decision, just because it's a decision we don't like?

In the last weeks, I recall that Mrs. Sgro wasn't very happy with the Ethics Commissioner either. There was a lot said about the process, about the time it took, and about certain things that were said in the report.

Mr. Chairman, the reality is that it's the commissioner. We have a process. As members of Parliament, we have established what we feel the process should be. When we have appointed a distinguished, respected academic and a former senior public servant to the position, as members of Parliament, if we want him to do the job that we have given him or if his office is tasked with the responsibility for regulating integrity or an ethical standard, then we have to first make sure he has the financial resources to do that.

• (0950)

This committee heard from him about that at a previous point, prior to the reports being issued. It's inconceivable to me that we would replace Dr. Shapiro as our commissioner just because we disagree with one of his reports.

Frankly, that's one of the concerns I have about the particular motion of my colleague Mr. Broadbent. I was expecting, frankly, a smoking gun. I was expecting some deep—

**Hon. Ed Broadbent:** Personal attack.

**Mr. Paul Zed:** Not a personal attack. I was in fact expecting a deep policy decision that would suggest there was going to be a shift

in the way that we, as members of Parliament, approached the Ethics Commissioner's office.

It seems to me, Mr. Chairman, there may be some process questions that have some lessons learned, if you will, by a first and second decision that had been made by the office. But I frankly find it a little discouraging when I hear honourable colleagues besmirch the name of the Ethics Commissioner. It seems to me that when I listen to the arguments of my colleagues, they have come forward with the fact that they believe the inquiries were mishandled. I think that's fair. It's a direct quote. The two colleagues on the opposite side of the table, Mr. Chairman, believe the inquiries were mishandled.

In fact, they are retrying the facts. They are retrying or wanting to be a court of appeal. It's the concern I have, and it's the concern I have for not being in a position to support the motion.

Mr. Lukiwski, a few moments ago, you talked about the two cabinet ministers who were reported in the media. You again repeated a rumour that Mr. Benson said wasn't in fact true. I'm not your lawyer in this matter, but you would want to be very careful, Mr. Chairman, I would suggest, in making or repeating that allegation outside the privileges of the House of Commons. What I heard the deputy registrar say was that there was in fact no ruling. Yet you, sir, repeated the fact as if there had been a ruling. And not only did you repeat that there had been a ruling, but you repeated it as if there had been a ruling and that it in fact exempted somebody, when no ruling in fact existed.

I find that a little discouraging, to be blunt, colleagues, because I thought this committee was about the process. I find it a little bit like a drive-by smearing of an office, because for partisan purposes—

**Hon. Ed Broadbent:** I haven't made—

**Mr. Paul Zed:** Mr. Broadbent, with the greatest respect, I listened to your comments, and I'm trying to evaluate them.

**The Acting Chair (Mr. David Tilson):** Order. We have a speaker here. Let's listen to him.

**Mr. Paul Zed:** Mr. Chairman, from Mr. Broadbent's motion, I very carefully listed six points—six points—and I waited very carefully for a point that would be relevant. He talked about policy decision-making areas. I think the commissioner himself said he was coming forward with that—not quickly enough for Mr. Broadbent, but he's nonetheless coming forward with it.

I'd like to ask my honourable colleague Mr. Lukiwski if he has any information about Borden Ladner Gervais and how much money was in fact donated to the Conservative leadership candidates in your leadership campaign that was recently under way, and how much money was donated from that law firm to Conservative candidates in the last general election. Frankly, having been a member of the New Brunswick Bar, the Canadian Bar, and the International Bar, and having had the opportunity to teach at a law school, and having been a member of a very large law firm, I can tell you that there are members of all political stripes in every law firm I've ever been associated with and in every law firm I've ever worked on the opposite side of. There isn't a law firm in this city or in this country or in North America that doesn't have members of every political stripe within it.

So when I hear Mr. Broadbent allege that he had made a decision about choosing Borden Ladner Gervais, I find that a little bit beyond the pale in terms of an issue that needs to question the credibility of the commissioner.

You talked about the two versions of a letter. Well, in fact, Mrs. Sgro was vindicated. You can choose to like certain parts of the report. Mrs. Sgro herself doesn't like certain parts of the report, but nonetheless it was the report. The report is the report.

So you know, colleagues, I guess we've all learned a lesson. There are some growing pains with the office. I hadn't met Dr. Shapiro before coming to this committee. You in fact, colleagues, validated Dr. Shapiro's appointment. The last time I looked, members of the New Democratic Party validated his appointment, members of the Bloc validated his appointed, members of the Conservative Party validated his appointment, and members of the Liberal Party validated his appointment.

So all members of Parliament, a little over a year ago, decided on this process. The commissioner comes out with two reports. All of a sudden the opposition doesn't like certain parts of the report and now they want to politicize that. If you want to politicize it, colleagues, choose another forum, but don't choose the Ethics Commissioner's office. I believe that's inappropriate. I believe it's counterproductive to establishing or renewing confidence in members of Parliament. It's not about the government. It's not about the opposition. It's about all of us, and it's about this place. I frankly have a very deep concern about embarking on this process. I believe it's wrong-headed, and I've said so many times, and I will continue to say so today.

Mr. Lukiwski, you talked about standards. You said it was below standard. What standard are you talking about? You didn't like the standard of Mr. Wilson. Mr. Wilson was not an ethics commissioner; he was an ethics counsellor.

So I guess, colleagues, I will conclude by saying that I have great respect for all parliamentarians and their views. I frankly have a very deep concern about establishing performance criteria when you're dealing with ethics, because as Mitchell Sharp once said before our committee, how do you legislate integrity? It's a very difficult thing. We're all honourable members in this place, and one of the concerns I have is that we're trying to retry facts; we're trying to retry a report when no trial ever occurred.

● (0955)

I would, Mr. Chairman, respectfully say that we have to be very prudent and not turn this parliamentary process into a star chamber or a kangaroo court, because I believe very deeply in the process of an Ethics Commissioner, and if we, as members of Parliament, need to do more to improve the quality of the office by giving him or her the tools to do the job, then so be it. If we want to establish changes or criteria that this committee wants to create in terms of timeliness, then I would be open to listening to those kinds of arguments. But to retry the case of the two most recent decisions I find, frankly, wrong-headed.

Those are my comments, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Zed.

Monsieur Laframboise.

[*Translation*]

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

We are speaking today to a very important motion calling for the censure of a commissioner.

Although I have been one of the more vocal opponents of Mr. Shapiro's actions, his intelligence must nevertheless be acknowledged. One does not head up McGill, one of the most prestigious universities in North America, unless one is intelligent. Mr. Shapiro cannot be faulted for any lack of judgment or ability.

What Mr. Shapiro lacked, and probably continues to lack, is political experience. All of the comments that I have made — you called me to order, Mr. Chairman, when I said he was afraid to be afraid — were due to his lack of political experience. He felt safer seeking legal opinions and that delayed the process. However, in judging his work, one must also take into consideration the tools available to him.

If Mr. Shapiro were replaced today — aside from appointing a judge who could no doubt live with all of the political scandals — would his successor be better equipped to handle the job than Mr. Shapiro was? The tools available to him were his administrative organization and the laws he was responsible for applying.

As far as his administrative organization is concerned, it's the job of our committee to find out from Mr. Shapiro how his office operates. At the outset, we heard that he did not have all of the investigators he needed to do the job. He told us that investigators needed to be hired and trained. Therefore, we knew in advance that he needed to choose a law firm. He made a mistake, and he admitted as much. He chose a law firm with ties to the Liberal Party to conduct the investigation. Colleagues were quick to point this out to him. However, the report drawn up by this law firm was never attacked. Even though he chose a law firm with links to the Liberals, the firm appears to have produced a comprehensive report. An analysis was done and witnesses were questioned. No one, and that includes colleagues around this table, called the report into question, to my knowledge. No one claimed that it was poorly drafted, or that it was blatantly partisan. A report was produced by a firm chosen by Mr. Shapiro. Mr. Shapiro has advised us that he will never again use a firm associated with the Liberal Party. Most likely he will hire some investigators.

This brings me back to my first question: would someone else have done things differently? I can't answer that question. I can't answer with a definitive yes, because anyone else would have had to choose a law firm, for lack of enough investigators on staff. I agree with some of my colleagues that it's difficult for a law firm in this area to do business without having ties of some kind to the party in power.

My second point concerns the tools available to him. In the matter of Ms. Sgro, we need to remember that two requests were made. First, Ms. Sgro requested advice from the Commissioner on November 15, 2004. Subsequently, the Member for Calgary—Nose Hill requested an inquiry on November 22 and on December 14. There was the initial request for advice and the Commissioner was required by law to respond to the minister. I believe a mistake was made and Mr. Shapiro admitted as much the last time we spoke to him. An agreement had been reached with Ms. Sgro to deal with the request in the report. As you will recall, it is noted in the report that Ms. Sgro later asked for independent advice, as she was entitled under the act to do, and asked that this advice not be included in the report.

Advice was therefore given. Pursuant to the act, when the Commissioner gives advice to a minister who requests it, the minister can choose to disclose that advice to the public. The Commissioner cannot choose to do so. However, the minister can and that is in fact what she chose to do.

The Commissioner admitted that he may perhaps have erred, but what powers does the commissioner have when he receives a request from a minister in advance of receiving a complaint by a member, pursuant to the act? What is the Commissioner supposed to do? Must he deal with this request and the advice in a single report to be published, or must he nevertheless give advice? He has told us that he might decide to act differently next time.

• (1000)

Would the act allow him to do that? If so, wouldn't the minister then seek legal advice in order to request from the Commissioner advice prior to his presenting his report? There is a legal void here and this issue will one day need to be clarified. The Commissioner has said that if this happens again, he might act differently.

That brings me back to my original question: had someone else been serving as Commissioner, would that person have acted any differently? Again, I'm not absolutely certain about that, Mr. Chairman.

I'd now like to broach the Tim Murphy question, my third and final point. I realize that Mr. Broadbent has more experience than me, but I've read and re-read the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the *Conflict of Interest Code for Members of Parliament*, but these codes pertain solely to private interests. I'm sorry, but these codes would need to be amended in order to extend to political interests, because all of the terms they contain — terms such as “private interests”, “public interest”, “gifts”, “customary hospitality”, “preferential treatment”, “insider information”, and “government property”, — pertain to our property. Pursuant to both of these codes, ministers and members are required to submit an annual report listing their property and to indicate whether they have received any gifts. There is no mention of political conflicts of interests. The only time this subject is mentioned is in the act granting certain powers to the Ethics Commissioner. The Act cannot be any clearer on this point:

72.08 (1) A member of the Senate or House of Commons who has reasonable grounds to believe that a minister of the Crown, a minister of state or a parliamentary secretary has not observed the ethical principles, rules or obligations established by the Prime Minister for public holders office may, in writing, request that the Ethics Commissioner examine the matter.

This provision targets ministers, ministers of state and parliamentary secretaries, but not public servants.

Mr. Shapiro clearly stated to us that when investigating the Minister of Health, Mr. Dosanjh, he would automatically be looking into the work of Tim Murphy and of the Prime Minister, but that as Members, we would not be able to make a complaint, either against the Prime Minister or any public servants.

Should the legislation be amended? I believe it should. However, the Ethics Commissioner is telling us that he didn't feel qualified to investigate a matter directly after receiving a complaint from a member, because the act does not authorize him to take such action. This is a complex situation. Furthermore, if a new commissioner were appointed tomorrow, that person would be grappling with the same act. If we are serious about wanting to clean house, then obviously, some legislative changes are in order.

As for Mr. Shapiro's lack of political experience, let me simply say that this job is a learning process and that he is quite capable of growing into the position. Besides, maybe one of the biggest mistakes he made was admitting openly and candidly that he had in fact made some mistakes.

Earlier, my Conservative colleague noted that the Commissioner had not analysed the situation, or sought legal opinions from the House's legal experts, and that he was unaware that he could do so. It's possible that no one informed him that he could seek this advice or that no one in government briefed him about going to the House's legal experts if he wanted a legal opinion. Instead, he turned to an outside legal firm for advice.

I believe Mr. Shapiro is smart enough to know to react differently if a similar situation ever arises again.

Can his errors be chalked up to a lack of political experience? I think they can. Is this sufficient justification for us to decide today to censure, challenge or replace him? We feel that until such time as the legislation is amended, Mr. Shapiro has our trust. And while we have been critical of his actions and we hope that he won't make the same mistakes again, we trust that he is an intelligent individual and therefore, we will not support Mr. Broadbent's motion.

• (1005)

[English]

**The Acting Chair (Mr. David Tilson):** Ms. Jennings, and then Mr. Lee.

[Translation]

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

I do not think that Mr. Broadbent has given us sufficient reasons for supporting his motion. I believe Mr. Shapiro, the Ethics Commissioner, is a person of integrity and experience. If there are weaknesses in the system, then parliamentarians and the House of Commons have a responsibility to address them. Any comments made by committee members, including myself, about the process undertaken to investigate the two complaints over the conduct of the Honourable Judy Sgro should be taken as constructive criticism.

This experience has demonstrated to us that the legislative framework in this case isn't perfect, that there is room for improvement and that we should learn from this and give some serious thought to putting forward some amendments to the act.

Therefore, I cannot support Mr. Broadbent's motion. In fact, I find it regrettable that he moved it at all.

●(1010)

[English]

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Lee.

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

My comments may not be so brief, but I'll—and thank you, Ms. Jennings, for that intervention.

I tend to agree with Mr. Laframboise about perspective on this. I really regret that we're doing this. I think it's most inappropriate, given the new office of Ethics Commissioner. If colleagues will think back, it must have taken us 10 years to get to where we adopted legislation and put the office into being. I note, having worked through all of those years, we found there were many obstacles in settling on the law and the extent of it, the jurisdiction, and the mandate.

Mr. Lukiwski spoke for the Conservative Party, so I'm very disappointed that the Conservative Party would take the position it has on this. It appears to coincide with Mr. Broadbent's position, that of the NDP.

We worked so hard and over such a long period of time to refine this new instrument, and we finally put it in place. We found a person who we believed would suit the task. All parties in the House of Commons approved the individual. I personally was quite happy with Dr. Shapiro's credentials. I often wondered who would want to take a job like this anyway. In any event, he was good enough to do it.

No sooner did he take office than he had to deal with the first filings of over 300 MPs, and that was a huge logistical and technical exercise. At the same time, as I understand, on a personal note, his spouse passed away. Then we had the first one or two complaints filed.

As he embarked on all of those exercises, he found there were kinks and uncertain areas in the legislation. For this, if there are problems with the legislation, we can only blame ourselves. He went through the exercise, and I thought he did it fairly well. It's not as if none of us has any questions about it. It's not as though there aren't some problems with the legislation. But he went through all of that and made his judgment.

Having made his judgment, it seems that some members around this committee table want to take the guy out and shoot him because they don't agree with the result, or because of the way he went about it. Yet Parliament, the House—not this committee, but Parliament itself—trusted this man with the powers and the procedures. He went about this and did it the best way he could, under all the circumstances.

I think it's really sad that our House would retain somebody, actually vote on his appointment, and then allow that to be subsumed into what I regard as an at least partly partisan exercise that would say, we didn't like what you did; we'd like to fire you. That's like shooting the messenger. I think it's a very sad day for Parliament.

Not only that, but it's the procedure we're using. I respect our need to be able to speak freely here and to make motions and to do what we have to do. But I was particularly struck by Mr. Lukiwski's recitation of facts that I know, that we know, to be hearsay. We know they're based on hearsay because Dr. Shapiro himself and one of his officials actually gave evidence here last week that told us exactly what the facts were, and there were in fact no exemptions given—no exemptions. One was a rumour in the newspaper. And yet Mr. Lukiwski here today has recited those two things as fact, as a basis for his party's view that we should report back to the House that we have a lack of confidence in Dr. Shapiro. The lawyer in me can barely contain himself to see that degree of unfair process.

●(1015)

At the very least, if the committee had issues with the process Dr. Shapiro followed, we should have outlined them in a letter, sent him the letter, and invited him to come and talk to us about those issues, instead of having him come here and answer a few questions about the process, and then bushwhacking him a few days later. I think we'd be lucky to find someone in Canada now who'd want to take on a job like this. I'm hopeful Dr. Shapiro will simply tell the Conservatives and the NDP to buzz off. He works for the House, not for the New Democratic Party and not for the Conservative Party, and he's going to finish his mandate because he thinks he's done a good job. I think he's done a good job.

Now, let me add a couple of other perspectives on this. I am sick and tired of hearing MPs talk about conflict of interest as if they understood it fully, when they really don't know what it's all about. The fact is that the existence of a conflict of interest is a no-fault scenario unless the MP or the office-holder has manufactured it for a particular self-interest. We all find ourselves in conflicts of interest all the time. Mr. Chairman, I'll just give you a scenario.

Each of us runs in an election. Let's say there's a person out there who would love to be hired on our staff, and that person comes to work for our election campaign with that explicit intention. Now, maybe I don't know it. Maybe, if I'm an existing MP, I have staff somewhere around, they know it, my campaign committee knows it. I don't know this person's looking for a job. But that's the person's intention, and they're working on my campaign. By that very fact, I have a conflict. I, as an MP, am taking advantage of the work and contribution of that person for my purposes in achieving the holding of public office at the same time as that person wants to work on my staff, and that creates a conflict.

Now, that's a relatively basic scenario, and it's really a no-fault scenario, but there is a conflict there, especially if I come to know about it. Do I tell the person that he or she can't work on my campaign anymore? I don't think so. That's the kind of thing Ms. Sgro found herself in when someone who wanted to benefit volunteered for her campaign. She didn't even know the person was working on her campaign. Her staff knew, but she didn't know. So there's a conflict scenario, and the commissioner has reported on it. I won't say more than that.

I want to draw another analogy here. In the House of Commons we vote for and select a Speaker. We ask the Speaker to be non-partisan, religiously non-partisan, and we have adopted a rule that says we will not comment on rulings of the Speaker. We don't do it. We can't do it. It's against the rules of the House to comment on the rulings of the Speaker.

In this case dealing with the Ethics Commissioner, we've hired an Ethics Commissioner, and we've asked that person to make decisions that I would characterize as just about 100% judicial. Technically, they're quasi-judicial—I'd say it was about 99% judicial—and we've asked that person to make decisions in a non-partisan way. I'm thinking the statute that created the office says we're not allowed to debate it and discuss it while he's doing his investigation and his inquiry, but something—

• (1020)

**The Acting Chair (Mr. David Tilson):** The MPs' code of ethics refers to that.

**Mr. Derek Lee:** Does it, Mr. Chairman?

**The Acting Chair (Mr. David Tilson):** I just want to point out to you you're referring to the code of ethics. I assume that's what you're referring to, and I—

**Mr. Derek Lee:** Yes. For the record, could you read it?

**The Acting Chair (Mr. David Tilson):** Yes.

I've tried to follow what I consider to be a very difficult ruling on this, dealing with the merits of the case as opposed to process. This is in the MPs' code of ethics:

Once a request for an inquiry has been made to the Ethics Commissioner, Members should respect the process established by this Code and permit it to take place without commenting further on the matter.

I don't know whether you were directing comments to me or not, but that's why I was trying to distinguish between process and the merits of the case.

**Mr. Derek Lee:** Thank you, Mr. Chairman. I wasn't referring to any of your rulings on this. I think you've handled it fairly well. But to refer to Mr. Shapiro's words, there are some shades of grey here.

At any rate, the concept of MPs not commenting on the work of the Ethics Commissioner, the cases he's required to deal with, or the individuals he's required to deal with is a good one, because we shouldn't be. We should allow him to do his work and make his decisions, not second-guess them, not turn this into a court of appeal, to repeat the phrase I used last week.

There's no point in having an Ethics Commissioner to deal with this stuff if, after he or she has made his or her report, we're going to

drag the stuff back into a committee and rehash it all again—and in this case suggest that the guy should be fired. This is awful.

You know, I wish I could prevail upon Mr. Broadbent to withdraw his motion. It's really a sad thing. Mr. Broadbent's been around public life for a long time, and I know he feels strongly about this stuff. I haven't regarded his work as being excessively partisan, but I can't for the life of me figure out why we around this table wouldn't see this in context, and see that the whole House in the process needs these kinds of protections and this kind of understanding of the work of the Ethics Commissioner.

If we're going to consign these difficult issues to an Ethics Commissioner, then I think he or she ought to have a very wide berth. At the end of the day, if we don't like the style or the process of decision-making that is brought to the office by the individual, then we won't reappoint; we'll look for something new the next time. But for heaven's sake, we just have to avoid this business of turning this particular committee into a kangaroo court every time the Ethics Commissioner makes a decision not liked by one or more of us, or by one or more parties.

Here we are today, talking about people—individuals and citizens, not MPs, not ministers, not public office-holders—who did nothing wrong; nothing wrong. Similar to the volunteer on the campaign that I referred to hypothetically earlier, nothing wrong; the person shows up in a political campaign. And yet we are talking about them here, having pulled their name off one of the pages of the report, and denigrating them, implicating them in some seamy side of politics. I actually didn't see any seamy side of politics, but the opposition clearly does here.

Mr. Chairman, just outside the House a couple of days ago, I heard one of the persons in leadership in the Conservative Party say that the Liberals would do a deal with any band of crooks they could find. That was essentially saying that all of the political parties in the House of Commons were crooks except for one party. Only one party wasn't a bunch of crooks, and that was the party of the speaker, the Conservative Party. Well, what do you know? We have found virtue here.

Clearly I'm not supporting the motion, but I'm perhaps inviting colleagues to look at this general issue later. We're not going to have a process that works in ethics counselling. We're not even going to have a person in the office. He or she is simply not going to take that kind of abuse. The next thing you know, we're going to have a lawsuit in which a citizen will try to protect himself or herself from what happens in here.

• (1025)

Now, I know we don't allow the courts to interfere in what we do; we have Constitution-based free speech in here. That is a reason we ought to be more vigilant about how we use that free speech, because the citizens can't get in here to protect themselves. When we start using other people's names out of these reports around here, let's be careful how we do that.

Some of these people are just witnesses, and none of these people who have been mentioned here did anything wrong, not based on the Ten Commandments, not based on the charter, not based on the Criminal Code, not even based on the code of conduct. They're just citizens, and they've become implicated in what the opposition parties are saying is this not very good-looking conflict of interest scenario.

Well, let's get a grip on it. Let's lower the temperature here. I'm not going to support this motion. I wish Mr. Broadbent would withdraw it.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Lee.

Mr. Broadbent.

**Hon. Ed Broadbent:** Thank you, Mr. Chair.

*[Inaudible—Editor]*...I have no intention of withdrawing it.

I'd like to take into account what my Liberal colleagues, in particular, have raised. I notice they didn't deal with a single substantive point that I made—I say in passing—of the six. Let me take up points they made one by one.

One of my colleagues said that what we have is a commissioner, not an ethics counsellor. The facts are the opposite: he does both. I refer the honourable member who raised that to the commissioner's mandate in sections 72.07 and 72.08 of the commissioner's mandate, which is to counsel, which is to give advice; so he's doing both.

On the question of conflict of interest, one of my colleagues wondered what was done wrong by the people who were discussed. I have tried to emphasize that at least in my view it was not brought out fairly, certainly not by Mr. Shapiro in his report, that Ms. Sgro knew she was in a conflict of interest.

I must say I listened to Mr. Lee's example of a conflict of interest, and I have rarely heard anything so bizarre in my life. The person who was working for you wasn't in a conflict of interest at all, I don't think. But what's of conflict of interest is this. If you're a minister of the Crown and are signing TRBs for relatives of campaign workers, and you know they are, that's a conflict of interest. You're rewarding somebody, directly and indirectly, for working by signing TRBs. That's a conflict of interest. It's not very hard to see what a conflict of interest is.

The other point is—and I of course presented words like “kangaroo court” and so on.... I think that's ridiculous; I tried to avoid making a single partisan comment in what I had to say. You can agree or disagree with the judgments. It's not based, as two Liberal members have said, on certain opposition parties seeing something wrong with one decision. I totally agree with you that it would be quite irresponsible for any member, just because we don't like one decision, to get up and say the person making that decision should be fired—totally irresponsible. What you do is pass cumulative judgment. How would you ever make a recommendation to the House of Commons? He is accountable to this committee.

That's why, in my view—and you may disagree with it—I cited—

**The Acting Chair (Mr. David Tilson):** He's not on this committee.

**Hon. Ed Broadbent:** That's your judgment.

He made a series of bad decisions, and I think it is our responsibility to take these into account in making our judgment about performance. I think it's appropriate for us to do that. It's not, I repeat, one or two; it's a whole series of bad decisions that led me to reach the conclusion I did.

Choosing the law firm was again an issue raised by my honourable colleague. I've said many times that I'm not a lawyer; I have many other faults. He is a lawyer, and he claims you can't find an impartial law firm: they all have members of all parties. As a matter of fact, they don't all have members of all parties. I happen to know that. Many of them do have, for their own reasons, representatives of all parties, and then some of them are known to be heavily involved in one political party. Mr. Shapiro himself acknowledged in this particular decision before this committee that he probably made the wrong decision in picking out that firm, for that reason. So it's not opposition parties making opposition points because they're in opposition; it's Mr. Shapiro himself who acknowledged that.

About the Speaker's ruling, Mr. Chairman, the Speaker's ruling pertained to talking about the Grewal and Dosanjh case only. He not only had those names; he subsequently, in other rulings in the House, allowed questions about Mr. Murphy and about the Prime Minister. He didn't shut those things down at all. His ruling in the House, I repeat, was about Grewal and Dosanjh. So we certainly can be raising questions about other people, as I restricted my comments in particular to Mr. Martin and to Mr. Murphy.

Finally, on the accusation that we want to politicize the process and make it partisan, I'll make what you will probably see as a partisan comment, and I normally try to avoid them at all times.

• (1030)

It seems to me that there is a characteristic virtue—the last word is ironic—of the Liberal Party. Whenever anyone makes a criticism, it's described as a partisan criticism, or a drive-by shooting, or star chamber procedure. Why the pejorative language? Can't one raise, for critical debate, points that should be taken seriously in their own right, without having pejorative language attached to these things? Is all criticism, by definition, partisan criticism? And if that's alleged, I'd like to know, in terms of my six points, which were partisan.

Thank you.

**The Acting Chair (Mr. David Tilson):** Well, I have a list. Mr. Powers is first.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** My motion was that the question now be put.

**The Acting Chair (Mr. David Tilson):** There do not appear to be any other speakers, Mr. Powers, so let's have a vote.

(Motion negated)

**The Acting Chair (Mr. David Tilson):** Now, ladies and gentlemen, we have two other items on the agenda. Before I get into trouble, as I did last week, do we wish to discuss these matters in open session or in camera?

**Mr. Derek Lee:** If it's future business, we normally go in camera.

**The Acting Chair (Mr. David Tilson):** I went through this last week and was reprimanded. That's what I thought, but I'm not going to do that again.

I'm assuming, through silence, that we're to proceed to in camera proceedings.

**Mr. Derek Lee:** I move that we go in camera to discuss future business, as we normally do.

**The Acting Chair (Mr. David Tilson):** We will suspend the proceedings for a couple of minutes so that the room can be cleared of all those except those who are on the committee.

Thank you.

*[Proceedings continue in camera]*

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