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Chair

Mr. David Chatters

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Thursday, November 24, 2005

• (1110)

[English]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I 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 (2) and the motion adopted by the committee on Thursday, November 17, a study on the report of the Office of the Ethics Commissioner entitled *Issues and Challenges 2005*. As our guests from the Office of the Ethics Commissioner, we have deputy ethics commissioner, Robert Benson, and director of strategy and policy, Stephen Tsang.

I believe, committee members, that you have a copy of the document we're looking at before you. If not, the clerk will get you one.

Mr. Benson, do you have a few remarks to make to the committee?

Mr. Robert Benson (Deputy Ethics Commissioner, Office of the Ethics Commissioner): Yes, I do. I have a short opening statement.

Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to discuss and to receive from you input on recommendations and policy approaches contained in the Ethics Commissioner's paper entitled *Issues and Challenges 2005*, which Dr. Shapiro tabled before this committee on November 3.

With me today, as indicated already, is Stephen Tsang. He's a director of strategy and planning in our office.

I have a brief opening statement, following which Mr. Tsang and I will be glad to answer questions in relation to the paper and to engage in a discussion with you.

As the title suggests, the paper deals with the issues and challenges faced by the office in the first year of its operations under the new conflict of interest regime created by Bill C-4 in March 2004. In his annual report and at previous appearances before this committee, the Ethics Commissioner outlined the challenges that were being addressed by the new office in its initial creation in getting up and running.

I'm here today to address the issues set out in the paper and to answer your questions on the recommendations and policy approaches it contains.

As you know, the commissioner administers the Prime Minister's conflict of interest code and the post-employment code for public office holders, as well as the conflict of interest code for members of the House of Commons. Your input as members of the House of Commons will be crucial, given the dual aspect of the Ethics Commissioner's mandate under the new regime.

In drafting his recommendations and policy approaches related to his activities under the Prime Minister's code, the commissioner consulted with the Privy Council Office and received its input. We now have the opportunity to receive your input to the commissioner's recommendations and policy approaches.

Let me emphasize that this paper is not a report of the Ethics Commissioner. Our recommendations are based on the commissioner's experience after one year in office. They serve, as he has acknowledged, as a starting point of *Issues and Challenges 2005*, which is intended to promote discussions among various stakeholders with the aim of improving the current conflict of interest regime approved by Parliament in 2004. Dr. Shapiro was clear on this point when he wrote in the foreword that the purpose of the paper is to "foster and sustain a dialogue on ways to improve the federal ethics regime in Canada".

The six recommendations and five policy approaches contained in this paper have one unifying theme: improving the efficiency and effectiveness of the administration of both conflict of interest codes in the Ethics Commissioner's mandate.

In his opening remarks in the foreword to the paper, the commissioner states, "This paper assumes that the basic premises of the current federal ethics regime are appropriate." Let me emphasize that while Parliament has granted the Ethics Commissioner the authority to administer the codes, Parliament retains the exclusive authority to determine the shape and scope of the ethics regime.

Mr. Tsang and I are now ready to answer or respond to your questions and engage in a dialogue in relation to the *Issues and Challenges 2005* paper.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Benson, for your opening remarks.

Since you have been here, the rules have changed slightly. The first round of questions and comments is now eight minutes and the second round is now five minutes. That's not a great deal of difference, but if you're timing it, you'll know why.

Mr. Lukiwski is next.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair, and thank you, Mr. Benson and Mr. Tsang, for being here.

I understand Commissioner Shapiro's health is not good. Could you speak on his behalf? If requested, will he be appearing before this committee at any time in the future? What is his status?

Mr. Robert Benson: Dr. Shapiro is undergoing radiation treatment. That's already commenced. That will continue until December 25 or 27. At this point in time he's coming to the office one day a week, just for a management meeting. He had indicated at a previous committee—I'm not sure whether it was this committee or the Standing Committee on Procedure and House Affairs—that he would not be available for that two-month period to appear before committee.

As the radiation treatments progress, we do notice in his attendance at the office, as he has indicated, a little more tiredness that seems to come upon an individual, but he hasn't lost his spirit, and they say the prognosis, as he indicated before, is good for this treatment. It is a difficult time.

Mr. Tom Lukiwski: Thank you for that.

The Acting Chair (Mr. David Tilson): Mr. Lukiwski, let me say this.

On behalf of the committee, you could inform him that we wish him well and hope his treatments are successful.

Mr. Robert Benson: It's most appreciated, and we will certainly inform him.

Mr. Tom Lukiwski: Thank you, Mr. Chair. You took the words right out of my mouth.

I want to speak to the first recommendation that is contained in Dr. Shapiro's report, where it says:

It is recommended to the Prime Minister that the Code for Public Office Holders be amended to include a provision requiring all public office holders to refrain from public comment on an examination or inquiry under either the Code for Public Office Holders or the Members' Code while that examination or inquiry is in progress.

We had a situation. I wish Dr. Shapiro was here to personally speak to this, but I will ask you, sir, for your comments on this.

It seems somewhat ironic that while this is a recommendation, I believe Dr. Shapiro has been found in contempt for speaking out publicly on behalf of an inquiry. How difficult do you think this would be to administer if the commissioner himself has been in violation of this recommendation?

Mr. Robert Benson: I can respond in this way. When the *Issues and Challenges 2005* report was put together, the proceedings you referred to hadn't reached fruition. The issue that was brought up gets its genesis from the conflict of interest code for members of the House of Commons. Under subsection 27(5) of that code, when an inquiry has been initiated, the standing orders of the code require that members refrain from commenting.

When the *Issues and Challenges 2005* paper was being put together, at that point in time it was considered that the issue that had been brought up within the code for the members of Parliament was a good initiative, within the context of parliamentary frameworks for

maintaining a non-partisan commentary once an inquiry in fact exists. We were trying to establish a parallel or recommending that a parallel be done in relation to the Prime Minister's code, because there is no requirement for non-communication or refraining from comment.

• (1115)

Mr. Tom Lukiwski: I understand.

I'm not trying to embarrass you or put you in a difficult situation, but again, while I understand what you were trying to accomplish, surely the commissioner understood this prior to making comments on the inquiry of which I made mention, the Deepak Obhrai inquiry. He surely would have known that it was conduct unbecoming at the very least.

While everyone understands this is certainly a solid and very good recommendation, or at least I do, why in the world would the commissioner violate his own recommendation? Doesn't that speak to a lack of confidence within your office?

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chairman, I have a point of order.

The Acting Chair (Mr. David Tilson): Yes, on a point of order, Mr. Lee.

Mr. Derek Lee: I don't have any problem with the question, but there may be a problem with the answer, in the sense that we may not be asking the question to the right person. I don't know whether Mr. Benson or Mr. Tsang are in a position to really provide any kind of a meaningful reply with respect to the actions of the Ethics Commissioner.

Mr. Lukiwski makes a point in asking the question. But I'm rather inclined to suggest that on a point of order, as chair, you might want to suggest relieving the witness of the need to actually answer the question in any kind of detail, and leave it for when Mr. Shapiro is better able to deal with it.

Mr. Tom Lukiwski: I can appreciate that. In fact, I appreciate Mr. Lee's comments.

As I mentioned in my opening remarks, I wish Mr. Shapiro was here. I was putting you in a bit of an unfair situation, but again, as a member of the office, I'm only wondering....

[*Translation*]

Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ): Point of order, Mr. Chairman. When you invited—

[*English*]

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

Have you finished?

Mr. Tom Lukiwski: No. I didn't know if he was on a point of order or not.

The Acting Chair (Mr. David Tilson): You've got to wait for him to finish. We're still talking on a point of order by Mr. Lee.

Mr. Odina Desrochers: I have another point of order.

The Acting Chair (Mr. David Tilson): You can do it, but Mr. Lukiwski is responding, and he's entitled to do that. You'll have to wait, Mr. Desrochers.

Mr. Tom Lukiwski: To summarize, I appreciate Mr. Lee's point, and I agree.

I don't want to put Mr. Benson in an unfair position, but speaking as a member of the office, does he have any comment on it? Does he feel this might erode some confidence in his office?

I agree that the direct question should be made to Mr. Shapiro. But again, as a member of the office, does he feel this would be detrimental to his office?

The Acting Chair (Mr. David Tilson): We're in the middle of a point of order. Are you speaking on the same point of order or another point of order? Another point of order?

Mr. Odina Desrochers: Yes.

The Acting Chair (Mr. David Tilson): If that's the end of the discussion, I think we should leave our guests out of this debate until we make a ruling.

My position is, looking at this report that is being reviewed by Mr. Benson and Mr. Tsang, it looks like it's almost written for both committees, so I think the questions are in order. I know there are rules that say they have to answer questions, but these are personal questions, and if they feel it would be more appropriate for Dr. Shapiro to answer them personally, they can say that. But I'm going to allow the questions, and Mr. Benson and Mr. Tsang are free to make those comments.

On another point of order, Mr. Desrochers.

[*Translation*]

Mr. Odina Desrochers: You read my thoughts, Mr. Chairman. You invited the ethics commissioner because you wanted him to respond to questions regarding the report he tabled. I consider Mr. Benson to be the commissioner's representative here today, and therefore able to answer all questions.

[*English*]

The Acting Chair (Mr. David Tilson): Mr. Lukiwski, I don't know where we are on the clock.

• (1120)

Mr. Tom Lukiwski: Neither do I.

The Clerk of the Committee (Mr. Michael MacPherson): I had stopped it.

The Acting Chair (Mr. David Tilson): He stopped it. What a clerk.

You can continue, Mr. Lukiwski.

Mr. Tom Lukiwski: I'm at four minutes, or we have four minutes left?

The Clerk: You have 3 minutes, 30 seconds.

Mr. Tom Lukiwski: I was wondering if, in your opinion, the confidence that public office holders and members of Parliament would have in your office has been undermined because of the actions of Dr. Shapiro. Would you care to respond?

Mr. Robert Benson: What I can comment on is not my opinion. What I can relay to this committee, because I was with Dr. Shapiro at each of the hearings at the Standing Committee on Procedure and House Affairs, is that Dr. Shapiro, in relation to that question of

privilege, did indicate as the matter was being considered that he didn't feel at that time the comments were inappropriate. He felt that they were neutral in fashion, the comments that were being attributed to him in the media.

That has not been so found by the committee. Dr. Shapiro respects the finding of the committee; there is no issue with that. He has indicated, when questioned by some members of the Standing Committee on Procedure and House Affairs as to whether he would consider doing that in the future, that he would not.

So the issue in relation to those comments has been dealt with before the committee. He has indicated the position that he felt he was in, and this has not been so found by that committee. Dr. Shapiro has no difficulty with the findings of the committee. He indicated that he wouldn't in the future make any comments in relation to any case.

Mr. Tom Lukiwski: I'll just make one comment. I'm not asking for your response on this, because it certainly is something that we should be, and I should be, talking to Dr. Shapiro about directly.

I think if Dr. Shapiro did not view his comments as being in direct contravention of this recommendation, then I think I have some questions about his judgment—I have questioned his judgment before—but this is something we can deal with at a future time.

Mr. Robert Benson: If I may, though, in the formulation of the challenges and issues paper, the recommendations were put in place at a time before the finding of the Standing Committee on Procedure and House Affairs. So the intent at the time of the formulation of the policy was I think a legitimate formulation of policy. Subsequent to that finding, though, it does bring into question, but not prior to, because the—

Mr. Tom Lukiwski: Since you responded, I want to again reinforce what I was saying.

You have a recommendation here that Dr. Shapiro was obviously aware of—it was going into the crafting of this report—saying that no public office holder, or member of Parliament or whatever, should comment on an inquiry or examination that is current. He knew that was going to be in here, yet he made comment on an inquiry anyway. Regardless of the timing of the committee's final decision, to me it speaks to an egregious lack of judgment on the part of Dr. Shapiro. I'm wondering how we can have confidence in Dr. Shapiro's judgment on other matters if something so basic doesn't seem to be, in Dr. Shapiro's opinion, a problem.

Mr. Robert Benson: But what you're getting at here...again, I can just work from what Dr. Shapiro has said about the timing of the recommendations. Before the other committee he did express, if you will, the knowledge or intent in his mind when the comments were made that they were neutral in fashion. As I said, it has been the finding of the committee that it wasn't. In his mind, if you will, the intent was consistent with the recommendations, but that again has not been the finding of the committee.

Mr. Tom Lukiwski: Well, we're not talking about neutrality here—

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

Monsieur Laframboise.

[Translation]

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

In the same vein, I've read the comments and begun reading *Issues and Challenges 2005*, and I somewhat agree with my colleague from the Conservative Party. It probably happened at the same time, but I want to make sure it is quite clear that all public office holders—including members of Parliament and ministers—refrain from public comments. Do you not think the same rule should apply to the commissioner? What is your opinion based on your experience, because you do work for the Office of the Ethics Commissioner.

• (1125)

[English]

Mr. Robert Benson: Well, it's the Prime Minister's code we're talking about here as well as the code for members of Parliament. There is an issue we may have to resolve with the law clerk as to whether the code's provisions apply to the Ethics Commissioner, like the public office holder code for.... In the Prime Minister's code there's a specific exclusion in there that it doesn't apply to officers of Parliament, so there's a question of the application of it. I don't think there's any difficulty after, say, having gone through the proceedings in the other committee of Parliament...that there won't be any comment made on any examination or inquiry that's conducted while there is one in existence.

As to the issue of whether or not it should be included, again, it's for the discussion paper or issues paper. If you wish to have recommendations, we leave that to you as members of Parliament.

[Translation]

Mr. Mario Laframboise: I get the impression we should go even further than that. Statements should probably be made, because journalists and the public want to know. We may have to come to some agreement. I'm trying to work with you here. I'd like us to have a pleasant conversation, but something should be made clear from the outset, including timelines. Can we agree on that, that we know ahead of time there will be an investigation with a given timeline which is to be determined?

We should state some things from the outset because it is such a complex issue we wouldn't want any missteps. Am I mistaken? Information is key. Everyone wants to know. We would also like to know. You're saying we shouldn't get involved and ask questions, but some basic information should be disclosed. Do you think this is something that could be done, or is it impossible to know?

[English]

Mr. Robert Benson: Anything is possible in relation to whether there should be comments or not, but it almost gets back to both regimes within which we work. We deal with extremely confidential information, and then the ability to communicate any of that confidential information at any point in time is controlled by the codes or by the initiation of an inquiry under the MP code or through an examination under the public office holder code. The comments should be controlled within the current regimes that are there, which say it's a confidence unless there's a provision in there whereby it can be disclosed through either a public disclosure or an examination process.

Something that was raised previously—if I can get more into the comments you made—was that the existence of an inquiry or an examination is something that should be able to be communicated. If it sits down there, it becomes an intense media issue, and then there are referrals or there's communication with the office of the other commissioner on whether or not something has been initiated. That was something we were commenting on before with respect to what we should be permitted to do, to just acknowledge. You don't get into any details; it's just a matter of yes, you concur, or indicate that one has commenced.

The issue of going further and whether we get into time limits or not was something that had been raised in a previous appearance before this committee. We have been working jointly with the law clerk in relation to that recommendation, and they are dealing with specific options that may be appropriate there for imposing time limits, or in ways to deal with that in a report that they propose to come back to this committee.

But at this point in time it's just been a matter of concurrence on the existence of one and not any further details. Then, as I say, the issue of whether it would go further as to time limits or anything else is an issue that's being worked on by the law clerk, who'll come back before this committee with some recommendations or options.

[Translation]

Mr. Mario Laframboise: When you examine a file and then state that there are grounds for an investigation, I assume the media ask a lot of questions. But what actually happen? Do they follow the commissioner? Is there a lot of media attention or is it relatively reasonable?

• (1130)

[English]

Mr. Robert Benson: If I understood you, there has been a request for an inquiry under either code, so an inquiry does exist.

Yes, media do respond to or make requests of our office as to whether one has been in existence or not. Our communications and parliamentary relations officer handles that, and the only communication she passes on to the media has been whether or not one has been brought into existence, and that's it—there's nothing further.

They usually ask how long it is going to take, and then it gets into an issue of the instructions we give over there and that we'll get it resolved as soon as possible. Because again, as you had indicated before, when you get into the time limits, it depends on the number of allegations and the number of witnesses involved.

The office has a limited amount of experience in handling inquiries under both codes. One took a considerable period of time, because it involved a considerable number of allegations and the gathering of information for a number of witnesses. The other one that occurred under the code for the members of Parliament was for a short period of time, because there was only one allegation and the number of witnesses to interview was very small.

So it is dependent upon the number of allegations, where witnesses are located, and the number of allegations that are in there. So there are variables at play there.

[Translation]

Mr. Mario Laframboise: You know, but you cannot say so from the start. You have to begin the investigation before you know how long it will take. Is that correct?

[English]

Mr. Robert Benson: It's really difficult to pinpoint how long one particular inquiry or examination is going to take. Generally, if there is a large number of allegations with no connection at all, that makes it difficult, because then you have to follow different factual tracks in order, essentially, to establish if there is or is not a breach of the applicable code. If you have several allegations relating to the same fact situation, this will simplify the process.

There's no magic formula at the outset as to how long a particular event will take. Again, it's just a matter of the complexity, the number of witnesses, and the coherence of the allegations.

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

Ms. Jennings.

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

I've looked at all of the recommendations the Ethics Commissioner has put forward in his *Issues and Challenges 2005* report and there are some that I think are worthy of serious consideration, both on the part of this committee and, ultimately, on the part of the House of Commons.

I wasn't here at the very beginning, so I'm sure the chair will tell me if what I am about to say has already been ruled out of order and not a subject of discussion. But I have to say I am concerned with certain aspects of the commissioner's office and the commissioner himself in the process of actually handling complaints.

It may be a weakness in the conflict of interest code—the members' code itself—and on the other side, with the conflict of interest and post-employment code for public office holders.

I've actually dealt with codes of ethics in a previous life. What was really interesting is that the code of ethics was part of a piece of legislation, and in the legislation it actually laid out a very clear process by which an investigation, for instance, could or should be undertaken, with definite timelines.

My concern is that in the members' code there really aren't any timelines. For instance, it says that if a complaint is laid against a member of Parliament by another member of Parliament, the commissioner shall, within a reasonable time, inform the member whose conduct is the object of allegations in a complaint. But there is actually no timeline. So what is reasonable? Is it the day after? Is it 30 days after?

When one looks at codes of ethics and the process of investigation or handling of a complaint leading out of a code of ethics in other jurisdictions, whether it's in policing, whether it's in the legal profession, for instance, there usually are definite timelines. I'm wondering if the commissioner has actually considered that.

When I look at the recommendations, I don't see any recommendation that deals with actually putting into place timelines for notices to be sent out at different stages, etc. Is that something

that has in fact been considered and discarded, and if discarded, why? And if not considered, do you think it's worthy of consideration?

• (1135)

Mr. Robert Benson: It's definitely not something that's been considered and discarded. It's a matter that in undertaking the inquiries or examinations we've had so far—again, you've made the observation—there were no procedures in place for the office in either code. There are powers, subpoena powers and the power to administer an oath in relation to the Prime Minister's code, but under the code for members of Parliament, it's simply a matter of cooperation of the members.

You've gone through several models there. If we look at the policing model, if something is an issue in relation to an offence contrary to an act of Parliament or the Criminal Code, a police organization—whether provincial or federal—doesn't sit down with specific guidelines and time limits. It's a matter of how long the investigation will take.

As an example, Air India took years following factual information and trying to go through....

Hon. Marlene Jennings: The example you're using is not at all pertinent, because the example you're using is a criminal investigation. I'm saying there are actual jurisdictions. For instance, Quebec has a code of ethics for all police officers who fall under provincial jurisdiction. That includes municipal police officers, provincial officers, and special constables. They've also put in place a system of ethics. You have a commissioner of police ethics and deputy commissioners of police ethics.

The legislation actually says, for instance, that to bring a complaint, a person has to do so, say, within six months—it used to be two years—from the date of the incident or their knowledge of the incident that they believe is a violation of the code of ethics.

Once the commissioner receives the complaint, if it's admissible, i. e., one, it's alleging a violation of the code of ethics; two, it was filed within the deadline; and three, it concerns someone whose conduct is regulated by the code of ethics—the commissioner has thirty days in which to inform the officer that his conduct has been the subject of a complaint and to respond with a written acknowledgement of receipt to the complainant.

Every 60 or 90 days—they've changed the timeline since I was there—the commissioner then has to send out a notice to the interested parties as to where the process of handling the complaint is. For instance, if the commissioner decides to investigate, he has 30 days in which to inform the police officer and the complainant.

So there are definite timelines. It doesn't stipulate how long an investigation will take, but throughout the process there are notices that have to be sent out, and we're told what has to be in those notices to provide reasonable information to both the complainant and the police officers whose conduct was the subject of complaint.

I'm saying that we did not do that for the commissioner when we adopted a members' code and made the public office holders' code subject to the Ethics Commissioner. With the experience the commissioner has had, I'm asking if that is an oversight that should be corrected. Would that be something that would be helpful in bringing some order, clarity, and transparency to the application of the code?

Mr. Robert Benson: Absolutely. If I may just come back, you clarified something you had raised during your initial period of time—policing—so I went on. You clarified it for me that you're not on that avenue, so I have no difficulty with that. When it gets to professional discipline, yes, there are procedures on that in there.

For the information of this committee, we've been asked and we are undertaking to provide rules of procedure on that for the procedure and House affairs committee, and those will then be submitted to them. We'll then deal with, again, the whole issue of the timing of notice, the period when there can be preliminary investigation prior to giving that reasonable notice, and giving time limits on that. So we've been asked, and we've undertaken that we will respond to the procedure and House affairs committee with rules of procedure for conduct. It will then be within that context and the input of members of that committee to develop that.

● (1140)

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

The chair has one brief question, following along the line of Ms. Jennings' comments, which I think are excellent—

Hon. Marlene Jennings: Thank you, Chair. I've been practising.

The Acting Chair (Mr. David Tilson): The procedures committee deals with the members' code. This committee deals with the Prime Minister's code for office holders, plus estimates. Obviously, listening to all, we've now finished the first round, and it would appear that all members are concerned about the procedures for how investigations are conducted. I don't know whether that line of questioning will continue, but my question is—and who knows where we're going to go in the future—whether or not it would be useful if this committee approached, as one of its topics, the calling of witnesses.

There have been ethics commissioners all across the country who have been operating, with due respect, longer than your office has. There are experts out there. There are professionals out there who could make contributions. Would it be useful for this committee to hold hearings as to appropriate procedures on all of these things that we're talking about, and indeed then make recommendations to your office?

Mr. Robert Benson: I think that would be an excellent idea. In the work we're going to have to do, we'll have to do research somewhat like that in that context, but to now have it more formally...because again, it's the committee members here who will have to sit down in the final analysis. Yes, to obtain that type of research, that type of input, that type of information would be most beneficial.

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

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): Thank you, Mr. Chairman.

Mr. Benson, thank you for being here.

I want to begin by also reiterating that we wish the best for Dr. Shapiro. I'd like to also put on the public record that my dealings with your office have for the most part been amiable and understandable, I got questions answered, etc., so thank you for that.

One of the recommendations you have is that there be actual amendments to the regulations and/or the codes and/or the legislation that would prohibit members from commenting during the time of an investigation. Now, in view of some of the conversation that's gone on here, should we and would you recommend that we also change the legislation with respect to requiring the Ethics Commissioner to stay mum on any current investigations? Should that be written into the legislation?

Mr. Robert Benson: As I've commented before, the model we took this from is subsection 27(5) of the conflict of interest code for members of Parliament, where at the initiation of an inquiry they're to refrain from comment. That was brought over into, as I say, the recommendation that for the public office holder code there would be essentially two areas for not commenting. Again, I'll leave it to your discretion whether you want to make a recommendation in that context.

The issue I had raised previously is the application...if it's written into or it's suggested that it be written into the Prime Minister's code.... Right now there's a specific exclusion in the definition of "public office holder" that officers of Parliament are not subject to the Prime Minister's code, so an application there wouldn't be applicable to him. If it's stated in the members' conflict of interest code—that's a standing order of the House—the application in all likelihood would apply there in relation to the commissioner.

I'll leave that to your discretion, but as I said, in light of what has transpired in the procedure and House affairs committee, I think they'll be refraining from comments in relation to examinations or inquiries.

● (1145)

Mr. Ken Epp: Thank you.

The second question I have has to do with your recommendation regarding the updating of information. The way you put it is that there should be removal of the requirement to report any material changes within 30 days. How many reports of changes have you had that would generate that one? It's recommendation 3 in your report. How many actual cases do you have, and is it indeed so onerous?

Then I have a short follow-up when you've answered that.

Mr. Robert Benson: It's not a question of being onerous; it's a question of the communication to our office of a material change. What we've found—not necessarily under the MP code, because it's only been in existence one year—in relation to the administration of the other code is that the proactive communication by our office is usually the trigger by which we obtain information. By that I mean our office proactively going out on an annual basis to the individuals for whom we administer the code and providing them with the summary or profile, as we've done with you under the member of Parliament code. That's when we get the real feedback as to what has transpired.

That doesn't say there aren't individuals who will communicate with us during the year, but what we found is that the really proactive response, communication, by any individual who has to report or indicate changes occurs during an annual review. As I say, at that time we provide them with a summary of their assets, their liabilities, their activities, the gifts so they have a picture right in front of them as to whether there's any change, any variance, any difference, as opposed to reporting through the year. That's where that comes from.

Again, we don't see it as an onerous provision. It's just a matter, coming out of our experience, of their responding and our getting an indication as to what changes have occurred within the previous year...and then the review.

Mr. Ken Epp: Okay. Then my quick follow-up, which you're going to have to answer really fast, is with respect to changes that do take place. For example, suppose I were to go out next week and buy a shipping line. Does that mean until the next year, when I get to report, I don't have requirements for recusal and all that stuff? I mean, would that apply also to the public office holders code, or only to the MPs' code?

Mr. Robert Benson: No. What we're getting at is that there certainly wouldn't be an obligation in relation to report, but there's no restriction on you communicating with the office: "I bought this shipping line. Is there something additionally I should do?" Again, basically that recommendation derives itself from the fact that over the experience, the changes that relate to an individual come out more meaningfully on an annual basis.

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

Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): Thank you. The report lays out six recommendations and five policy approaches. Could you clarify the difference, what you mean between recommendations and policy approaches?

Mr. Robert Benson: The way the recommendations are formulated, it is really not something we can do. Either through a committee, or through recommendations or amendments to the legislation, something can be changed or altered. That's the recommendation. It's not within the ability of our office to make an interpretation of how we will proceed on it. In contrast, the policy approaches are the other side of it. It's where, as a consequence of the issue or particular matter that we've got the policy on, this is how we're saying the office will react, will deal with, will respond to that particular matter.

Mr. Russ Powers: So the suggestions you've made within the five policy approaches will now be the approach or that is the approach that's going to be taken by the office?

• (1150)

Mr. Robert Benson: The approach is the manner by which we will now respond.

Mr. Russ Powers: I have a singular question on one of the policy approaches, and it's on pages 14 and 15. Policy approach number 2 is basically trying to give some clarity with regard to reasonable opportunity to present his or her views. Under the Parliament of Canada Act, it uses the statement "a reasonable opportunity to present his or her views" before the Ethics Commissioner provides advice or issues a report. Yet in the members' code it says "all

appropriate stages throughout the inquiry". Can you give me some clarity? In my own mind, there's a difference. One of them is a little bit more limiting than the other one. And in my opinion, what you're suggesting is more limiting than what is laid out in the Parliament of Canada Act. Perhaps you can help me there.

Mr. Robert Benson: It's certainly not our intent to be more limiting. What we're getting at here is...the experience of the office is limited in the number of investigations we've done. But this issue flows directly from the examination we did in relation to former Minister Sgro and what transpired. We indicated before committee—I believe we did, anyway—that the concern we had was that we had amassed a great deal of information, we had communicated with a great number of witnesses, and there was an obligation that we provide the minister with reasonable notice. What we were doing at that point was preparing, extracting the facts, not the conclusions or findings, from the report at its near-completed stage and giving that to her.

We were concerned at that juncture that procedural fairness—it was getting a little short-fused at that point in time, if you will—required that after the amount of time and effort we had gone through in gathering information, the individual against whom the allegations are made now is faced with being offered the opportunity to look at the facts, the information that had been gathered, but it was a little compressed at the final end of the inquiry or examination. So what we were recommending there was, again, adopting from the conflict of interest code for members of the House.

We felt it was a little broader there, as opposed to "reasonable opportunity to present his or her views" before the report is published, and if there's more of an "at all appropriate stages", that at least opens the door so there can be communication to the member against whom the allegations are made to be involved more in the process. That's the intent. That's not in fact what comes out of it, but that's our intent on that one.

Mr. Russ Powers: The supplemental, then, is, does "throughout the inquiry" mean "right up to the point", or—how should we say it—"moments before" the ethics commissioner would table the report, or "during the actual investigation"? In my own mind, there seems to be a difference between—

Mr. Robert Benson: I'm sorry, are you talking about what "at all appropriate stages" means?

Mr. Russ Powers: Yes, that's correct.

Mr. Robert Benson: That's essentially from the commencement of the investigation to the conclusion of the investigation. Once the facts are all gathered in the investigative stage, what happens is the report is essentially being put together. Then, from that written document, we've extracted—this is the one we've gone through—the findings, not the conclusions and recommendations, and we provide them to the member so that the member has notice as to what information has been gathered in relation to the allegations. What we would like to do is try to get it opened up a little more at some point in time, so that if issues come up as to, say, credibility of witnesses, there's an avenue we can open up to have it tested and brought to the attention of the member.

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

Mr. Desrochers.

[*Translation*]

Mr. Odina Desrochers: Thank you, Mr. Chairman.

Mr. Benson I would like to draw your attention to recommendation No. 2 that states:

It is recommended to the Prime Minister that all instances of ministerial recusal from Cabinet or Cabinet committee meetings be recorded in a public registry—

Is there such a registry within your Office, within your knowledge?

• (1155)

[*English*]

Mr. Robert Benson: No. At this point in time, there is no formal public registry for recusal.

I want to make it understood clearly that we do have the public office holders complete a public declaration of recusal. That public declaration of recusal will identify—for example, for the Prime Minister, shipbuilding, the St. Lawrence Seaway, or, for example, for Minister Stronach, the auto industry, or Dofasco.... There is a public declaration that we have in our public registry for compliance in relation to public office holders; so there is a public disclosure of the recusal process that's put in place.

What we're dealing with here is that the recusal process is not a stagnant process; we have to receive information almost on a daily basis from the Privy Council Office in relation to items that are going to be considered by full cabinet or cabinet subcommittees. On the basis of the public declaration we have for the public office holders who don't get involved in this area or sector or aspect, or something that has a specific and direct link to their private interests, we review the cabinet agendas and documentation, and if needed we'll get further information. We then make the recommendation to the Privy Council Office, and they identify this as an item of recusal for the Prime Minister or other minister to whom it applies.

Our role is now ended. It goes into the executive part of government—we're Parliament—with our advice on the recusal. What we're saying now is at the other end of the process, when either cabinet or a cabinet committee considers it, the record or decision or the recusal of that minister is now put in the public domain. This is something that exists within British Columbia—

[*Translation*]

Mr. Odina Desrochers: I hear you, Mr. Benson, and this entire matter seems quite complex. You say the cases should be recorded in a public registry, yet when I ask you the question, you state there are a number of constraints—from what I've gathered—regarding the Prime Minister, the Prime Minister's Office, ministers, the Privy Council.

What about the commissioner's authority? Who makes determinations regarding the many remarks made by all the people I've just mentioned?

[*English*]

Mr. Robert Benson: I went through a rather complex explanation, but I'm trying to make sure it's understood that there is a difference: there is some public disclosure of the recusal process; this recommendation is really for the top end of the recusal process.

We make a recommendation that the PM or a minister should be recused in cabinet. Our role then ends. What we're saying now is that there should be a public disclosure that this was actually carried through; you don't have that at the top end. As I say, it's not something new; it's a model that exists in British Columbia. It's a matter that, when we have made the recommendation for a PM recusal of the item, at the top end or when it's actually done there's a public disclosure of it.

[*Translation*]

Mr. Odina Desrochers: Mr. Benson, I asked you a question. If there is no registry, is there currently a virtual registry, and will there eventually be something tangible?

[*English*]

Mr. Robert Benson: The public registry at the top end that I'm referring to does not exist at all, virtually or otherwise. There's a recommendation that the Ethics Commissioner made in his annual report, and also in this challenges and issues paper, that it should come in. He's recommending that it be put in place.

[*Translation*]

Mr. Odina Desrochers: Mr. Chairman, I'd like to ask a final question.

[*English*]

The Acting Chair (Mr. David Tilson): Well, you know....

Mr. Odina Desrochers: Two seconds?

The Acting Chair (Mr. David Tilson): Two seconds. One, two.

[*Translation*]

Mr. Odina Desrochers: When will the public registry be official, when will it be made public?

[*English*]

An hon. member: [*Inaudible—Editor*]

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

Mr. Lukiwski.

Mr. Odina Desrochers: Can I get an answer?

The Acting Chair (Mr. David Tilson): They're all coming at me, Mr. Benson. You have to answer the question.

• (1200)

Mr. Robert Benson: No problem.

The recommendation of our office is for the executive of government to implement it. It's our recommendation that the Clerk of the Privy Council institute that practice or that the government institute it.

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

Mr. Tom Lukiwski: Thank you, Mr. Chair. Excellent job on pronunciation, by the way. I'm very proud of you.

I have a quick comment, and then a quick question.

My comment goes back to my earlier line of questioning, when we were talking about whether Mr. Shapiro's comments in the Deepak Obhrai case had undermined the confidence of your office. My comment is this.

You had said that in Dr. Shapiro's opinion, the comments he made were neutral. My suggestion to Dr. Shapiro—and if you wouldn't mind, please carry this along—is that if he ever is questioned by members of the media again on any investigation, his only comment should be “No comment”. Neutrality shouldn't come into it. Whether he determines a comment to be neutral or not, he should just say, “No comment”, because I fear, quite frankly....

I'm a big believer in the powers of the Ethics Commissioner. I believe the office is very necessary to instill confidence primarily for the members of the general public. But I think comments like that will undermine the confidence that members of the public see in your office. If you lose confidence, though, you'll jeopardize your ability to be effective.

So I would just make a recommendation, just a suggestion, that Dr. Shapiro should just say, “No comment” anytime he's asked again, whether he believes it to be neutral or not.

My question deals with recommendation 4. You talked about the fact that you may want to introduce new legislation for post-employment offences of public office holders. You're suggesting that while this might take some time, we or the government should adopt or follow the Ontario model, which uses a maximum fine model.

I'm not familiar with the Ontario model whatsoever, so can you give me just a brief backgrounder? For example, does it go from a minimum fine to a maximum? Who determines the level of the fine? How is it administered? I would just like to have more information on those sorts of things. If you're recommending that we follow it, what is it?

Mr. Robert Benson: The Ontario offences are contained in their conflict of interest legislation. That legislation sets out the obligations of individuals who are considered former public office holders or former public officials in relation to their dealings back with the government, their ability to lobby, their ability to contract with individuals. The actual offence section, if you want, just says that essentially it's a fine up to a maximum of \$50,000.

It being an offence provision, in this situation it would be the prerogative of an organization, a police entity, to do its investigation and submit to the Crown on whether they would proceed. It would then be handled within the normal proceedings within the provincial court. That's how it functions.

Mr. Tom Lukiwski: Who determines the level of fine? It goes up to a maximum of \$50,000?

Mr. Robert Benson: Yes. It just says it's up to a maximum of that amount, so that would be at the discretion of the judge.

Mr. Tom Lukiwski: Of the judge.

That's it, Mr. Chair.

The Acting Chair (Mr. David Tilson): Just before I go to Monsieur Laframboise, what do you recommend? Do you have any recommendations on this? In other words, just take the example in the area Monsieur Desrochers was talking about. You believe someone has not disclosed their interest or has not recused themselves, but they have gone into cabinet and have gone into an area that perhaps they shouldn't have. What happens now? Nothing, I guess, eh? No one can do anything.

With Ontario, as I understand it, if they knew that was happening, anyone could ask a court to make a ruling, right?

Mr. Robert Benson: I think we have things mixed here.

The Acting Chair (Mr. David Tilson): Have we?

Mr. Robert Benson: I may be mixed.

In one case, we were talking about the recusal process. What we're talking about here is post-employment obligation.

The Acting Chair (Mr. David Tilson): Well, maybe I'm going to lump them all together.

If someone has a conflict of any sort, whether it be in cabinet or anywhere else, what happens?

Mr. Robert Benson: In the codes that our office administers and in the provincial conflict of interest codes, the aspect of whether there is a conflict of interest in relation to the discharge of their official duties and responsibilities and their private interests rests with the provincial ethics commissioners or rests with the Ethics Commissioner here.

The issue of the recommendation here for post-employment—

• (1205)

The Acting Chair (Mr. David Tilson): Could I just stop you?

I don't think they do. I think the courts are the only group that can make any rulings, if there has been an alleged conflict of interest.

Mr. Robert Benson: No. I don't know specifically the details on every one, but I can use British Columbia as an example.

If issues come up, the commissioner will, as an officer of Parliament, conduct the inquiry on behalf of, again, the House and report back, because the matter relates to the conflict.

The Acting Chair (Mr. David Tilson): Absolutely. The commissioner can make comments, but he or she cannot penalize someone.

Mr. Robert Benson: In certain jurisdictions they can make the recommendation for the level of—

The Acting Chair (Mr. David Tilson): Yes, absolutely.

Mr. Robert Benson: And then it's for the House or the assembly—

The Acting Chair (Mr. David Tilson): No, it's for the courts. I think they're the only ones that can take away an office. For example, someone could be removed from office.

Mr. Robert Benson: Not in relation to....

Again, I don't want to speak for complete provincial conflict of interest regimes, but again, just as it is here in Parliament, the conduct of members of the House is a matter for the House. It's not a matter for the courts. So just as in the provincial legislatures, the inquiry is done, the report by the commissioner is submitted to the House, and then the House will determine whether or not discipline, including vacating a seat—

The Acting Chair (Mr. David Tilson): Okay, I'm not going to....

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you, Mr. Chairman.

Earlier on, we were discussing a public registry. At this point, there are people in your office sitting on cabinet meetings and issuing recommendations. How do you account for that? Do you have a registry of your involvement and recusals signed by ministers or the Prime Minister?

[*English*]

Mr. Robert Benson: With the establishment of the new office in relation to the recusal process, it has improved immensely, because now the flow of information by the Privy Council Office to our office in relation to what is going on in cabinet is very open. There's a lot of communication, a lot of information that flows that way.

Up until this point in time, the office has provided in its first annual report the recusals that have been put in place in relation to the Prime Minister. It did it in a general fashion. What's occurring at this point in time is that we continue to receive the information and we continue to make recommendations as to recusal.

The issue we're dealing with concurrently with the Privy Council Office is to be more transparent when these recusals occur, but the difficulty we're having at this point in time is the issue of cabinet confidences. We still have to respect that in our desire to be more transparent sooner as to what issues are being recused and put that in a public declaration from our office, the issue of disclosure of a cabinet confidence may come into play. So that's a difficulty we're having at this point in time.

We're working with the Privy Council Office. If something becomes public, we're more at liberty at that time to make a public disclosure of it, but as we work through these things, we're privy to the information and we make the recommendations. If the aspect of cabinet confidence can't be disclosed, we have a bit of difficulty in making it transparent.

That seems to dissipate when we get to an annual report, because a lot of issues within cabinet now become publicly known.

[*Translation*]

Mr. Mario Laframboise: Surely, you must have somewhere a registry of your recommendations. You have a registry which hasn't been made public, but you must have compiled this data somewhere, right? You probably have a registry for that.

[*English*]

Mr. Robert Benson: Absolutely. Internally, this is a fairly labour-intensive part of our office in relation to the information we receive and the recommendations we make, so it's most definitely documented and controlled, very concise and precise.

We're working towards more transparency in two respects. One is, as has been raised before, getting a public registry at the top end where this has occurred. That will alleviate somewhat the dilemma we're having now as to when something is or is not a cabinet confidence. The responsibility would then be on the Privy Council Office to deal with that aspect.

We also have, as I indicated before, on our public registry the actual areas of recusal, broadly based, not the actual specific day-to-day work that our office goes through.

• (1210)

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

Mr. Ken Epp: Thank you.

I want to ask a few questions with respect to the operation of the quota. I think you were with Mr. Wilson's office before. Is that right?

Mr. Robert Benson: That's correct.

Mr. Ken Epp: Yes. So the work with the MPs' code is new under this regime.

I want to know from you whether or not, in your opinion—this is an opinion now—all of the information that is gathered and collected from members of Parliament is in fact useful in terms of enhancing confidence of the public in the honesty and integrity of members of Parliament. I know that's almost a political question, but I know you gather this information. Maybe before I let you answer I'll even go on to say, in my view, we're asking for way too much from members of Parliament, who don't have the kind of spending authority and ability that cabinet ministers do.

Mr. Robert Benson: I can respond to that, in certain respects, with some experience in relation to the administration of another conflict of interest code and the level of information there. I acknowledge, as you indicated, that the areas of decision-making, the approvals of public funds, the development of regulatory policy, and the initiation of legislation is different on the executive part of government than it is on the parliamentary side.

What happens is you have a code of conduct in place for members of Parliament. It's just in its first year of existence. Having worked in this type of milieu for a number of years, the conflict of interest issues that come up continually change, develop, and nuances come into play.

As you are providing the information, and as we are administering the code, it's a learning process on our behalf, and probably on the member's behalf, as to what's at play here. What we've learned within the first year about the disclosures we've received is that in relation to particular assets that individuals may have—depending on what it is, depending on which committee they're on, depending on whether the committee has a particular bill or legislation before it that it's considering, there may be, and I'm not saying in all the cases, implications where a conflict would arise. There may be instances—because as members have set out, they want disclosures of spouses and dependants—where some spouses have dealings in their jobs with the federal government. Some may be involved in lobbying, some may be in corporations. Again, depending on what the member may be faced with as far as dealing with committee work, legislation, issues, or let's say a crown corporation coming before a committee on main estimates, there may be links that otherwise are not thought about.

But by disclosing to an ethics office, again, the proactive nature of the office.... We acknowledge that it's not a very pleasant thing to go through with the amount of disclosure being down, but that's the objective of it. With the experience that ethics advisers have, with the disclosure of the personal information you have, trying to envisage at that point in time, in the discharge of your duties in Parliament.... Again, we look at what committees you are on, what the legislation is, and what particular issues are occurring at that point in time.

When they're dealing with the files—again, for the provision of advice to the members regarding the personal information and what the family members are doing—if it's indicated there are dealings back with either Parliament or government, or there are contractual links, the ethics officers will consider the implications in relation to the duties and responsibilities of the member. Are there any implications at all? If there are, we communicate with the member. Again, it's like a negotiation process. It's not rigidity, that you can't do this or you can't do that; it's a matter of, here's the issue and is there something that needs to be done in this situation.

• (1215)

Mr. Ken Epp: Mr. Chairman, my time is up. I'd like another round, if I could.

The Acting Chair (Mr. David Tilson): No. We have Mr. Harris.

Mr. Ken Epp: Yes, I know.

The Acting Chair (Mr. David Tilson): You'll have to wait.

Mr. Ken Epp: Okay. I'll gladly wait. Thank you.

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

Mr. Harris.

Mr. Richard Harris (Cariboo—Prince George, CPC): Thank you, Mr. Chairman.

Mr. Benson, just quickly, is the Office of the Ethics Commissioner proactive in any sense as to looking for perceived conflicts of interest, or is it only reactive to an allegation or a suggestion that there is one?

Mr. Robert Benson: If I may, we do use the word “proactive” in relation to our office in the context of.... On appointment of a public officer holder, or on the listing of the name of an individual after election in the *Canada Gazette*, we communicate and provide the disclosure statement or confidential report, depending on which individual is on there. We get that information. So we have that information in confidence. With that information, proactively, we will then—again through the experience the advisers have gained in relation to this activity or this asset or this dealing back with Parliament or government—provide our advice. There will be communication back to the individual. So a letter will be prepared advising—and this is the proactive part—within the compliance function.

It's not that, say today, we'll go back to the office and hunt through whatever we can find to try to find some issue. That's not what we're talking about.

Mr. Richard Harris: You were talking about the possibility that some members of families of members of Parliament, some extended

families, may benefit in some way from a member of Parliament's vote on a committee or something.

Quite frankly, I think Mr. Epp raised a pretty good point. Over the last 12 years that I've been here, I've been watching almost a plethora of alleged conflicts of interest, even by the former Prime Minister, Mr. Chrétien—the infamous Grand-Mère golf club and hotel case. Then there have been incidents of ministers buying expensive personal clothing on their government credit cards. Nothing ever came of that.

Calls by all the opposition parties for an ethics commissioner who would oversee, who would actually be diligent in looking after the activities of the government in power, resulted in the new ethics commissioner, Mr. Shapiro, with this broad-based mandate that covers all the MPs, even the backbenchers who have only the remotest opportunity in this place to influence decisions that could be of personal benefit to them or their family—and I mean the remotest opportunity, and you have to agree with that. But there doesn't seem to be the diligence on behalf of the government watchdog, or the ethics commissioner, on the government itself.

My friends in the Bloc brought something up earlier this year that has not been dealt with by a committee yet, nor has it been dealt with by the Ethics Commissioner. It was that while the current Prime Minister was the finance minister, the taxation regulation in regard to shipping—

• (1220)

Mr. Robert Benson: All those double-taxation treaties—

Mr. Richard Harris: —yes, that you pay—were altered.

Only one country in that group was left with the low taxation level; I think it was around 6%. It just happened to be that the current Prime Minister's shipping organization was either all registered in that one place or it soon was. It was far too convenient to be a coincidence. It's a glaring thing that's still out there, yet no committee and no ethics commissioner has ever looked into it.

It's still in effect, so when I ask if the Ethics Commissioner's office is proactive, if they are, wouldn't something like that be of interest?

Mr. Robert Benson: The cases or fact situations that you are bringing up did relate to the former regime—not only the former office, if you will, but the former regime. One of the criticisms of the former regime was that although information was gathered, it was like a confidential...a non-public report was provided to the Prime Minister. That was based upon, again, the model at that point in time that the Prime Minister is accountable in the House for that.

As a consequence of the history that existed, as you've outlined in the past, the office within which we now work was created. It is an office of Parliament. It is an independent office. Unlike the former office, we're not government; in the past we were part of government. As was indicated earlier, we had certainly no interference or intervention in the former office, but it was part of government. The present office is not.

In relation to the fact situations or previous issues that you're bringing up there, the previous office had no significant coercive powers. The current office does. If a member of Parliament or a senator lodges a complaint with the Ethics Commissioner, that will trigger the power of the Ethics Commissioner to summon and subpoena individuals. This is a different regime; that did not exist in the past.

The Acting Chair (Mr. David Tilson): We're already two minutes over. You can come back again, Mr. Harris, on another round.

Mr. Epp.

Mr. Ken Epp: Do I get three minutes?

The Acting Chair (Mr. David Tilson): No, you have five minutes.

Mr. Ken Epp: When we were talking before I indicated the depth to which you asked questions on your questionnaire. I worked on the committee that developed this legislation and we hammered this stuff around. We had questions at the time, and I think maybe we got it wrong. When we go to fill in these forms now, you ask whether or not I have credit cards outstanding. What difference does it make? So I didn't completely pay my wife's spending last month; I have \$500 left over. And you ask whether my house has a mortgage on it. Some members of Parliament still owe money on the houses they live in and some don't. What does that have to do with the increasing degree of confidence in the ethical behaviour of members of Parliament?

I'm wondering whether you would recommend that we should ask for less information and basically call out all that information that has nothing to do with the ethical behaviour of a member of Parliament.

Mr. Robert Benson: If I may, I'll comment.

On the disclosure statement for members, our office is working with a subcommittee to the procedure and House affairs committee. We've submitted to them within the last week or two a revised disclosure statement, which is the one you're talking about that is fairly detailed. It's been reduced by 25 pages and it's now almost a check, indicating.... At the request of the subcommittee of the procedure and House affairs committee—we've been working with them—this reduced form is now in their hands. As I say, one of the things that's come out of there is that it's been reduced by 25 pages.

• (1225)

Mr. Ken Epp: That's good news, Mr. Chairman.

That was basically my concern. I'll be very interested in seeing what your proposals are. Maybe I can get my party to substitute me into that committee to look at that. I would like that.

Thank you.

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

Mr. Richard Harris: Mr. Benson, I understand what you're talking about: there was a former regime, so it's not your thing.

I could almost draw an analogy to that by saying John Smith at one time robbed a bank and hasn't been caught yet, but he changed

his name to Joe Jones and now of course the authorities can't touch him because he's under a new name or a new regime.

The fact is the current Prime Minister's family is still operating that corporation, which operates under the cloud of taxation regulation or taxation agreements that became rather suspicious back when...I'm searching for the word. I'm waiting for Derek Lee to hand me that.

Mr. Ken Epp: Are you thinking of tax treaties with other countries?

Mr. Richard Harris: Well, it's tax, but it's another word for it.

The Acting Chair (Mr. David Tilson): I'm not sure if he's going to give you a word on this question.

Mr. Richard Harris: There was a cloud of suspicion when the change of those agreements took place when the current Prime Minister was the finance minister. It's almost as if, well, it happened back then, and even though it's still in effect, and his family may be benefiting from that issue, that incident, we can't go there because it happened under a different establishment. That doesn't seem clear to Canadians.

Mr. Robert Benson: That's not what I'm saying. I was drawing the distinction that there was an old regime and there is a new regime within which the Ethics Commissioner works. Under the current regime, the trigger, if you will, is in your hands as a member of the House of Commons or as a senator. Those are the individuals who, on reasonable grounds, believe there's been a violation of the principles, guidelines, or rules and can request an examination. If you will, the ability to commence is not in the hands of the Ethics Commissioner; it's in the hands of members of Parliament under section 72.08.

Quite apart from that, you've raised something about something occurring in the past. The retroactivity of application we haven't considered in the office, so that would be an issue that would have to arise. But in two respects, if you want, you can say the ability to initiate rests with members of the House.

Mr. Richard Harris: Okay. That's the question I want to ask now. So if a member of the House came to you at your office—

Mr. Robert Benson: On the basis of reasonable grounds to believe—

Mr. Richard Harris: —on reasonable grounds and laid out a case, would your office be bound to follow up and do an investigation on that?

Secondly, is the treatment of cabinet ministers different from ordinary backbenchers, as far as your office is concerned, on how they would be treated if a complaint was launched?

Mr. Robert Benson: You're talking about the application of two different codes.

Mr. Richard Harris: Well, I thought the office oversaw members of Parliament, and everyone really is a member of Parliament. They have different jobs.

But let's say there's a complaint against a cabinet minister and there is exactly the same complaint against a regular backbencher. Would those two individuals be treated differently in relation to whatever investigation your office would do?

Mr. Robert Benson: No. We have one currently going on with that exact issue.

Mr. Richard Harris: So to go back to the first one, if a complaint were launched regarding the taxation issue—

Mr. Robert Benson: Again, that falls within the parameters of section 72.08 of the Parliament of Canada Act.

Mr. Richard Harris: Okay. Thank you.

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

Mr. Derek Lee: I thought I would follow up on this issue of recusals. Mr. Harris has made all these suggestions about.... He hasn't really said it, but the innuendo contained in his remarks suggests some inappropriate failure to recuse somewhere. My recollection is that those matters were reviewed by the ethics counsellor at the time, and the rules were followed; appropriate recusals were had. I'm not aware of any impropriety connected to any of that. Mr. Harris is simply stating some facts there.

So on the issue of recusals, Mr. Benson, a registry of recusals would show the recusal of a cabinet minister for purposes of making a cabinet decision.

• (1230)

Mr. Robert Benson: That's correct.

Mr. Derek Lee: I think Mr. Harris is referring to matters that went through Parliament, not to cabinet, and there, you don't need a recusal register; you just have to look at the voting record of the various MPs and ministers.

Mr. Richard Harris: Tax conventions. That's what I was talking about.

Mr. Derek Lee: A tax convention would have gone through the House. So the record of recusal or voting or non-voting would be apparent on the record. So Mr. Harris can do that research right in his own office, fortunately.

However, I had another take on the recusal issue, on the register. We have in this field of conflicts a real conflict of interest, which is not a bad thing, which is not a negative. They happen in life. Conflicts happen. Just because you have a conflict doesn't mean a bad thing has happened. It just means there's a conflict of two legitimate competing interests.

Then you have perceived conflicts. A perceived conflict is not a real conflict. It's a zero. So if you had a register of recusals, would it not tend to cause one to respond to a perceived conflict and recuse oneself when in fact there was no conflict, only a perceived conflict? The issue would be resolved in advance of the vote or the decision, and if the matter was in reality only a perceived conflict, the public official would go ahead and do it.

If there is to be a register of recusals, wouldn't that tend to cause more public office holders to recuse themselves just because there was only a perceived conflict, when in fact there wasn't a real one? Then you'd get this whole bureaucracy generating paperwork and decisions and recusals just because there was only a perceived conflict. In this business, there are tons of perceived conflicts.

Mr. Robert Benson: The current recusal process that our office administers is, as I say, on the basis of information we receive and a recommendation we make and is not something the public office

holders are trying to administer themselves or on which they're trying to make determinations.

In the process that exists at this point in time, we receive the information—and a great deal of information, whatever we want. We will then provide the advice that this is a recusal item, and it is focused: is there a specific and direct link in relation to the particular public office holder's private interest that's in consideration here?

It's a matter where it would be quite easy for anybody, if it's a very broad area, to be subject to recusal. That's not the way the recusal process is administered. It's a matter of getting down—the terms have been put in the annual report and put in other documents we have—to the specific and actually the public disclosures of individuals. Recusal is looking for whether there is a specific and direct link with the asset, or activity, or whatever recusal item is put in place. If there is, the recommendation that the person should recuse and not participate in discussion and decision-making is then made.

What our public registry is talking about is that the recommendation we make be documented at the ultimate end of it, showing that yes, in a particular instance of discussion in cabinet, the recusal took place because the item came up. It's just documenting that the implementation of the recommendations we make is occurring.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Lee. I may ask you to speak again, but...

Mr. Lee.

Some hon. members: Oh, oh!

• (1235)

Mr. Derek Lee: Thank you, Mr. Chairman.

Your advice to recuse is not public; only a record of the actual recusal would be public. Is that correct?

Mr. Robert Benson: That's right. Up to this point in time, we've done a public disclosure in the annual report. That has been dealing with the Privy Council Office and the extent to which we can communicate in respecting cabinet confidences.

What we're proposing is two things to try to add further transparency. One is that we have the ability to do a public disclosure of the public office holder's having recused herself or himself on this, and the other is that after a cabinet consideration, the government or cabinet and the Privy Council Office, through its minutes or public disclosure, indicate that a recusal action occurred during that meeting.

Mr. Derek Lee: But you're not proposing that your recusal advice be part of the public record, are you?

Mr. Robert Benson: No, just the fact that recusal occurred.

Mr. Derek Lee: It's just advice.

Mr. Robert Benson: Yes.

Mr. Derek Lee: It's advice that cabinet ministers are free to take or not take. I'm sure it's always excellent advice, but it is advice.

Mr. Robert Benson: I agree with you, but I just want to clarify. There is a public declaration that is made by, for example, the Prime Minister. He recused himself on shipbuilding and marine transportation policy. That's advice that we provided to him and that he's accepted, obviously, because he signed the public declaration that he will, in the discharge of his duties and responsibilities, recuse himself in relation to these issues. There is a public disclosure, to that extent.

Mr. Derek Lee: Of recusals.

Mr. Robert Benson: Of recusals. But the process we're talking about now is the ongoing day-to-day activity, because cabinet functions through these periods.

Mr. Derek Lee: I understand. So you wouldn't agree with my suggestion—I'm really thinking out loud here—that the putting into place of a register of recusals would increase the volume of recusals based on perception? Cabinet ministers and public office holders are quite likely to take steps on their own; they won't sit around waiting for the advice of the Ethics Commissioner all the time. The Ethics Commissioner doesn't run the operation; it's the ministers who have the decision-making authority.

Mr. Robert Benson: That's correct. All we're talking about—

Mr. Derek Lee: Would you agree with me? I just want to get to that. Do you think the existence of a register would increase the volume of recusals because of the inclusion of more recusals based on perceived conflicts rather than actual?

Mr. Robert Benson: No. What's occurring right now is...the recusal process, as it is now, is for cabinet; we're making the recommendation. So our recommendation is made to the Privy Council Office; they will then note it on the cabinet agenda. From that point on, information is not provided in relation to that particular cabinet item. It's identified specifically on the cabinet agenda, so the actual public office holder to which we have now made a recommendation is not to be provided information. When it gets into the actual cabinet consideration, it's the Privy Council Office that reacts at that point in time to identify this as a recusal item and not to participate. So it's not the public office holder who is aware... this action has occurred, really, to their exclusion. They're then faced with the sort of identification...or if this is a recusal item, they'll absent themselves from the room. It will be considered and then they will come back.

Mr. Derek Lee: You were assuming, Mr. Benson, that every single recusal is based on your advice—not you, but your office's advice—and that there aren't walking, talking, thinking cabinet ministers and other public office holders who won't be recusing themselves from time to time simply because they reach the conclusion that they should. I'm shocked that you would.... Maybe there's some aspect of this governance model I'm not understanding,

but if you're suggesting that every single sparrow that falls on the subject of recusal is based on advice from your office, I'm missing something here.

• (1240)

Mr. Robert Benson: You may very well be right. I—

Mr. Derek Lee: Your universe is only your universe. There's a whole other universe.

The Acting Chair (Mr. David Tilson): Everybody should talk through the chair, please.

Mr. Robert Benson: I have no difficulty with that.

Mr. Derek Lee: However, you're not buying into my thesis, that there would be an increase in the number of recusals based on perceived conflicts rather than real. You don't see that as a practical reality.

Mr. Robert Benson: At this point in time, I don't, because through experience it's been a matter of it being a consultation process with us, whether it is or not. I see what you're saying, and I don't have any additional comment.

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

That appears to conclude the questions and comments. To both of you, Mr. Benson and Mr. Tsang, we thank you very much for coming. Obviously, the committee has some concerns with many issues. I know this committee, whatever the makeup is going to be and whenever we meet again, will be raising issues with the commission. I thank you very much for coming.

You're excused. Thank you.

Members of the committee, we have one more item. It says “in camera”, so I assume we want to proceed in camera on this issue.

Mr. Derek Lee: That's the motion.

The Acting Chair (Mr. David Tilson): There is Mr. Lukiwski's motion.

Mr. Derek Lee: Could I ask, what's the purpose of going in camera to debate a motion?

The Acting Chair (Mr. David Tilson): I have no idea. It's written on the page and that's why I raised it.

Mr. Derek Lee: No, it's a regular motion. If it's future business, we often go in camera. I guess that's the rubric we're operating under: future business.

The Acting Chair (Mr. David Tilson): We're going to recess for a couple of minutes, ladies and gentlemen, and then we will be proceeding with this motion in camera. Thank you.

[Proceedings continue in camera]

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