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# Standing Committee on Procedure and House Affairs

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**Thursday, October 20, 2005**

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**Chair**

**The Honourable Don Boudria**

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• (1105)

[Translation]

**The Chair (Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.)):** Order, please. Pursuant to our Order of Reference dated June 22, 2005, we will be dealing today with Bill C-312, an Act to amend the Canada Elections Act (appointment of returning officers).

[English]

Honourable members will know that we also have before us the matter of a question of privilege, which we must take up at noon. That's when the Ethics Commissioner will be coming before us.

I would make a suggestion to all of us that we try to keep our discussion with Mr. Kingsley this morning to the content of Bill C-312, rather than many other subjects. That will greater enable us to finish at 12 to start the other subject, which of course we must deal with because it's an issue of privilege and has priority over everything else.

[Translation]

Without necessarily telling you what to do, and because we do have to deal with a question of privilege, I would ask you to limit your comments to Bill C-312, even if that means inviting Mr. Kingsley back at a later date to discuss other topics. As you know, it is at the top of our priority list, and we must deal with it starting at noon today.

[English]

I don't know if there's any reaction to that. Hopefully we can agree to that in a general way, at least.

[Translation]

Mr. Kingsley, I would like to thank you and the officials who are with you today for being here. Would you like to make an opening presentation with respect to Bill C-312?

**Mr. Jean-Pierre Kingsley (Chief Electoral Officer, Office of the Chief Electoral Officer):** Yes, thank you very much, Mr. Chairman.

Ladies and gentlemen members of the Committee, it is always a tremendous pleasure to appear before this Committee. I want to thank you for inviting me here today to discuss Bill C-312, a private member's bill by Mr. Guimond, the member for Montmorency—Charlevoix—Haute-Côte-Nord.

I am accompanied today by Diane Davidson, the Deputy Chief Electoral Officer, and James Sprague, Senior General Counsel.

The intent of this bill is obviously to seek the improvement of the regulation of federal elections, and it is in that spirit that I have a few minor comments for the Committee's consideration.

First of all, both the Canada Elections Act and the bill are silent with respect to a situation where the positions of both returning officer and assistant returning officer become vacant. This could be addressed with a provision allowing for the appointment of a person on a temporary basis in this circumstance. This acting person would perform the duties of a returning officer while the process of appointing a replacement takes place. This would be a very useful addition to the bill.

My second comment relates to the returning officer's term of office. Providing for a term not exceeding ten years—which is what the bill proposes—would be acceptable, but I would like to suggest a fixed ten-year term. This would allow returning officers to develop expertise in their positions, and since the term of office for all appointments would be the same, potential problems arising from the awarding of different terms to different individuals across the country could be avoided. It is also important to understand that the annual turnover in returning officers would naturally result in staggered appointments. The average term of appointment is four years, even though a ten-year term is provided for. Thus there would be no concern with respect to the entire body of appointments coming forward at the same time, as a result of this turnover.

• (1110)

[English]

Lastly, the committee could consider introducing the concept of other merit-based processes in addition to formal competition—which is the only instrument foreseen in the bill—to measure competence. The possibility of using such alternative processes exists in the provinces of British Columbia and Manitoba, whose chief electoral officers have already appeared before you to describe these features.

Outside of the issues of the appointing and removal authority and the process for appointment, Bill C-312 does not otherwise change the status or the operations of returning officers under the Canada Elections Act. Everything else remains the same. If implemented, it would not affect the later consideration and possible implementation of the recommendations that I have made in a recent report respecting amendments to the Canada Elections Act, and to returning officers more specifically.

There are now a few additional matters of detail respecting Bill C-312. Rather than taking the time of the committee at this time to review these detailed points in this presentation, I have prepared, in both official languages, a short outline of these matters that can be distributed for the consideration of the committee—right now as a matter of fact, Mr. Chairman. Moreover, I would also like to say that my office is prepared to assist you and your committee, through professional resources, in any drafting that you wish to undertake.

I would like to thank the committee for this opportunity to address it respecting Bill C-312. My colleagues and I would be pleased to answer your questions to the best of our ability.

**The Chair:** Thank you very much, Mr. Kingsley.

Can I conclude then that the list you're distributing to us is a list of all the possible amendments that you would suggest, that you would consider, along with a little paragraph as to why you want them? Is that what it is?

**Mr. Jean-Pierre Kingsley:** It is a listing of those changes that are quasi-automatic in nature if you wish to ensure consistency with the present statute in the bill. They are not substantive unto themselves. The substantive parts are what I read out.

There is a brief explanation in those sheets about what the slight changes are all about, but they are not drafted in this document.

[*Translation*]

**The Chair:** Thank you very much.

[*English*]

Mr. Reid.

**Hon. Ed Broadbent (Ottawa Centre, NDP):** Mr. Chairman, on a point of order before we proceed, if you don't mind, could we get clarification on this clarification?

If I understand what you have just said, Mr. Kingsley, the sheets you just passed around are simply changes that would flow from accepting the bill.

**Mr. Jean-Pierre Kingsley:** If one wishes to ensure that the bill is consistent with the way the rest of the statute sits, yes.

**Hon. Ed Broadbent:** Exactly. So substantively there's no change.

**Mr. Jean-Pierre Kingsley:** Substantively, they do not represent significant change.

**The Chair:** Mr. Reid.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Thank you.

It's a pleasure to have you here, as always, Mr. Kingsley.

I didn't get the chance to say good morning to Madam Davidson or Mr. Sprague, but welcome to our committee as well, both of you.

One of the things that happened when we met with the various chief electoral officers—we had the chief electoral officers from Quebec, Ontario, Manitoba, and British Columbia—was that it became apparent to us that among provinces that have moved away from the Order in Council appointments, there are two different ways of establishing terms of office. One way is the one used in Quebec, which is for a period of...I'm not sure if it's for ten years or up to ten years, but it's one or the other. That has been the template

from which other provinces have drawn their ideas, but an adjustment was made in British Columbia and Manitoba.

The adjustment was to fix the term for an electoral cycle. Once the work that's involved in wrapping up a particular election has been carried out—and there's a reasonable amount of time assigned for that—the appointment then terminates.

We asked the chief electoral officers from those jurisdictions about this, particularly the one from Manitoba. He said this is something they had looked at. They had looked at Quebec's model, took most of what they had, and made this adjustment. The advantage is that, in his experience, about 15% of the returning officers who would like to be reappointed are perhaps not suitable, so this provides an opportunity to move them aside without having to go through the complexities involved in dismissing somebody who doesn't want to go.

I would just invite your comments on the merits or demerits of doing what they do in British Columbia and Manitoba, as opposed to a ten-year term.

• (1115)

**Mr. Jean-Pierre Kingsley:** Mr. Chairman, in my view, there is merit to that approach as well, and there is merit to the approach here. Under correct legislation, I was just informed, it is a fixed 10-year term. The author of the bill has proposed up to 10 years, and I think this presents more difficulties than opportunities in terms of equity between people. That's what I'm trying to reflect in my comments.

We saw the text you had proposed to make it six months. I would suggest that at the federal level, in light of what has to happen after an election—contestation or recounts, if one were to go that way—I would prefer to do it for one year. They keep their positions, but after one year there's an automatic need to do something. They're out or—

**A voice:** Reappointed.

**Mr. Jean-Pierre Kingsley:** But at the same time, if one were to go that way, this bill would have to introduce meritorious processes other than a formal competition, because if we were to do 308 formal competitions at the federal level across the land—and I'm going to answer a question that has not been asked yet—after the end of the two years under the present bill, the cost would be \$1,500,000. If you had competitive processes or other means of evaluating merit—i.e., 85%, 90% are automatically reappointed after a meritorious process that doesn't involve other candidates—then you reduce that cost significantly.

So that I would see as an advantage. But I would certainly urge the committee to do it for one year, if it wanted to go that way, and also to open up other avenues than strict competitions. Okay?

**Mr. Scott Reid:** That's very helpful. Thank you.

[*Translation*]

**The Chair:** Thank you very much.

Ms. Picard.

**Ms. Pauline Picard (Drummond, BQ):** Thank you, Mr. Chairman.

Mr. Kingsley, on page 16 of your report entitled “Completing the Cycle of Electoral Reforms”, you say that it would be useful if the legislation gave the Chief Electoral Officer the power to remove returning officers for valid reasons. You say that this would be done based on an “equitable process”. What do you mean by that?

**Mr. Jean-Pierre Kingsley:** For all intents and purposes, Ms. Picard and Mr. Chairman, what I had in mind when I referred to an “equitable process” was what the current legislation provides for—and that the bill would maintain—in other words, the same reasons that are currently set out in the Canada Elections Act. There would be no additional reasons.

However, this would have to be done on the basis of an equitable process, in other words taking care to ensure that an individual's natural rights are respected. That would mean that they would first have to be made aware of the criteria for assessing their performance. They would then have to be informed of the results of their performance appraisal and the reasons for the appraisal. In addition, the appropriate documentation would need to be shared with them and they would need to have a right of representation, so that they had an opportunity to explain their actions and provide valid reasons as to why their performance was inadequate. They could even challenge the notion that someone might think that a given individual has, or has not, successfully performed his duties. So, the idea would be to allow all of that to take place before any decision would be made.

Of course—although it's not really necessary to point this out—there would be a whole series of other procedures to follow, consistent with the principles of natural justice. Thus people would have the right to appeal to the courts, if they so desired, or would have access to other forms of recourse.

● (1120)

**Ms. Pauline Picard:** As you see it, what organizational structure is needed in order for your office to be able to hire returning officers? In your report, you say that this would not be a significant burden and that only two additional positions would be required.

What kind of organizational structure would allow you to comply with the provisions of this bill?

**Mr. Jean-Pierre Kingsley:** Thank you. I understood the question.

First of all, the two positions referred to would be at head office and the incumbents would have responsibilities. One of these positions would be attached to Human Resources, for the purposes of assisting in assessing candidates when there was a need for it. The other, in the Operations Branch, would involve tracking RO positions to be filled and closely following the results of exams or competitions. Based on our preliminary estimates, that is all that would be required at head office.

The actual competition would be held in the affected riding. The related advertising would state that the position is available and ask

people to apply. First, there would be written exams to review the selection criteria and the applicants' resumé's, to ensure they meet the basic requirements. There would then be a written exam to assess their knowledge. Of course, it wouldn't go into great detail, but at least it would give us a good sense of what the person is like and what they know about the Canada Elections Act or the Referendum Act. There would then be a screening process to select those candidates to be invited to an interview. That is where the regional liaison officer would play an important role because, in most cases, he would act as chair of the selection board, to which would probably be added people from the provinces—if they're available and interested—or people from head office, but not always: I don't think it's necessary for someone from head office to be involved in the selection process. That would mean that liaison officers would have been trained and understand what this kind of competition involves. There would always be two or three people assessing the various candidates, using the same questionnaires.

**The Chair:** Thank you very much.

Mr. Broadbent.

[*English*]

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

I join with others in welcoming you and your team to the committee.

I'm probably a little slower than usual this morning, for what reason I know not, but I'd like to know the reasons you gave for the recommendation of a 10-year term, as opposed to up to a 10-year term.

**The Chair:** Mr. Broadbent, I'm sorry to interrupt you, sir.

There's an error in the printing of the bill on that point. I'm told by the MP's staff that the intention of the legislator is the version that's on the French side, which is for a fixed 10-year term. The English version says it's not to exceed 10 years.

I'm sorry to have interrupted you. But you were asking on that point, and I was alerted to it a moment ago.

Again, I apologize, but it may help the committee.

**Hon. Ed Broadbent:** As is often the case, the French are better than the English.

[*Translation*]

**The Chair:** Absolutely, Mr. Broadbent; you are right once again.

[*English*]

**Hon. Ed Broadbent:** I thought you would agree with that, Mr. Chairman.

Now that we've resolved that, let's deal with my obtuseness.

Instead of going to a competitive process that would cost what you estimated, we could save a lot of money by going to the method you proposed. But how do you avoid people having most of their 10-year terms coming up at the same time?

**Mr. Jean-Pierre Kingsley:** The remarks may not have been as clear as they should have been.

The turnover is very high among returning officers. On average, they stay four years, despite the fact that they have a 10-year term when they're appointed. On average, they never make it to the end of the next cycle. Some last one year, two years, three years, four years, five years, six years, seven years, or eight years within one cycle.

We have a turnover of approximately four to five returning officers a month, as we speak. It's a massive turnover that's going on all the time. They decide to leave for personal life issues or whatever. It's all there.

I suspect there may be a slight impact on that, but it won't be significant enough to affect it. In a matter of time, I think we will be on a perfectly staggered system, where we will have exactly the same or approximately the same number of returning officers turning over every month, which will be in that range.

• (1125)

**Hon. Ed Broadbent:** Okay. As I understand it, as long as we keep those very extensive and elaborate benefits where they are, so people won't be induced to stay more than four years, your scheme will work.

**Mr. Jean-Pierre Kingsley:** Exactly.

**Hon. Ed Broadbent:** Okay. That's all I have at this time.

[*Translation*]

**The Chair:** Thank you very much, Mr. Broadbent.

Are there any other government members who wish to ask questions?

Ms. Longfield, please.

[*English*]

**Hon. Judi Longfield (Whitby—Oshawa, Lib.):** I'm actually following up on Mr. Broadbent's questions.

Returning officers are appointed under Governor in Council right now. Would they become public servants under this bill and subject to the Labour Relations Act?

**Mr. Jean-Pierre Kingsley:** No, they would not become public servants.

**Hon. Judi Longfield:** What would they be? Would they be your employees?

**Mr. Jean-Pierre Kingsley:** May I ask James Sprague, chief legal counsel, to explain, so that it's very clear in legal terms?

**Hon. Judi Longfield:** Okay. Thank you.

**The Chair:** Mr. Sprague.

**Mr. James Sprague (Senior General Counsel, Office of the Chief Electoral Officer):** Their status wouldn't change under Bill C-312. The only thing that's going to change is the appointing authority. Instead of being appointed by the Governor in Council, they'd be appointed by the Chief Electoral Officer. They would still remain individuals who are appointed under a statute to perform a statutory function.

They might be considered servants of the Crown for indemnification processes, but they are not public servants, they are not members of the Public Service Employment Act, and they are not staff of the CEO under section 20 of our act. They simply become

appointments, in the same way that some statutes have ministerial appointments as opposed to Governor in Council appointments.

**Hon. Judi Longfield:** Okay. Normally when someone has an appointment, there's someone who oversees that.

I guess I'm trying to decide how this works. You would appoint them or fire them, but they don't really work for you. They still have the same kind of status. But for the same status now, there's some review if we're going to remove them or take them away. Who oversees all of that?

**Mr. James Sprague:** It would operate in much the same way it does now. But rather than a Governor in Council exercising an oversight role to see whether people should be removed for the reasons set out in the act, the CEO would maintain the oversight, would see how they perform through the processes we actually already have, and would determine whether or not a situation has arisen that requires some kind of disciplinary action.

**Hon. Judi Longfield:** But my understanding is that the process doesn't work all that well. From Mr. Kingsley's perspective, you don't feel that you can remove them from office, and it's very cumbersome. Yet you're saying it would be the same thing.

**Mr. James Sprague:** As I understand it, the remarks that have been made in the past do not go so much to the process for removal as to the willingness to exercise it.

**Hon. Judi Longfield:** Are we throwing the baby out with the bathwater? If the reason we're changing it is because exercising the process is difficult, shouldn't we be making recommendations to make the process more responsive to the suggestions or the determination that someone is not doing the job to the desired capacity or is not fulfilling the job appropriately?

**Mr. Jean-Pierre Kingsley:** That is an alternative, but it is certainly not one that I view as working as efficiently as the one that is before you in this bill.

**Hon. Judi Longfield:** Okay. I may have something later on.

[*Translation*]

**The Chair:** Welcome back. Before beginning a second round, I would like to put one question to Mr. Kingsley.

How much more would this cost?

**Mr. Jean-Pierre Kingsley:** We would need two more people at head office.

• (1130)

**The Chair:** I believe you mentioned a figure earlier.

**Mr. Jean-Pierre Kingsley:** Well, if, as the legislation currently provides, we held a competition for all the positions at the same time after two years, the process would cost approximately \$1,500,000. However, if we proceed on a cyclical basis, we can expect that every competition will cost about \$5,000 or \$6,000.

**The Chair:** I was actually referring to the bill. Would it be about \$1 million?

**Mr. Jean-Pierre Kingsley:** Yes, if a competition is held for everyone at the same time, at the end of a two-year period.

**The Chair:** That is what the bill is proposing.

**Mr. Jean-Pierre Kingsley:** Yes.

**The Chair:** Thank you.

I'm coming to my question now. I believe we will need to ask the clerk whether a royal recommendation will be required for this bill. I'm not expecting to get an answer to that immediately, but could someone enquire about that?

If this is an expenditure... Someone who is sitting at the end of the table has done this before. Could I just be given that information? We will need to have it before we begin third reading.

**Mr. Jean-Pierre Kingsley:** For the benefit of the clerk, I would just point out that this would fall under statutory authority, and not under the authority of the Treasury Board.

**The Chair:** Very good. Thank you.

We will include that in his research.

[*English*]

For the next round then, Mr. Hill.

**Mr. Jay Hill (Prince George—Peace River, CPC):** Thank you, Mr. Chairman.

Thank you, Mr. Kingsley, and your colleagues for appearing.

I want to pick up on your answer to Mr. Broadbent where you were saying, on average, the ROs currently only serve about four years. Could you just go over how they're paid, what they're paid, what benefits they're entitled to, and whether, in your experience, that has a bearing on the relatively short period of time that you have these trained people on staff, as it were, and then they look elsewhere, obviously? As you say, obviously they leave for a variety of reasons.

**Mr. Jean-Pierre Kingsley:** I will proceed, first of all, by stating that the main reasons people leave, that are invoked on paper, are personal. That's what they write to me. There's almost always an allusion to health issues.

In terms of remuneration, for an election the remuneration is around \$17,000 to \$18,000 for that period of approximately two months, because we effectively require them for that length of time. On a year in, year out basis—that is to say, in between elections—my recollection is that they may get up to \$5,000 or \$8,000 because of the preparatory work that we require them to do in terms of geography, in terms of preparing polling places, and so on. So that's an annual remuneration over and above—

**Mr. Jay Hill:** That's \$7,000 to \$8,000 on average per year between elections.

**Mr. Jean-Pierre Kingsley:** Yes, around \$8,000, and in terms of benefits, that's it. They get the remuneration.

**Mr. Jay Hill:** Because they're not an employee of the government or considered an employee of your department, they wouldn't qualify for pensions or anything like that?

**Mr. Jean-Pierre Kingsley:** No.

**Mr. Jay Hill:** They just get that salary for that short period of time.

**Mr. Jean-Pierre Kingsley:** Right, and under this bill that would not change.

• (1135)

**Mr. Jay Hill:** Right.

At the present time, how do you go about evaluating the performance of an RO? Could you just run through that? Do you rely primarily on complaints that come in and then you investigate the complaint, or is there some ongoing evaluation?

You were saying one of the things you're looking at setting up if this bill goes ahead and there's this change in, for lack of a better term, the hiring or the appointment process, or what you kind of laid out, is how you would go about advertising, having a written exam, something to test their knowledge and credibility up front before they even get the job. I'm assuming you probably would even put something in place as an ongoing evaluation. What do you rely on currently?

**Mr. Jean-Pierre Kingsley:** Right now, we have a positive process in the sense that every returning officer's performance is evaluated. There's an element that is related to his pay; there are a number of factors that have been identified whereby if he has achieved these goals there is an increment to the pay. It's \$400 or \$600.

But over and on top of that, there is a formal process whereby members of the executive, especially the people who are in operations and the people who are in finance, because there's a lot of interaction with these two directives, evaluate the performance of the returning officer against the criteria that are required, that are pertinent to the performance of that job.

That is, how did they behave with candidates? Were there meetings held with candidates? These are important events.

How did they handle the relationship with the clients, the electors? What kinds of complaints did we receive? Complaints come in, but they're part of it. They do not drive the exercise. Ours is a positive-driven exercise. We do it all the time.

We would obviously want to improve that process in light of the fact that it would become a tool that would be available to decide whether someone is prolonged or is not prolonged in the position, but mainly it would be a tool that would be aimed at how we can improve the performance of this returning officer, because we assume that most people are reasonable and most people want to perform well in their jobs. This is not a tool whereby we're looking at flipping over 15% of the staff. I don't see this as foreseen at all.

**Mr. Jay Hill:** My final question—for this round, at least—is if you could just explain the difference.... You already went through how you would go about hiring or selecting these individuals in an earlier question. Right now, as I understand it, there is nothing like that, right?

**Mr. Jean-Pierre Kingsley:** I don't know what there is, sir, because it's entirely out of my hands.

**Mr. Jay Hill:** But are you aware of any advertising? For example, you said the first step you would undertake, if it were your responsibility, would be to advertise, as granted in this bill. Are you aware of any advertising, or is it unknown how these people suddenly materialize and become part of your responsibility?

**Mr. Jean-Pierre Kingsley:** The truth of the matter is that it is unknown to me; the whole process from start to finish is unknown. I have provided job descriptions, I have provided criteria for selections, and I have provided a video on the job of a returning officer, but the uses to which these have been put are not known to me.

**Mr. Jay Hill:** But under the present system, you don't know anything about that individual until you receive their name?

**Mr. Jean-Pierre Kingsley:** Until I receive their name.

**Mr. Jay Hill:** In other words, they've already been appointed; it's a *fait accompli*, and they say, Joe Blow is now returning officer in XYZ constituency.

**Mr. Jean-Pierre Kingsley:** I get the Governor in Council minute telling me he's been appointed, and then I write a three-page letter saying here's what I'm expecting of you and I want you in the course on this. I have no idea of the extent of their knowledge of anything, or of their skills and experience—nothing.

**The Chair:** Thank you very much.

Madam Redman.

**Hon. Karen Redman (Kitchener Centre, Lib.):** Thank you, Mr. Chair.

Welcome back, Mr. Kingsley.

**Mr. Jean-Pierre Kingsley:** Thank you, Madam Redman.

**Hon. Karen Redman:** I actually just want to follow up a little bit on the same theme that Jay was covering. In the bill, with the exception of order of merit, the statute really doesn't identify some of the underlying fundamental principles and values, such as being non-partisan, being representative, and having official languages ability, and the other values.

Why is the statute silent on those? Shouldn't this process be a little more fleshed out?

**Mr. Jean-Pierre Kingsley:** Well, frankly, I haven't dwelled upon that at all, because we're in the throes.... We have some tools that we have developed, but we will be in the throes of developing them further the moment this bill leaves this committee, so that we can do more work.

Whether or not those need to be included in the bill is something for Parliament to decide. I'm not necessarily seeing a need for this, but I can tell you that it will occur, because we will do this very professionally, just as we do everything. There are others who have done this; it's part of what is being done in other provinces. New Brunswick has recommended this, where it's on its way, and there's another province—I think it's Saskatchewan. And I don't think the details of this type of thing go into the bills.

The principles are enunciated and the tools or authorities are enunciated in legislation, and then Parliament expects these will be executed and that reports will be provided to the parliamentary committee, or to Parliament, on how these are being exercised, either

on a yearly basis or as regularly as one wishes. This is certainly something that I would do quite voluntarily and report back every time on how this is working, on where there are problems, and on how many people were let go, if any.

• (1140)

**Hon. Karen Redman:** I guess I find it really interesting. We all know how the system works now. What I'm hearing you say is that the process will just come under your jurisdiction, as opposed to returning officers being appointed through the governor in council, the way it is right now.

If I didn't want to leave the position—and granted, I may have thought I was doing a good job as a returning officer—and the decision was made that, no, this wasn't something that was going to continue, what kind of recourse would I have as a returning officer, and would that end up in the courts or full of red tape? Exactly how do we see this piece of it working?

**Mr. Jean-Pierre Kingsley:** If one were that returning officer now and the two-year limit came in—which is in the bill now—one might well apply for the position again.

I will be bold enough to suggest to you that a returning officer who has been performing satisfactorily would have one leg up on the other candidates at that competition, and I would value valid experience and good performance in terms of that competition. I want to make that clear.

**Hon. Karen Redman:** Again, I understand you said it's proactive and that you evaluate the performance of returning officers, but at the end of the two years, if I wanted to continue, it's a clean slate—either I get reappointed or I don't. But would I not have any recourse if I were not selected and wanted to continue?

**Mr. Jean-Pierre Kingsley:** You would have recourse if you thought you were the best candidate and had not been selected. You would even have recourse if you thought you were *not* the best candidate but you wanted to take it to the courts. However, nothing under the Canada Elections Act would allow that recourse; it would be elsewhere, under other statutes concerning your rights.

**Hon. Karen Redman:** Okay.

[Translation]

**The Chair:** Thank you, Ms. Redman.

Mr. Plamondon.



**Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ):** You have already said that you are in favour of this bill. However, in previous reports, it seems to me that you have recommended a number of times that returning officers be appointed by Elections Canada, and not by the minister. How many times have you made that recommendation?

**Mr. Jean-Pierre Kingsley:** I made it in 1990, when I made my first presentation to the Royal Commission on Electoral Reform, as well as when I made my last presentation. That was before the Commission wrote its report. In both cases, I was the first and last witness to appear before the Commission.

As soon as I took up my duties as CEO, I realized, without even having witnessed the consequences, that the current system was deficient in terms of management. Since my first report in 1996, I have consistently repeated that same recommendation. Indeed, I was thoroughly convinced that in order for the management process to be efficient, that kind of authority, that can be closely tracked in an organization, needed to be in place.

**Mr. Louis Plamondon:** That means that under the current system, you are stuck in a way. If the minister recommends someone, you have no choice but to accept that person. You may try to educate him so that he does as little damage as possible or, if you want to see it the other way around, the best possible job. For example, you do not have the power to refuse someone who has a criminal record or close connections to a political party.

**Mr. Jean-Pierre Kingsley:** As regards the possibility of a criminal record, I can assure you that we currently carry out security checks. I know that because it is one of the factors that results in delays in appointments. As for the other situations you referred to, you are right: there is absolutely nothing I can do.

In terms of possible recourse, the situation is exceptionally difficult. I am sometimes forced to send someone to the RO's office to explain all the decisions that have to be made. The idea is to ensure that those decisions are legal decisions.

• (1145)

**Mr. Louis Plamondon:** And in terms of the objectivity and honesty of the election itself, that is clearly a real problem.

I would like to discuss my own case. In 1993, the person appointed returning officer was the Liberal candidate's organizer. That doesn't mean he wasn't qualified; I would even say he was a good returning officer. I have a very good relationship with him. However, it is rather strange that a returning officer should be appointed to the position because he happens to have close ties to the party that has just formed the government.

I must admit that in the beginning, this kind of situation is tiresome for the incumbent. However, I repeat: I have no criticisms to make of my director. That is not the issue. However, there have been irregularities, notably in some ridings where the vote count represented 105 per cent of potential votes. When there are more votes than voters, there is definitely something wrong. The returning officer had not performed his duties properly or, in that instance, had cooperated in creating certain inequities.

As a general rule, the system works well. However, leaving it the way it is could be dangerous, in that you do not have the power to

refuse someone who does not have the appropriate qualifications. In that sense, it is high time that our Committee agree unanimously on the need to give you the necessary powers to manage an election in an appropriate and honest manner. That is why I wanted to hear you say, again today, that for at least 15 years now, you have been recommending that the legislation be changed and that the process be much more transparent.

I want to thank you for the work you do.

**The Chair:** Mr. Kingsley.

**Mr. Jean-Pierre Kingsley:** I would just like to make one comment by way of a response.

In the past, what used to happen to candidates with links to political parties? I think it's important to recognize that human rights must prevail. A person would not automatically be excluded for that reason. However, within the selection process, there would be criteria through which to assess the ability and desire of an individual to perform his duties in a neutral and equitable fashion. As I see it, the fact that someone had been through such a process would very much help to get around the perception that he could have a favourable bias towards one candidate, rather than another.

Of course, if we apply that to the entire system, it would mean that people with connections to each one of the political parties would get these jobs, because the process would be one based on merit. And the fact is that there are lots of deserving individuals in each of the political parties who may want to change careers and who would certainly have every right to do so, something that we would automatically accept, provided that they are the best candidates.

**The Chair:** We have to move on to other questions now. Otherwise, everyone will not have a turn.

Mr. Casey.

[English]

**Mr. Bill Casey (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thank you very much.

Welcome back to our committee. When you were here last time, I felt later that perhaps I had been a little more aggressive than I should have been under the circumstances.

I want to tell the committee that when I went back home to Stewiacke, the phone rang in my car; it was the Chief Electoral Officer to report back on some of the things I'd raised. I appreciated that very much, and I do thank him for it.

Having said that, with all this talk about jobs and competitions, I can't resist; I want to raise an issue. Today on the Public Service Commission website, you're advertising ten jobs for your office. They each pay \$47,249. They require a high school diploma or equivalent. The problem is that the only people who can apply for those ten jobs have to have postal codes in Ottawa.

I know there are people in Rodger Cuzner's riding who would like to apply for these jobs, and there are people in Mr. Hill's riding in British Columbia who would like to apply for these jobs. And there are ten of these things.

Now, it seems to me that it would be good public policy, or good policy for your department, to have people from all across Canada in your office, not just from Ottawa. Here ten jobs are advertised, and they all have to come from this little cluster of postal codes around Ottawa.

You probably don't even know that these are on the website, and I don't mean to surprise you with this, but it's offensive to us in the other parts of Canada that people in our ridings can't apply to work in government offices—especially at the electoral office, where you'll be managing an election in the very near future.

**The Chair:** Mr. Casey, I don't know if you had arrived in the room yet, but I thought there was a consensus—

• (1150)

**Mr. Bill Casey:** No, I know that, but I couldn't help myself.

**The Chair:** —to deal strictly with Bill C-312. In eight minutes from now the committee will adjourn, and members who might have had questions on Bill C-312 won't have asked them because another issue was being raised.

**Mr. Bill Casey:** I'll just wind up then and ask him for his thoughts on this.

**The Chair:** Could you comment on it briefly, Mr. Kingsley? I want to complete the discussion of the bill.

**Mr. Jean-Pierre Kingsley:** I know that the Public Service Commission has said that this rule would change by the year 2007. In the meantime, like everybody else, we hire under the Public Service Employment Act.

That doesn't pre-empt my looking into the matter, and I will do that. I am sensitive to that. This job has to be sensitive to the fact that we go from coast to coast to coast. And we are.

**Mr. Bill Casey:** I agree, absolutely, but ministers can overrule that. Perhaps you can.

That's it.

**The Chair:** Please remember that Mr. Kingsley is an officer of Parliament, as is the other officer of Parliament about whom you're inquiring. We're talking about two officers of Parliament here, in fact.

Mr. Broadbent.

**Hon. Ed Broadbent:** I just want to share an observation made by my Bloc colleague, that being a member of the Liberal Party of Canada doesn't preclude you from having the ability to do the job we're talking about. It's not a defining characteristic of being a Liberal that you don't qualify for this job, and neither should it be a defining characteristic that to get the job, I take it, you have to be a member of the Liberal Party of Canada.

**Mr. Jean-Pierre Kingsley:** Or any party; that will not be a defining characteristic.

**Hon. Ed Broadbent:** I would like to add that in addition to the appropriate reasons for making these decisions, however we define the term “available to any citizen in any part of Canada on a competitive basis”, it is another step forward when we go with this to the departronization of the political process in Canada, which I think is long overdue. Quite apart from the merit principle here, what I think is so important for the perception of Canadians is that people in

these jobs are there not because of a connection to a political party, and we still have a long way to go.

I got to thinking about this when I made an inquiry a year ago about the NCC in my riding and found that of the 15 members on the board, the major qualification was to be a member of the Liberal Party of Canada. Of the 15, 14 are participants in one way or another of the Liberal Party of Canada. It's absurd for the NCC to be that way.

I'm going to leave that, but I want to say that what's so important about this initiative is the departisanization of the electoral process. I think it is so important for the country.

[*Translation*]

**The Chair:** Mr. Kingsley, you were saying earlier that an involvement in politics does not disqualify anyone. However, there are certain criteria that disqualify people because of their involvement. For example, is it not true that former members of Parliament and former candidates—Section 22 of the Canada Elections Act contains a list of people—are not eligible?

**Mr. Jean-Pierre Kingsley:** You're absolutely right. I said that the rest of the legislation would not change, and nor would that particular provision.

**The Chair:** I wasn't talking about that; I was talking about your answer to the question posed by Mr. Plamondon, I believe. You said that there were no restrictions in that regard. But the fact is that there are restrictions that apply to people who have been involved—obviously, at a certain level—in partisan activities, by having been candidates, members of Parliament, and so on.

**Mr. Jean-Pierre Kingsley:** That is what the legislation currently provides, and that would continue to be the case. That is why I did not highlight it. I could easily have done so.

**The Chair:** Thank you.

Mr. Cuzner.

[*English*]

**Mr. Rodger Cuzner (Cape Breton—Canso, Lib.):** First, I'd like to start by thanking my colleague, Mr. Casey, for his continued support in bringing down the jobless rate in Cape Breton.

**Some hon. members:** Oh, oh.

**Mr. Bill Casey:** That's what I'm here for.

**The Chair:** Let's get back to the bill. You only have seven minutes left.

**Mr. Rodger Cuzner:** This may have been asked and answered already, but could you give me some kind of indication as to what types of concerns or grievances have been brought forward on recent DROs? In fact, regarding what Mr. Broadbent said, is it common to have charges of partisan intervention maybe on the part of DROs? Is that not uncommon?

**Mr. Jean-Pierre Kingsley:** If I may respond, Mr. Chairman—and there is a more thorough response through previous testimony that I've given here—I would like to answer your question as best I can in the timeframe we have.

The issue about political partisanship has been reported here as a concern among members, as a perception. In many cases, that perception is a reality, in their view, that there are little things that occur. So that's on that end. That, of course, affects the effectiveness of the returning officer in the returning office, because it would mean that some candidates would be reluctant to approach him or her, knowing the reception is not the same. That was one issue.

● (1155)

**Mr. Rodger Cuzner:** Have you received a number of grievances?

**Mr. Jean-Pierre Kingsley:** They've been flagged here.

**Mr. Rodger Cuzner:** Just here in testimony.

**Mr. Jean-Pierre Kingsley:** When I indicate “here”, I'm indicating to the class of people, members of Parliament, and I get them from members of Parliament after every election.

**Mr. Rodger Cuzner:** You do?

**Mr. Jean-Pierre Kingsley:** Yes, I do. In management—

**Mr. Rodger Cuzner:** Can you quantify?

**The Chair:** Excuse me, Mr. Cuzner. It's difficult for the people recording all this if two people speak at once, if you don't mind.

Mr. Cuzner.

**Mr. Rodger Cuzner:** Could you quantify? Would you know how many? In those cases as well, would they result in any kind of action from your office, or even dismissal? Would you have had to remove anybody because of that?

**Mr. Jean-Pierre Kingsley:** Those were the topics we broached before, but maybe I'll come back to that if I can.

I also wanted to explain that in management terms the issues that have arisen are very simple. The law says that the Chief Electoral Officer shall issue directives. It's supposed to be the law. It's a form of law. There is no regulation under the statute, which is very detailed. But it still needs directives to be carried out, and returning officers are bound to carry out those directives. Some of them just put them aside. Every election I have four, six, eight blatant cases that come forward. Of course, the people who are paying for this are the electors, because my directives are aimed at providing service to the electors. This is, of course, something that would occur much less often, if at all, under the kind of regime that is being proposed by this bill.

In terms of numbers, at one time it was foreseen that I would be appearing before the committee to explain a number of cases, but the committee never did call me back on that, and I'm not prepared to answer in terms of numbers this morning.

**The Chair:** Madam Longfield asked for a question, and then we have to adjourn. We have another item at precisely 12 noon.

Madam Longfield.

**Hon. Judi Longfield:** I understand your views on this, Mr. Kingsley. Some of your concerns I share; others I don't. The perception is that somehow, because they're partisan appointees, it

makes them strident, difficult, aggressive, and difficult to deal with. I have found that some of the ones in my neighbouring ridings, who, if you used the thought that they were appointed by a Liberal and therefore they should be more cooperative with Liberals, have been some of the most difficult to deal with. I suggest it has less to do with partisanship than with the character of the individual. We're always going to have that, whether you get them through open competition or through appointment. You're going to have a body of people who do things differently and have their own set ways. You can't always weed that out in a competition. On paper they look pretty good, until you get them trying to work.

I appreciate there needs to be a way to get rid of those people, but I don't think they're there because they're partisan.

Just in terms of Mr. Broadbent's comment, my last returning officer, who quit because she was taking care of her mother, was actually the wife of a former NDP candidate in the neighbouring riding.

**Hon. Ed Broadbent:** I'm sure she was doing a splendid job.

**Hon. Judi Longfield:** She was, and her political affiliation had nothing to do with the fact that she was the best candidate and that's the one we recommended.

[*Translation*]

**The Chair:** Very good.

Mr. Kingsley, we have to wrap up now. Do you have a final comment to make?

**Mr. Jean-Pierre Kingsley:** No I do not, Mr. Chairman.

**The Chair:** Mr. Kingsley, thank you very much for appearing this morning. Your testimony will certainly be helpful in our review of this bill, which we will be completing very soon, I hope.

Now that the first part of our meeting has concluded, we will move to the next item on our agenda. We are going to proceed promptly to the next item of business. I'm sorry if we are unable to take two, three or five minutes to change witnesses. We simply don't have enough time for that. We are going to proceed immediately.

● (1200)

[*English*]

Order. We're still sitting.

Pursuant to the order of reference of Thursday, October 6, 2005, the question of privilege relating to an inquiry conducted by the Ethics Commissioner is the next item on the agenda.

Honourable members will recall that at the last meeting we had the complainant appear before the committee following an issue that was raised in the House of Commons, whereupon the Speaker ruled that there had been a prima facie case of privilege. The House had voted that there was such a prima facie case of privilege and the issue was referred to the parliamentary committee.

Would it be the wish of the committee that I reread that motion for the record, or do you all know it sufficiently? You want it read again. Very well.

[*Translation*]

A question of privilege having been raised by Mr. Obhrai (Calgary East), the Speaker ruled that there was a *prima facie* case of privilege.

Whereupon, Mr. Obhrai, seconded by Mr. Nicholson, moved:

That, pursuant to Standing Order 108(3)(viii), the process by which the Ethics Commissioner is conducting inquiries in relation to the Conflict of Interest Code for Members of the House of Commons, in particular the issues raised in the House by the Honourable Member for Calgary East on Monday, September 26, 2005, be referred to the Standing Committee on Procedure and House Affairs.

As I indicated earlier, the question was put on the motion and it was agreed to.

It is my pleasure this morning to welcome one of our own—in other words, an officer of Parliament—to the Committee, namely Dr. Bernard Shapiro, Ethics Commissioner.

[*English*]

Dr. Shapiro, welcome to our parliamentary committee this morning. We're glad to have you with us.

I must indicate to members, of course, that we are sitting from 12 till 1 p.m., and if it is deemed necessary, we could perhaps bring the witness back later. I'm not saying it is, but I understand there might be an interest in having other people appear later, and if someone wants to talk about it during the course or at the end of the meeting, the chair will be ready to receive that input as well.

With that, Dr. Shapiro, we'd ask that your comments be kept rather brief to allow more time for members to ask questions, recognizing that these are complicated issues and that being brief in a complicated issue is not easy.

Dr. Shapiro.

[*Translation*]

**Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner):** Thank you, Mr. Chairman.

I would like to introduce the Deputy Ethics Commissioner, Mr. Robert Benson.

Mr. Chairman, members of the Committee, I am here before you today in response to the Order of Reference from the House to this Committee on a question of privilege.

The Order of Reference has two parts: the first pertaining to the administrative and operational process in support of investigations pursuant to Section 27 of the Conflict of Interest Code for Members of the House of Commons, and the second dealing more specifically with the matters raised by the honourable member for Calgary East in the House on September 26, 2005.

[*English*]

As an introduction, I wish to state the principles that have guided my actions in discharging my duties in administering the Conflict of Interest Code for members of the House of Commons. These are that the Ethics Commissioner enjoys the privileges and immunities of the

House of Commons and its members when carrying out his duties under the code. This commission always has and always will, I believe, continue to safeguard the independence and the integrity of any process the House has agreed to with respect to the code. Finally, the Ethics Commissioner will of course respect the confidentiality of any information that I or my staff may encounter in conducting an inquiry to be conducted in private or in providing our advice to our clients on their obligations under the code.

At the outset, I wish to outline the general constraints with respect to all inquiries undertaken by my office. First I would like to make reference to the Speaker's ruling of June 7 of this year. It states:

[A]s I see it, in adopting those amendments to the Parliament of Canada Act along with the Conflict of Interest Code that is now included in our Standing Orders, the House decided to be governed by the Ethics Commissioner in certain matters.

Part of that discipline, it appears to me, is akin to the House abiding by the *sub judice* convention: when a matter is before a court, the House will await the determination of the court before discussing that matter publicly in the course of its proceedings.

Similarly, when issues are the subject of an inquiry under the mandate of the Ethics Commissioner, members are enjoined from discussing those issues, so that the inquiry can proceed untrammelled by public comment from members.

Second, subsection 27(7) of the code requires that an inquiry be conducted in private. Therefore, the Ethics Commissioner is not at liberty to discuss any aspect of an inquiry. His role is to conduct the inquiry and provide a report to the House. This being said, in his October 6 ruling the Speaker indicated

that the absence of a clear process to address these kinds of disputes leaves both hon. members and the Ethics Commissioner lacking the clarity to which they are entitled in the performance of their respective roles.

Allow me to say a few words about the inquiry process in general. My office has used our experience of its first year of operations to develop processes for the various types of inquiries that might be undertaken under the code.

There are three types of inquiries that can be envisioned. These are, first, an inquiry following a request made by a member of the House; second, an inquiry following a resolution of the House; and third, an inquiry at the initiative of the Ethics Commissioner.

The process for each of these types of inquiries is outlined in the charts that I am tabling today. I would welcome an opportunity—not necessarily today, and it could be today, but it could be a future occasion—to discuss them with the full committee or, if you prefer, a subcommittee that you might appoint for the purpose, so that a mutually acceptable process can be put in place.

As a further comment—and here I'm really reflecting on the comments that have been made in a variety of contexts in the past few days—I believe I am sensitive to the impact of my inquiries on members and, by extension, sometimes on their family members who have not themselves chosen a public life. On the other hand, I cannot simply limit my inquiry context to those individuals who are subject to the code. I will continue, however, to treat any matter brought to my attention with discretion and respect for the code itself, for its principles, due process, the members rights, and of course the rights of all Canadians.

With respect to the current self-initiated inquiry, I believe both I and the committee are facing a real conundrum. On the one hand, given the confidentiality requirement of subsection 27(7) of the code, I am not able to comment on or discuss today either the progress or the substance of the inquiry. I have to respect the integrity and privacy requirements of the process. On the other hand, it is exactly this information on the progress and substance of the inquiry that would be most helpful to the committee in deciding on the matter of personal privilege.

At the committee's meeting of October 18, you requested that I suspend the inquiry until such a time as the committee has tabled its report on the issue of privilege. Given the conundrum I've just described, I do not believe suspending the inquiry is the wisest course of action. However, in order to assist the committee to examine the question of privilege, and given that I have relevant information that relates specifically to the question of reasonable written notice, I will undertake to address the issues raised by the member from Calgary East in my report on the inquiry.

As all committee members may recall, my report on the inquiry is to be tabled in the House. Following its tabling, any member has a right to make a statement in the House immediately following question period, within five sitting days, as you can see in subsection 28(9). As well, subsections 28(11) and (13) provide that the report may be considered by the House and may be referred back to the Ethics Commissioner for further consideration.

● (1205)

This, I would submit to the committee, is the proper means to deal with objections raised by the member being investigated. Otherwise, the independence of the inquiry process, which is *sub judice*, would be brought into question.

However, if it is still the wish of the committee, I would, admittedly with some unease and reluctance in terms of my responsibility to sustain the independence and integrity of the inquiry process, be willing to suspend the inquiry provided that, one, it is done without prejudice to future inquiries, two, it is not to be taken or interpreted as a precedent, and three, the inquiry will resume as soon as the committee has tabled its report.

Meanwhile, until my report has been made available to the House, I cannot respond to questions specific to the inquiry itself. That being said, I understand that there are two allegations made by the honourable member from Calgary East that have been referred to the committee by the House. The first is with respect to the leaking of information to the media as a result of my interview with Mr. Obhrai from the *Ottawa Citizen*, and second, with regard to the lack of reasonable written notice provided to the honourable member.

I would like to respond briefly to these allegations. On the first allegation of leaking information, it is unfortunate that there have been numerous media reports regarding this whole matter. I am tabling with you today a sample of the articles that have appeared in various media outlets across Canada since May 2005. Numerous individuals and parties have been quoted as being the source of the information. I would like to note that in no case was my office reported as a source of that information. In a September 16, 2005, article by Mr. Obhrai, after my interview with him, my comments were quoted by him and were:

"I have some material that suggests something inappropriate was happening.... If true, it seemed worth looking into. If untrue, it will turn out not to be."

My comments merely summarized the issue central to the inquiry. Indeed, the purpose of my inquiry is to determine whether or not there is any merit in these allegations. My comments on the matter were therefore not biased, nor could they in any way cause prejudice.

With regard to the second issue, that is, whether reasonable written notice was provided to the honourable member, I refer you to the chart that I provided today outlining the process in relation to a self-initiated inquiry. The process commences with information brought to the attention of the Ethics Commissioner. Additional information may be gathered or interviews may take place before a decision to self-initiate an inquiry is made by the commissioner. In this case, given the process followed, I do believe that reasonable written notice was given to the honourable member. I will of course address this issue in more detail in my report on the inquiry to be tabled in the House in due course.

In closing, with respect to the committee's request to suspend the inquiry, I've already proposed an alternative course of action. I would be pleased, in any case, to answer your questions on the general process followed in conducting inquiries initiated pursuant to the code. However, as I've already said several times, I will not be able to answer questions on the progress or substance of the inquiry with respect to the honourable member from Calgary East.

Thank you.

● (1210)

**The Chair:** Thank you very much, Dr. Shapiro. We do appreciate the limitations within which you're operating, and I know all honourable members will want to respect that while we're asking questions. As I put it to some of our colleagues the other day, we're not a court of appeal, and certainly not, even if we were, before a decision has been rendered, in any case.

We all know that; nevertheless, I'm sure members have a number of questions they would like to ask.

Mr. Reid.

**Mr. Scott Reid:** Mr. Chairman, my question is a little longer than is typical, but it will respect the five-minute time limit.

**The Chair:** Including the answer, Mr. Reid.

**Mr. Scott Reid:** I understand that.

Dr. Shapiro, I'm going to present to you, in the form of five propositions, the facts of the situation as they appear to me. If any of what I state is inaccurate, I'd like you to set me straight in your response.

Proposition one: as the Ethics Commissioner, you are bound to respect those provisions of the Conflict of Interest Code for Members of the House of Commons that apply to your office.

Proposition two: the code states, in paragraph 29(1)(a), that:

(1) The Ethics Commissioner shall immediately suspend the inquiry into a matter if

(a) there are reasonable grounds to believe that the Member has committed an offence under an Act of Parliament, in which case the Ethics Commissioner shall refer the matter to the proper authorities;

Proposition three: on May 9, Minister Volpe forwarded to you two affidavits along with a cover letter in which he informed you that he was also forwarding these materials to the RCMP. These affidavits asserted that Mr. Obhrai was guilty of accepting a bribe. If there were reasonable grounds for believing the accusations in the affidavits to be valid, you are required, by virtue of paragraph 29(1)(a), to turn the matter over to the RCMP and to not even begin an investigation, since accepting a bribe is an offence under an act of Parliament. On the other hand, if there were no reasonable grounds for believing the accusations in the affidavits to be valid, you were under an obligation not to start an investigation.

On the contrary, you were obliged to act in conformity with subsection 27(6) of the Conflict of Interest Code, which states, *inter alia*:

If the Ethics Commissioner is of the opinion that a request for an inquiry is frivolous or vexatious or was not made in good faith, or that there are no or insufficient grounds to warrant an inquiry or the continuation of an inquiry, the Ethics Commissioner shall so state in dismissing the request.

In short, you were in violation of your mandate from the very start, since the code precludes investigations by the Ethics Commissioner into criminal matters.

Proposition four: you violated subsection 27(4) of the code when you failed to inform Mr. Obhrai of your investigation into the allegations against him until after it had already commenced. The first occasion on which you appear to have made a proactive indication to him that you had commenced an investigation was in a letter dated July 18, after the date on which the investigation had already commenced. However, maybe there's something missing from the files and materials that Mr. Obhrai provided to me, and you had informed him earlier; I'm unaware of those things.

This is relevant, because subsection 27(4) of the code states:

The Ethics Commissioner may, on his or her own initiative, and on giving the Member concerned reasonable written notice, conduct an inquiry

In other words, you must notify the member in advance of conducting the inquiry.

Proposition five: you violated subsection 27(7) of the code, which states, *inter alia*:

The Ethics Commissioner is to conduct an inquiry in private and with due dispatch

This violation occurred when you informed Jack Aubry that you were conducting an investigation into Mr. Obhrai. Mr. Aubry reported on September 15 that you had told him:

"I have some material that suggests that something inappropriate was happening.... If true, it seems worth looking into. If untrue, it will turn out to be."

You did not say the one appropriate thing that you could have said: "No comment."

I invite your comments on the foregoing propositions.

•(1215)

**Mr. Bernard Shapiro:** I'm not sure I have them all clearly in mind, since it was a very long question, but I'll do the best I can, trying at the same time to avoid talking about the inquiry itself.

I think you are right that if I have reason to believe a criminal act, for example, is at hand, it is not something that would be up to me to

investigate. It would be something up to me to refer to the appropriate authorities. I think that's quite right.

I think accepting a bribe probably is a criminal act. It definitely is a criminal act. But if I proceeded, it must have been on the understanding I had, at least, that.... How can I put this without actually saying anything about the inquiry itself?

Let me talk about the general case. If I get a request for an investigation or material suggesting that I might investigate something, or if something comes to my attention, I would in normal circumstances take a look at it. Usually there is more than one issue at hand, and if any of these issues are of the type you mentioned, I would not take any steps further; I would refer them to the authorities and they would take the appropriate steps, if any. That is the general way in which I proceed.

I cannot respond to the specifics without talking about things I'm not entitled to talk about. This is a conundrum that I tried to raise in my opening remarks.

On the issue of when to let people know, my general approach is to try to look at the situation, to do some thinking about it, and perhaps speak to some people about it, before deciding whether or not to proceed. When I've decided to proceed in a formal way, that is when I would normally let the object of the inquiry know.

The fact that an investigation is going on I don't regard as a private matter. If there was any mistake I made in that regard in this case, that is....

I really can't comment. As I said in my opening remarks, I had a lot of information, but I'm not free to share it without saying things I'm not supposed to be saying. It must be very frustrating for you, I'm sure, as it is for me.

But I don't believe the set of propositions you provided, although often correct in the—

[*Translation*]

**The Chair:** Thank you very much.

Members of the Bloc Québécois have questions. Do members on the government side also have questions?

[*English*]

Mr. Hill, I believe you're next.

I'm sorry, Mr. Broadbent, I missed you.

Mr. Broadbent is first. I missed you on the way there.

**Hon. Ed Broadbent:** I want to—

**The Chair:** It's not because we're both retiring, Mr. Broadbent.

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

I was a bit surprised by your last statement, or near the end. I was trying to write it down: "The fact that there's an investigation going on is not to be regarded as a private matter." Would you elaborate on that? My understanding is that it ought to have been regarded as a private matter.

**Mr. Bernard Shapiro:** When I'm asked to give advice about something—when a client approaches me and asks for confidential advice—I regard that as an entirely private matter between my office and the client, whoever it happens to be: the public office holder or the MP. When an investigation is being launched, it is no longer possible to keep it private, because so many people become a part of the process. It's no longer just occurring inside my office with a client; it's occurring in a much broader context.

When I think about this in retrospect and ask myself whether there is anything I might have done differently, after the fact, there is one thing I should mention. That is, normally speaking, once I launch an investigation I let the Speaker know. I write a note to the Speaker in order to deal with the issue of not publicly commenting on the investigation. In this particular case I did not, because the House was not in session, and in retrospect I think I should have sent it whether or not the House was in session.

• (1220)

**Hon. Ed Broadbent:** My understanding is that if you've embarked on an inquiry that's been launched by a member, that should indeed be kept a private matter, unless the member himself, of course, wants to tell the public. And your response ought to have been analogous to what goes on often when questions are asked about whether a criminal investigation.... In the House, questions are frequently raised—inappropriately raised, but sometimes accidentally inappropriately raised—about whether somebody is subject to a criminal investigation by the RCMP, and the appropriate answer is, “No comment.” There's no comment on whether there is or is not an investigation. It seems to me that this is entirely what keeps it neutral, vis-à-vis a citizen or an MP who may otherwise be at risk.

I come back to your statement that you just made today. Your comment to Mr. Aubry was, “I have some material that suggests that something inappropriate was happening”. Then you conclude from this that, “My comments”—which I just quoted—“were therefore not biased, nor could they in any way cause prejudice”. Even if you've added the qualifier, as you did in your fuller statement, “I have some material that suggests that something inappropriate was happening”.... You added the qualifier, “If true, it seemed worth looking into; if untrue, it will turn out not to be”.

If this was an RCMP investigation, and an RCMP official or a cabinet minister said, “I think something is wrong, i.e. I think he may have violated the Criminal Code, and that's why we're looking into this”, we would be objecting to that very strenuously, saying that that's inappropriate comment and it does indeed prejudice the situation negatively about the individual. Certainly when I look at this, the fact that you said that something inappropriate was happening suggests that something inappropriate was happening, contrary to the conclusion you reach that this did not in any way cause prejudice. I think it does. It causes prejudice—certainly in the public impact—and affects, potentially quite seriously, an MP's reputation. This has already been raised, not only the particular—

**The Chair:** Mr. Broadbent, you're leaving no time for the witness to respond.

**Hon. Ed Broadbent:** Okay. I welcome that intervention.

I made my point, and I would like to hear the witness respond.

**Mr. Bernard Shapiro:** The practice I've followed is that in what I would call the preliminary stage—when things are coming to my attention but I haven't made any choice about what to do—I keep that an entirely private matter. I don't discuss it, although this was widely discussed in the House, etc., at the time. So there was a lot of public information about this. But there was no comment from me. I didn't think it was appropriate until I decided to move forward.

I believe the need for some reasonable transparency requires that once I have made that choice and I have notified the member, then it's possible to say that it's just to confirm that it's going on—not to comment on it, but to confirm that it's going on.

**Hon. Ed Broadbent:** My brief comment on that is that I don't think that's appropriate.

**Mr. Bernard Shapiro:** I understand.

**Hon. Ed Broadbent:** I think that should not be said. I think it should be fully acceptable, indeed desirable, for you to say that you have no comment on this whatsoever. The fact that this wasn't done I think was a mistake and does prejudice the situation vis-à-vis the individual in question.

I'll leave it at that for the time—

[*Translation*]

**The Chair:** Thank you, Mr. Broadbent.

Mr. Guimond, please.

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

I want to be sure we understand each other, Dr. Shapiro, and I hope you will be able to answer my questions. You essentially inferred that, because the investigation is ongoing, you will not be able to provide answers.

Appended to your presentation is a document setting out three different processes.

The first is entitled “Process in Support of a House Request for an Inquiry as per MPs' Code”. That means that the motion comes from the House. That is not the case we are dealing with today.

The second is entitled “Process in Support of an Inquiry Requested by an MP as per MPs' Code”. That means that a member of Parliament requests an investigation of one of his colleagues. I don't believe that is the case here.

The third is entitled “Process in Support of a Self-Initiated Inquiry as per MPs' Code”. Does the case we are dealing with today fall into that category?

• (1225)

[*English*]

**Mr. Bernard Shapiro:** In this particular case, it's the code, and it self-initiates at the commission. The issue first came to my attention in a different way. That's a whole different issue—

**Mr. Michel Guimond:** Self-initiates?

**Mr. Bernard Shapiro:** Yes.

**Mr. Michel Guimond:** By whom?

**Mr. Bernard Shapiro:** By me.

**Mr. Michel Guimond:** By you. Okay.

**Mr. Bernard Shapiro:** [*Inaudible—Editor*]

[*Translation*]

**Mr. Michel Guimond:** You and the members of your team are certainly aware of the question of privilege raised by our colleague from Calgary East.

For Step one, it says: “Correspondence/material or report alleging breach of Code by an MP”. Then below, under “A”, it says “If applicable, acknowledgement of receipt” and, under “B”, “Inform the member concerned”. That means that the member concerned must immediately be informed that you are proceeding with an investigation.

However, one of the complaints that has been levelled at you by our colleague from Calgary East is that he learned about the investigation late, or at least after it had already been announced in the media. What do you say to our colleague from Calgary East?

[*English*]

**Mr. Bernard Shapiro:** He certainly found out from me long before I made any comment to any media at all. There were lots of comments by other kinds of people, both in the House and outside it, but that's a different matter altogether. I made no comment whatsoever before letting him know, once I had taken a look at what the situation was and at just how many issues might arise.

[*Translation*]

**Mr. Michel Guimond:** Mr. Jack Aubry does not engage in journalistic interpretation in the articles. He quotes your exact words. The fact that you did not comply with the requirement to keep your investigation confidential is another thing you are being criticized for.

What do you say to that?

[*English*]

**Mr. Bernard Shapiro:** Whether I would regard it as confidential is the same issue that came up just a moment ago. What I regard as confidential was what was going on inside the inquiry, not whether there was one or not, because when I write to the Speaker, in almost all cases he will have to make it clear that there's one going on in order to alert the members of their own responsibilities not to speak of it while it is going on. There is no way of not making the fact of the investigation public.

[*Translation*]

**Mr. Michel Guimond:** I have one last question for you. I would like to refer you to a statement that appeared in the *Calgary Herald* on September 15. In the second paragraph, Dr. Shapiro, the reporter quotes you as saying that you began the inquiry because you had received certain material in the spring that warranted a more thorough examination.

You then go on to say—and these are your own words—that you have some material that suggests—and I see here that you are being

cautious—that something inappropriate was happening. You add that if that is true, it is worth looking into; if not, you will simply drop the matter.

Would not the most basic prudence have warranted your avoiding making such a comment, since it was possible that some doubt would remain?

If someone suggests that an individual is a dangerous pedophile and he is treated as such, it will be quite a struggle for him to convince people in their heart and minds that he is not a dangerous pedophile.

The Committee will be making a decision, but what I'm trying to say is that in my view, this type of comment is inappropriate, given your duties and your role as guardian of the Code of Ethics.

● (1230)

[*English*]

**Mr. Bernard Shapiro:** I appreciate the comment.

I have no further comment to make than what I've already said.

**The Chair:** Madam Longfield.

**Hon. Judi Longfield:** Thank you, Dr. Shapiro.

Did you say that you had written to the Speaker or had not?

**Mr. Bernard Shapiro:** No, I had not.

**Hon. Judi Longfield:** You had not.

Does the code indicate that you should?

**Mr. Bernard Shapiro:** No.

It's been my practice, but the code doesn't say that.

**Hon. Judi Longfield:** Okay. You would write the letter to the Speaker at the time you began the inquiry. Is that correct?

**Mr. Bernard Shapiro:** That's correct.

**Hon. Judi Longfield:** You also say that when you determined that you should begin the inquiry—or self-initiated it, as you say—it was then or slightly before then that you actually contacted Mr. Obhrai.

**Mr. Bernard Shapiro:** It was at that moment that I wrote Mr. Obhrai to tell him.

**Hon. Judi Longfield:** Okay, and you told him you were conducting an inquiry.

But before you had determined that you were going to conduct the inquiry, you were making pre-inquiry investigations, as it were. So you were contacting other people to determine in your own mind whether what you had in front of you warranted investigation. Is that correct?

**Mr. Bernard Shapiro:** That's correct. It's rather like the issue first raised by Mr. Reid. You try to decide whether this is frivolous or vexatious.



**Hon. Judi Longfield:** I think in hindsight we would say that perhaps we had better have much more stringent guidelines or operating procedures to cover the pre-inquiry period, because if that, in itself, gets out in the media, or it even just gets out in the public, or something that your office is trying to determine whether they're going to follow up or proceed further on an inquiry, the member's privacy is being invaded without him or her actually having been told about it.

So perhaps if you said, "I've received some information and I haven't decided whether I'm going to proceed with it, but in the interim I may go out and do some investigatory thing"...it might have been helpful for Mr. Obhrai if he had known that you were doing this. It might have caused him less grief.

**Mr. Bernard Shapiro:** I can't comment about this specific case—

**Hon. Judi Longfield:** Okay, but in some similar situation—

**Mr. Bernard Shapiro:** —but I will comment on the issue.

I would say that it would be ideal, but it would require a degree of reticence on the part of people outside my office to enable it to happen. When this first came to my attention, it had already appeared in the media and in the House. So it requires not simply the criteria for how things go on in my office, but how everyone else who plays a part in this also behaves.

**Hon. Judi Longfield:** I think, given this—and I'm sure there are others—we're going to have to think very carefully about how we can protect the privacy of individuals.

On the other—and I'll let you comment in a minute—I think people who are charged with an offence often feel that they're found guilty in the media before the actual trial happens. Once you've initiated a process and you've written to the Speaker, I don't know how you keep that presumption of innocence until proven guilty. Do you have some thoughts on that?

**Mr. Bernard Shapiro:** I certainly agree with you. I think it's very, very difficult. As I said to this committee I think—or it may have been to the ethics committee, I can't recall—about the very first inquiry I did, which had to do with Minister Sgro at the time, so much had happened in the media before I even began that it put everybody in a kind of false position and a difficult position to deal with.

As we just heard, accusations are easy to make and people suffer because of them. So I'd be glad to cooperate in trying to develop processes that would be more helpful in this regard.

**The Chair:** Mr. Hill.

**Mr. Jay Hill:** Thank you, Mr. Chairman.

I have several questions here, but to start, could you perhaps enlighten me as to why you would feel it necessary to conduct an interview?

**Mr. Bernard Shapiro:** With anyone, you mean?

**Mr. Jay Hill:** With the media. With Mr. Obhrai. You state in your document "after my interview", so obviously you must have agreed to an interview.

• (1235)

**Mr. Bernard Shapiro:** Yes.

**Mr. Jay Hill:** Why was that necessary?

**Mr. Bernard Shapiro:** Oh, I don't think it's necessary.

**Mr. Jay Hill:** Is it part of your job? Is it a requirement that you interact with the media?

**Mr. Bernard Shapiro:** I don't think it's a requirement. I think it is not very helpful usually to refuse to, on any occasion, speak to the media.

**Mr. Jay Hill:** Why is that? Why would it be inappropriate to refuse an interview?

**Mr. Bernard Shapiro:** I do refuse some interviews.

**Mr. Jay Hill:** But why wouldn't you have refused this one?

**Mr. Bernard Shapiro:** Well, I didn't know exactly what it was going to be about, for one thing. I asked, and—

**Mr. Jay Hill:** Why is it necessary for you to do an interview with any reporter about any case that you may or may not be investigating?

**Mr. Bernard Shapiro:** It's not necessary, and I don't usually accept interviews when that's what I'm told they're about.

**Mr. Jay Hill:** Don't you see that in our world of politics, where the integrity of the individual member is everything—in connection to their career, to how they're viewed in their home community, how their family perhaps might be treated, their children at school—merely the inference that they have somehow done something "inappropriate", to use your word, would be very harmful to that individual and damaging and stressful to them, their wife, and their children? Do you understand the point?

**Mr. Bernard Shapiro:** I do understand the point. I think you are right in that respect. It can be very hurtful and very damaging.

In this particular case, the issue had been widely discussed in the media long before any of this.

**Mr. Jay Hill:** But not by someone of your stature, who has the role of an investigator on whether there's any credibility to the charges that have been talked about.

**Mr. Bernard Shapiro:** I didn't talk about whether there was any credibility.

**Mr. Jay Hill:** Yes, you did. You said that you were in receipt of material that suggested something inappropriate was happening.

**Mr. Bernard Shapiro:** Right.

**Mr. Jay Hill:** The statement that you made to Mr. Obhrai lends credibility to the charges. Do you not understand that?

**Mr. Bernard Shapiro:** Well, I understand that someone thought it lent credibility to it, because otherwise they wouldn't have written about it, but it didn't say anything about what I thought.

**Mr. Jay Hill:** When do you make the determination that the preliminary process, to use your term, becomes a full-scale investigation? In your mind, what differentiates a preliminary process from an investigation?

**Mr. Bernard Shapiro:** The ideal would be to go beyond. You try to find a point where it's reasonable. It seems reasonable that this matter is serious enough to deserve an investigation, as opposed to only being somebody's suspicion about X, Y, or Z.

**Mr. Jay Hill:** No. My understanding is that you did not inform Mr. Obhrai until the letter of July 18. Is that correct?

**Mr. Bernard Shapiro:** I really can't respond, because I would have to tell you a lot about the process in this particular case, which I'm not free to tell you about. I don't want to mislead you.

**Mr. Jay Hill:** I guess what I'm trying to determine is when a private matter would no longer be considered a private matter. In other words, your defence seems to be that you hadn't really launched an investigation. You were only doing some preliminary research, if you will, to determine whether an investigation was appropriate.

But I don't see, and I don't think a lot of people would see, what the difference is. What's the difference between phoning people, asking them for information, and trying to authenticate whether the allegations have any merit, and the process that you're actually following once you've launched a full-scale investigation? That's what I'm trying to determine. What is the difference between the two?

**Mr. Bernard Shapiro:** The difference would be in the level of detail that you go into, the depth that you go into when trying to get a response from people who may know something about the situation being investigated. You would look more carefully and more systematically than you would otherwise.

**Mr. Jay Hill:** But you'd still be contacting the same people. In this case, it would be Mr. Obhrai's sister-in-law. Was she contacted before he was informed?

**Mr. Bernard Shapiro:** I'm not going to talk about the case itself. I'm sorry. I know that's frustrating, but I have regulations that I have to deal with.

**The Chair:** Colleagues, I know when we start on a line of questioning, it's hard even for us to concentrate on when we cross that threshold.

It may be true that the member of Parliament has shared some of his correspondence with us. He has done so. Many of us have large amounts of information. But that does not relieve Dr. Shapiro from his obligations of confidentiality, even if he does know. I'm not sure whether he knows or doesn't know. We have some of the correspondence about which we're asking some of the very same questions. He still has his same statutory obligations with or without that. I would only caution all of us in that regard.

Thank you.

• (1240)

[Translation]

We will move to Mr. Guimond now.

**Mr. Michel Guimond:** Mr. Chairman, it is going to be difficult for us to dispose of the matter of privilege referred to us by the House regarding this specific case if we are unable to get any information. I really don't see how we're ever going to be able to resolve this.

Dr. Shapiro, I will not refer to the specific case. I want to come back to the process that you have set out for a self-initiated inquiry under the MPs' Code. Under Step one, it says: "If applicable, acknowledge of receipt" and then "Inform the member concerned".

According to your process, does that happen at the same time as you acknowledge receipt? Does the member concerned receive a copy? Do you prepare another letter to the member advising him that you have been made aware of specific allegations and that you have decided to conduct a self-initiated inquiry? Do the two things happen simultaneously? Or is there a delay of five or ten days?

There may be other cases where you have proceeded with an inquiry or that relate to an inquiry that is currently under way. I am not asking you to tell me who is involved nor how many such cases there are. I simply want to know when the member is informed. Does that happen under "B" of Step one?

**Mr. Bernard Shapiro:** We do it almost immediately—the same day, in most cases.

**Mr. Michel Guimond:** Thank you, Mr. Chairman.

**The Chair:** Thank you very much.

[English]

I'm just trying to follow the order here.

Mr. Broadbent.

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

I don't know if this is a question of age, Mr. Chairman, affecting your memory and mine, but anyway—

**The Chair:** Maybe our ages are too similar.

**Hon. Ed Broadbent:** Mr. Shapiro, you quote subsection 27(7) of the code, and that says the Ethics Commissioner is not at liberty to discuss any aspect of an inquiry. Does that include whether an inquiry is actually taking place or not?

**Mr. Bernard Shapiro:** I do not think so.

**Hon. Ed Broadbent:** It's the nub of the question here, in a way.

**Mr. Bernard Shapiro:** I understand the question, and I understand how one could think of it differently—I do understand that—but I don't see how it would be possible not to make the fact of the inquiry public if, at the very same time, members of the House have to be enjoined from speaking publicly about a matter that's under investigation. That's why I make the distinction between the investigation as a whole...that is, it seems to be part of a transparency in the process that it is happening...

I do accept the point that we might try to develop, either together or separately, or whatever...better ways of trying to protect people who may be and often are quite innocent of whatever the charges happen to be.

**Hon. Ed Broadbent:** I understand that, and I want to be clear. When you had the interview with Mr. Aubry, and you said you didn't know what the subject was going to be, and you said these words that I said earlier about what you were doing, including that something inappropriate was suggested, was going on, did you know at that time that you were soon going to be reporting this to the Speaker?

**Mr. Bernard Shapiro:** Yes.

**Hon. Ed Broadbent:** Did that in any way affect the judgment of what you were saying to the reporter?

•(1245)

**Mr. Bernard Shapiro:** I don't really recall that. I don't know if it occurred to me at the time. I really can't tell you.

**Hon. Ed Broadbent:** The logical point that I'm trying to understand here is this. You know the Speaker at some point is going to stop discussion in the House of such a case if it's before you. You saw nothing wrong with saying that an inquiry was taking place, because at some point the Speaker was going to be told about it, and therefore at some point the Speaker of the House would be saying that an inquiry was being undertaken by you.

Is that the logic of your—

**Mr. Bernard Shapiro:** That's correct, but as I said earlier, I had not written to the Speaker immediately when I wrote to Mr. Obhrai because the House wasn't in session. As I said earlier, in retrospect I think I should have done it then, rather than wait for the House to open...just be a bit more careful.

[*Translation*]

**The Chair:** Excuse me. There are still a lot of names on my list, but we only have 15 minutes left. I would ask that all speakers be brief.

Mr. Casey.

[*English*]

**Mr. Bill Casey:** Thanks very much. The thing that concerns me the most here is how far you've reached into the families. It really troubles me.

There was a series of e-mails and telephone conversations in July. Mr. Obhrai's sister-in-law had an e-mail to your office addressed to Mr. Eppo Maertens, and it just says—this is from his sister-in-law:

Where is my privacy? When I met you in Ottawa I gave you all the detail.

And she goes on. She says:

I am already disturbed and please do not disturb me any further. ...my son is already having a hard time in school. His grades are failing. Please respect my privacy and do not ask any more questions. I fail to understand why you are investigating me. Please leave me alone. ... I am scared.

I'm not sure of the date, but my understanding is that you hired a lawyer in India to question his sister-in-law's son. For this sister-in-law's son, there's no involvement as far as I can tell, no accusation that the sister-in-law's son is involved in any way. He wasn't a witness. He didn't do anything wrong, but he's been dragged into this thing.

Now, never mind that case. I just figured out that I have nine sisters-in-law and I have 21 nieces and nephews. Do you think you have the right to go to my nieces and nephews if they haven't been

involved or been part of an accusation or part of an issue at all? Do you have the right to hire a lawyer and go question my nieces and nephews?

**Mr. Bernard Shapiro:** I don't think of these things in terms of the personal relationship between—

**Mr. Bill Casey:** Oh, you don't?

**Mr. Bernard Shapiro:** Let me try to finish before you have a view.

We try to question people who we believe have valuable information to respond to the charge that's been laid or the accusation that's been made. We don't differentiate between whether or not they're relatives. In fact, I think they normally aren't, because those aren't the kinds of people who are usually involved.

I can't talk about this particular case, but in any general case, the only reason we would speak to a relative or anybody is that we feel they have substantial information to offer to us. We don't differentiate in that case between what their relationship is or isn't to the person involved.

I can understand how difficult it is and how insensitive it must seem to the people involved. It's a difficult, intrusive process. It's not pleasant, so I can understand that. We try to be careful, but we cannot limit our interest to people who are the subjects of the code themselves. That would make an inquiry impossible.

**Mr. Bill Casey:** But there seems to be no limit to what you can do. This young man, as far as I can tell from any of the documents I have seen, played no role, is not part of the accusation—

**The Chair:** Mr. Casey, you're asking him to explain his investigation. Please.

**Mr. Bill Casey:** All right, on to other things.

In a case in which the information you're examining has been proven wrong and you've been given that proof, and the RCMP say there is no case here and the person involved says there is no case here.... For example, in Mr. Obhrai's case, the affidavit was proven wrong. The RCMP said there was no issue there. The wife said her husband was trying to divorce her or she was trying to divorce her husband. This was a family issue. There was no case. Why would you not stop the examination then? Why are you still going with it? What are you going on? What is your...?

I know you can't comment on the case, but when do you stop? Is there no stopping you?

**The Chair:** Again, Mr. Casey, I must remind you that you're asking about details, referring to details—

•(1250)

**Mr. Bill Casey:** In general.

**The Chair:** Yes, but you do put in a three-minute preamble describing a case, and then you ask Dr. Shapiro to comment in general.

**Mr. Bill Casey:** That's what we're here about, but I'm going to ask him in general.

**The Chair:** Dr. Shapiro, please reply, and then we'll have to move on to the next questioner.

**Mr. Bernard Shapiro:** You do try to stop these things as soon as you possibly can, whenever you feel you have a set of circumstances such that it's clear what is at hand, or at least you have as much as it's reasonable to get. You then write the report, and that is what I'm doing following this case and every other case. I'm not anxious to waste my time or anybody else's on fruitless investigations.

[*Translation*]

**The Chair:** Thank you.

Mr. Guimond.

**Mr. Michel Guimond:** Dr. Shapiro, you would agree that as Ethics Commissioner, you enjoy immunity. Is that correct?

**Mr. Bernard Shapiro:** Yes, it is.

**Mr. Michel Guimond:** In not answering our questions with respect to the member for Calgary East, I assume that your intention is to protect the inquiry that is under way and, to a certain extent, to protect the member concerned. Is that correct?

**Mr. Bernard Shapiro:** Yes, that's correct.

**Mr. Michel Guimond:** I won't go into the details of the inquiry, because that does not concern the Committee. You have work to do, and that work involves determining whether or not there has been a violation of the code. The reason you are appearing before us today is that a colleague has asserted that you did not follow proper procedure. We want to ascertain whether that is the case or not, but you don't want to tell us.

If the member concerned agreed to relieve you of your obligation with respect to confidentiality—in other words, if the member for Calgary East were to fully agree to the Ethics Commissioner disclosing information as to when he informed the member, as well as certain personal information related to the process—since it is the member of Parliament that needs to be protected, not you—what would your reaction be?

[*English*]

**Mr. Bernard Shapiro:** I'm really not sure how I would respond. It's an interesting question and I'd just have to think about it. I don't want to give a quick response and regret it later.

[*Translation*]

**The Chair:** It is possible the member will be given an answer to his question at a later date. For example, Mr. Johnston has suggested inviting Mr. Bob Walsh to advise us on certain matters. That may relate to parliamentary law, in which case he could provide an answer.

**Mr. Michel Guimond:** With all due respect for Mr. Walsh, I don't need him to tell me what to think. I want to get an answer to my question from the horse's mouth. What you are proposing, Mr. Chairman, is a solution that would allow us to untie the Gordian knot in which the Committee has become entangled.

Let us just assume that the member agrees to relieve the Ethics Commissioner of his obligation to maintain confidentiality. I'm not talking about the details of the inquiry—the \$40,000, the brother-in-law, or India; I'm not concerned with those things today. What I want to know is whether a colleague has been injured through this process.

**The Chair:** Mr. Shapiro.

[*English*]

**Mr. Bernard Shapiro:** I do have a response. I've now had 30 seconds to think about it, and I think the issue would not be for the deputy himself but for the House itself. You've got the honourable member from Calgary's.... Since it's the House's rule that binds me, I think the House would have to take that step before I could think about it carefully; otherwise the deputy would be able to, in a sense, reorganize the rules—

[*Translation*]

**Mr. Michel Guimond:** It is clear that you are not giving a definitive answer. I would ask that you take the time you need to think about this over the weekend, after mass, and that you come back with an answer.

**The Chair:** We have time for one more question, or possibly two, if they are very short.

Mr. Reid, you are next. If anyone else has questions, we will have to invite Dr. Shapiro to come back another time.

[*English*]

**Mr. Scott Reid:** I had a series of propositions at the beginning dealing with three specific infractions of the commissioner's mandate that it seems to me have taken place under the Conflict of Interest Code.

I'll just state outright that I reject the reasoning provided by Dr. Shapiro with regard to an investigation into a matter that might be a violation of an act of Parliament. The rule is not ambiguous and is not subject to interpretation.

With regard to privacy, I think we're working on something. I'm sure we can get Mr. Obhrai to provide us with the necessary waiver.

With regard to the third point, the question of whether or not you violated Mr. Obhrai's privacy, and the idea that this stuff was in the air and you were going to be facing questions...certainly there's a sense in which it was in the air and people knew about it. There was an article in the *Calgary Herald* on May 17 dealing with a leak of information that put Mr. Obhrai in a very difficult position.

I'll just read a little bit, to give a sense of what was going on and therefore how inappropriate what you did was. This is quoting from the *Calgary Herald*:

Federal Immigration Minister Joe Volpe should be fired after documents violating an Alberta woman's privacy were leaked on Parliament Hill in an apparent effort to smear Tory MP Deepak Obhrai, the Conservatives charged Monday.

Tory MP Diane Ablonczy accused the Liberals of trying to gain political points on the eve of an election by publicizing allegations from 2004 that Obhrai took \$20,000 to help his former brother-in-law get into Canada. The allegations, contained in an affidavit filed in India,

—that's the one that was forwarded to you—

were aired last week on national television. Circulating the documents violates the privacy of Obhrai's sister-in-law, Ablonczy said, since immigration matters are to be kept confidential by the government.

Volpe denied he leaked the allegation, saying he forwarded documents he received directly to the RCMP and to the federal ethics commissioner, as per government requirements. However, a Liberal aide said the documents may have been circulated by other members of the party.

That's the end of the quote from the article.

Now, in a situation like that, where there is at least reason to believe that somebody—I don't want to suggest it was Mr. Volpe, but somebody in the Liberal Party—was putting this stuff out for the purpose of destroying Mr. Obhrai's credibility so as to cause him to lose his seat and end his career, things that might very well be untrue, in such a circumstance, and when the only thing the public knows at that point was that Mr. Volpe has asserted he passed the documentation on to you, it seems to me the only thing you could have said is “No comment”, particularly in an environment where there could be another election while this investigation is out there. To do otherwise is to effectively say you are willing to participate in the public destruction of a man's character at a time when we could face an election before your investigation is over.

I have to tell you, your explanation of what you did is just unacceptable under those circumstances.

•(1255)

**The Chair:** We're going to get a last comment from Dr. Shapiro. If we want the witness to return, members are going to have to indicate that that is their wish.

Dr. Shapiro, perhaps you could make one last comment.

**Mr. Bernard Shapiro:** I want to comment not on the last point you made, which is your comment, not a question, but on the issue of whether or not it's ambiguous.

In the general case, when one gets information and one is trying to decide whether it's vexatious, it's always very difficult to know how inappropriately motivated the accusation is, no matter what the facts are. I don't get many memos, let's say, from person A talking about person B, who is in the same political party.

**Hon. Ed Broadbent:** Have you received any?

**Mr. Bernard Shapiro:** Not yet.

I try not to be above that, but I try to put it aside, simply because it's the only way I can behave. I certainly don't want to participate in the destruction of anyone's career. I think that's a terrible thing to be involved in. Sometimes one is, for reasons that can't be avoided.

Although the proposition you gave, which is that the act is clear on issues where I think a violation of the Parliament of Canada Act is involved.... Most investigations have a number of aspects, a number of issues to deal with. We do not pursue ones where we think an act of Parliament has been—

**The Chair:** Thank you very much. We're running out of time for today.

Yes, Mr. Reid.

**Mr. Scott Reid:** Mr. Chairman, I don't think we managed to get through all the questions we had for Dr. Shapiro, and I'm not sure whether a motion is necessary to call him back.

**The Chair:** Dr. Shapiro, could we ask you to be back next week?

**Mr. Bernard Shapiro:** You could. I should tell you that I will be in Calgary on Thursday and Friday of next week.

**An hon. member:** Tuesday will work for us.

•(1300)

**Mr. Michel Guimond:** Are you going to have a press conference?

**The Chair:** Order, please. Colleagues, please, let's not do that.

Is it your wish that we change the agenda for Tuesday?

**Some hon. members:** Agreed.

**The Chair:** Tuesday it is.

Dr. Shapiro?

**Mr. Dale Johnston (Wetaskiwin, CPC):** Mr. Chairman, I wonder if the committee would benefit from the appearance of Rob Walsh at some point, just so we could learn what exactly is—

**The Chair:** Do you wish that I tentatively reserve him for the last half hour on Tuesday?

**Some hon. members:** Agreed.

[*Translation*]

**The Chair:** We will ask Mr. Walsh to be here for the last half hour of the meeting on Tuesday. After that, we will resume our consideration of Mr. Guimond's bill, because I have the feeling he will ask us to do that.

Mr. Guimond.

**Mr. Michel Guimond:** Is Dr. Shapiro coming back on Tuesday?

**The Chair:** Yes.

**Mr. Michel Guimond:** Could you ask him whether he will have completed his cogitations with respect to my suggestion?

[*English*]

**The Chair:** I'm sure Dr. Shapiro will reflect upon everything that's been said today, including that.

With that, will someone move the adjournment?

**An hon. member:** I so move.

**The Chair:** The meeting is adjourned.





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