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—
Chair

The Honourable Don Boudria

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• (1105)

[English]

The Chair (Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.)): Order, please.

Colleagues, as you will know, a question of privilege has been brought to the attention of the committee. At the previous meeting I read the actual order. I will do that again so that members are fully apprised of what it is that the House has charged us to do.

On 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, Niagara Falls, moved:

That 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.

The question was put and the motion was agreed to by the House.

That is the issue that was referred to us at the last meeting.

Honourable members will know that we had a first meeting where the member of Parliament in question raised this issue in the House. We had a subsequent meeting with Dr. Bernard Shapiro and his people, Mr. Benson, at which Mr. Shapiro testified. At the conclusion of that meeting, honourable members will recall that one of us asked, and the committee agreed, to invite Dr. Shapiro to come again for a second meeting. It was also agreed that at the same meeting Mr. Rob Walsh, our assistant clerk responsible for legal matters, be invited to appear.

Yes, Mr. Johnston.

Mr. Dale Johnston (Wetaskiwin, CPC): Mr. Chairman, I wonder if you might find agreement among the committee to have Rob Walsh appear prior to hearing from Mr. Shapiro. Maybe we could meet with Mr. Walsh for half an hour—just reverse the order of what we had laid out for an agenda today.

The Chair: Okay. Before doing that, if you don't mind, I'll just ask our clerk if he knows whether Mr. Walsh is around here right now. Is he available?

The Clerk of the Committee: I believe so, yes.

The Chair: He is, okay.

That being the case, what is the wish of the committee? Do you want to reverse the order and listen to Mr. Walsh first?

Some hon. members: Agreed.

The Chair: Okay.

Perhaps I could invite Dr. Shapiro to stand down for a little while, and we will invite Mr. Walsh to join us. I believe the clerk has left the room and he will be back with Mr. Walsh momentarily.

We'll suspend for two or three minutes to the call of the chair, at which time we'll reconvene.

• (1108)

(Pause)

• (1110)

The Chair: Order, please. The committee will now reconvene.

I don't propose to reread the order of reference. It's already before the committee.

We have, at the request of members, reversed the order of our witnesses this morning to hear first from Mr. Rob Walsh, law clerk and parliamentary counsel.

[Translation]

Welcome, Mr. Walsh. Shall we move to questions from members right away, or do you have some information to share with us first?

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): I would like to start by making a few comments, Mr. Chairman. I would like to establish a context for our work.

[English]

I think I can save you some time by making some general comments.

The Chair: Yes, please do. Proceed now, and then we'll have the questions immediately after.

Mr. Rob Walsh: Thank you, Mr. Chairman.

I had the benefit of reviewing the proceedings of last week. When I learned on Thursday afternoon from the clerk of the committee that I was asked to appear here, but without specifics as to what I might speak about, I thought it incumbent to inform myself about the proceedings and review the legislation, the code, and other relevant materials. I have done that.

It seems to me, Mr. Chairman—if I may be so bold as to suggest—that what I heard from this committee in its exchanges with the member for Calgary East and with the Ethics Commissioner was a certain level of discomfort in the sense that the committee is not sure what its role is in the circumstances of this case.

Let's not forget that the regime that was set up contemplated that members of Parliament would be investigated by the Ethics Commissioner, and in some cases, where there's non-compliance with the code, there would be a report made to the House. What we have here is the reverse of that. A member has reported to the House that there was non-compliance with the code by the Ethics Commissioner. This obviously wasn't foreseen in the scheme. The question now is, what's the role of the clerk, where on a point of privilege the matter has been referred to the committee? What's this committee to do—a breach of privilege of the member for Calgary East on the one hand versus the concerns about privacy and confidentiality relative to the matters at issue in the investigation by the Ethics Commissioner.

In my view, the first thing the committee ought to reflect on is the relationship between the House of Commons and the Ethics Commissioner as set out in the legislation, reflected in the code, and with the underlying principles of parliamentary law as guidance. I can expand more on that later if committee members wish to pursue it.

Secondly, in my view, this is all about process; it is not about substance. Process is important, and you have to address process early. I don't want to make light of the member for Calgary East's concerns, and I'm not trying to be funny, but if you feel you're on your way to a hanging, you don't want to raise questions of process later. The time to do that is now. This is what I think the member for Calgary East is doing. He has concerns about process.

As a result, I think the committee has had to spend time on what I would call secondary issues, such as confidentiality; privacy issues such as the independence of the Ethics Commissioner under the regime; and this initiative by the Ethics Commissioner in sending notice to the Speaker about an investigation, which then leads to the role of the committee here. If I may suggest, it is not unlike that of a judge presiding at a jury trial. Forgive the legal analogy, but that's my culture.

A judge presiding at a jury trial is not a trier of fact. The jury determines the issues of fact and whether the person committed the offence for which he or she is charged. The judge presides at the trial. He makes a determination and is constantly observing process. The rules of evidence are followed, and all the other trial procedural rules are followed.

It can happen on occasion that the trial process falls off the rails and a mistrial is declared, in which case the jury is dismissed, and, not in every case, but in most cases, a new trial is ordered and a new jury is obtained. If you think of your role here in those terms, you are being asked by the member for Calgary East, through his point of privilege, to look at this matter as a matter of process. You might want to think about your report to the House eventually, on a point of privilege, as addressing the issues of process and whether, in your view, what has happened is a departure from the prescribed process of a kind that prejudices the privileges of the member for Calgary East.

I would just close by saying that I re-read the Speaker's ruling of October 6, 2005. You may recall that in his ruling he expressed the view that he thought it would be beneficial, both for the Office of the Ethics Commissioner and for the House, if the committee considered

this matter, to afford the Ethics Commissioner an opportunity to explain the process by which inquiries are conducted and to give honourable members a chance to raise any concerns. He hoped that a dialogue between the committee and the Ethics Commissioner would clarify the matters involved.

He went on to make reference to the need for a thorough review and assessment by the responsible committee. He described this as a very serious matter and noted the absence of a clear process and the lack of clarity to which both members and the Ethics Commissioner are entitled in the performance of their respective duties.

•(1115)

Mr. Chairman, I offer that as the frame of reference I'm coming from. Of course, I would certainly respond as best I can to any questions from members.

The Chair: Thank you very much.

Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Thank you very much, Mr. Walsh, for coming here and for accommodating our change to the time.

I very much appreciate the general thoughts that you have, but my question will refer to a more specific matter.

One of the questions under dispute right now is on whether Dr. Shapiro violated subsection 27(4) of the ethics code, which states that

The Ethics Commissioner may, on his or her own initiative, and on giving the Member concerned reasonable written notice, conduct an inquiry to determine whether the Member has complied with his or her obligations under this Code.

The key phrase is “on giving reasonable written notice”, which clearly means notice in advance of the actual launch of an investigation.

Mr. Obhrai has provided committee members with documentation. Based on that documentation, it's clear that the investigation proceeded on July 18, the first date on which, according to those documents or letters, Dr. Shapiro informs Mr. Obhrai that the investigation is under way.

That doesn't provide conclusive evidence. Dr. Shapiro could clarify things, demonstrating that he is either guilty or not guilty of having violated subsection 27(4), if he were to provide any relevant prior correspondence in which he provided written communication or if he were to admit that he doesn't have it. However, his approach has been to say that he cannot inform the committee of any documentation because this would violate Mr. Obhrai's privacy.

In response to a question last week, Mr. Shapiro specifically said, in regard to the date of the first correspondence on this:

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.

On a further question, Mr. Guimond said:

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.

Dr. Shapiro responded by saying:

I do have a response...and I think the issue would not be for the deputy himself but for the House itself...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.

As I understand it, Dr. Shapiro is saying that in the absence of an order of some kind from the House, an MP cannot free the Ethics Commissioner to reveal correspondence that relates to the process under way; in this case, it's documentation that shows when first written contact was made to inform the member of an investigation.

As a final note, I would add that Mr. Obhrai submitted a letter to the chair of this committee, which has been circulated to all of us, indicating that:

In order to avoid any further difficulty or delay in the Committee's consideration of the issue at hand, I am writing to inform you I hereby waive any confidentiality or secrecy that may apply to any currently ongoing investigation of me by the Ethics Commissioner.

All of that having been laid out, my question to you is this. In light of this letter, is Dr. Shapiro in fact now free to reveal any written correspondence that would show the first date on which he informed Mr. Obhrai of the fact that an investigation was under way?

• (1120)

Mr. Rob Walsh: Mr. Chairman, the short answer to the second of two questions is that, in my view, Mr. Shapiro was free to respond to the questions before that letter was provided to the committee, as much as he's free to do it now today—and I'll explain that in a minute.

On the first question, as I recall it, you asked whether the Ethics Commissioner was in violation of subsection 27(4), which requires written notice to be given in the case of a self-initiated inquiry.

Mr. Chairman, as you might expect, I am reluctant to comment specifically on whether Mr. Shapiro, in the conduct of this matter, is or is not in violation of the code. That's a judgment for this committee to make, and it would be presumptuous of me to be telling the committee how they should interpret or judge the actions or inactions, whichever the case may be, of Mr. Shapiro.

Let me say now that I know Dr. Shapiro is here in the room, and he can explain this better than I can when the opportunity will no doubt be afforded to him. I'm speculating, but I think what happened here is that this matter started at a much earlier date, on the mistake and understanding that it was an initiative or an investigation pursuant to a request. It went on for some time on that basis. I think it was recognized later that there had not been any request, and it converted to an investigation of the kind covered by subsection 27(4). At what point that later decision was taken, I don't know. It may be that you have to measure the reasonableness of the written notice against that decision, as opposed to measuring it against when this whole matter first began.

On your second point, you're basically going to the question of confidentiality. To explain my earlier answer, as you well know—and I've had occasion to say this to this committee and other committees a number of times, and my view has't changed—as a matter of parliamentary law and parliamentary privilege, this committee is entitled to ask of a witness any questions it likes. The witness does not have an election as to whether to answer or not.

Again, the committee has an election as to whether to ask the questions, but a witness does not have an election as to whether to answer.

I understand Dr. Shapiro's concern, because he has a statutory provision that applies to him and imposes a duty of confidentiality. However, that is only a statutory provision, if I may say that. The Parliament of Canada Act is an important statute, and it's indeed an important provision, but it is a statutory provision that is subordinate to the constitutional principles of our system of government that give to committees of the House the prerogative to ask of witnesses any questions they wish to ask and to insist on getting answers. If the answers to some of these questions might touch on issues that are otherwise confidential and that should be kept private, then as many committee members well know, of course, it's open to the committee to go in camera, to hear the answers to the questions in camera, and to thereby protect the privacy or confidentiality of the information relative to third parties.

So with the greatest of respect for Dr. Shapiro, I think his concern about his duty under the statute is understandable. It's my view, however, that it is not a duty of a kind that pre-empts him from answering the questions that he was asked by this committee at the previous meeting or that he might be asked later today.

[*Translation*]

The Chair: We will now go to the next question. Do you have any questions, Mr. Guimond, Ms. Picard or Mr. Godin?

You have the floor, Ms. Longfield.

[*English*]

Hon. Judi Longfield (Whitby—Oshawa, Lib.): Actually, Mr. Walsh responded to the question, because my view is that the application of subsection 27(4) comes into play at the point at which the Ethics Commissioner determines he is going to conduct an inquiry. A lot of this was in the public domain as early as May 13 or May 14, when it was raised either in the House or there was a letter floating around that Mr. Volpe subsequently passed on to the commissioner and the RCMP.

Where I'm having some problem is with that process between May 13, when there was some public discussion about this, and when the commissioner determined to self-initiate an inquiry. It's hard to be in violation of the code if the code didn't start to apply until such point that you initiated the inquiry. I think we need to put some guidelines between that first public... And I mentioned it in my intervention last week. The code seems to be really fuzzy about when it gets out there in the public and when the investigation begins.

So I'm going to ask you if you believe there's anything in the code that covers that portion of the process.

• (1125)

Mr. Rob Walsh: It's not as nice or as neat as I would like to see it, as someone trained in legislative drafting. There are some holes here, certainly.

There are three ways, as you know, inquiries get launched. One is by direct order of the House. Another is by a request of a member. And the third is self-initiated. Only for the self-initiated inquiries is there mention of giving notice to the member. I suppose when a member requests.... One of the problems here, Mr. Chairman, is that 27(5), as you know, asks members not to comment on an investigation or an inquiry. Well, how do they know there's an inquiry going on, outside of a self-initiated one where notice is given to the member who is being investigated and that member perhaps makes it known? Because there's no duty on the Ethics Commissioner to make known that an investigation is under way, and arguably there's a duty on him to not do so. It's not clear.

A member who intends to file a request for an investigation could, however, stand up and announce publicly to the world his intention to do so, so as to give full publicity to the allegations he intends to make to the Ethics Commissioner. And then once he's made the request, the sub-judice rule, so-called under subsection (5), comes into play and no one can talk about it.

If you want to take a really negative or pessimistic view of these matters, you might unkindly suggest that this could well be done with forethought so as to enable an attack by one member on another and then to deprive the other member of any response. You quickly get the request in, and the other member can't respond to everything that was said by the accusing member.

So there are some problems here in the way this is set up relative to those kinds of process issues.

The Chair: Thank you.

Are there further questions? No. All right then, going back to the other side of the room, we have Mr. Casey.

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

Based on the considerable evidence we had here, the committee voted unanimously to ask Dr. Shapiro to suspend the investigation. The committee was set up at the request of the Speaker because he recognized that there was.... And he declined to do that.

If we can't ask him to suspend it—he has now, but when we asked him to he declined to—who can?

Mr. Rob Walsh: Sorry, did I hear some intervention to say that he has now suspended? He has not?

The Chair: One moment, please. Let's everybody be careful here.

Monsieur Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Mr. Shapiro has not appeared yet. There's a document. If you read the document, it seems that if he has not suspended it's because of the RCMP; it's not because of the committee. Let's not say something that is not there.

Mr. Bill Casey: If the committee asks Dr. Shapiro to suspend an investigation and he decides not to, who can ask him to suspend an investigation?

Mr. Rob Walsh: Mr. Chair, the committee has two paths here: one is responding to the House in respect of a point of privilege, and the other is acting under its authority under subsection 72.05(3)

where it says the Ethics Commissioner carries out his duties and functions under the general direction of this committee.

So it could well be that this committee might give a general direction of that kind, but my concern here, and the concern of the committee of course, is that general direction—or in French, *autorité générale*—really is something.... Whatever it is, it doesn't include actually intervening in a particular investigation and telling the Ethics Commissioner how to conduct a particular investigation, or even telling the Ethics Commissioner whether to conduct an investigation. And I would say it would not include telling the Ethics Commissioner to not continue with an investigation or to not do an investigation. So I don't think 72.05(3) is a source of authority for that kind of directive from the committee.

My own view is that the committee could, however, make a recommendation to the House, on the point of privilege, that upon a review of this matter, the committee has come to the conclusion—much like a judge might about a mistrial—that the process here has fallen off the rails. The committee might well form the judgment that it can't really be put back on the rails, in fairness to the member for Calgary East, because so much has been said about this matter publicly in this committee and elsewhere that arguably the member's position is prejudiced and the position of the Ethics Commissioner, arguably, is prejudiced, whatever the outcome. If he files a report finding a breach, it could be argued that he's doing it because he was given such a rough ride in the process by the member from Calgary East. If he files a report saying there's no breach, it could be argued that he's doing it because the system got to him and he backed off.

So arguably, his own integrity is in question at this point, when he eventually provides a report. So it is open to the committee, in my view, to report to the House, if it chooses to do so, in the context of a question of privilege, to make an assessment of the process here and recommend to the House that the House direct the Ethics Commissioner to discontinue his investigation.

I think the House might be able to do that, but I don't think this committee can do that.

● (1130)

Mr. Bill Casey: Under subsection 72.1(1), it says:

the Ethics Commissioner has the power to summon witnesses and require them

(a) to give evidence....

Does the Ethics Commissioner have the power to do that in foreign countries, and do foreign countries have the same power to come to our country and ask questions or investigate my relatives?

Mr. Rob Walsh: Sometimes the principles here are illustrated in extreme examples, Mr. Chairman. We have currently, and much in the public debate, the incident involving Canadians who found themselves imprisoned in a country in the Middle East where, it is alleged, the methods of interrogation used were of a kind that wouldn't be acceptable here in Canada. What is alleged would be against the law here in Canada, relative to how they were treated in that country. The officials of that country, however lawful what they did there might be, cannot come here to Canada and engage in those same means of interrogation, because it's against our laws.

All of this is to say that whatever authority the Ethics Commissioner has in Canada, it simply doesn't go beyond the borders of Canada. That's not to say he can't, through an agent, make some inquiries, but to the extent that he's discharging his official duties, he doesn't have the basis for discharging his official duties outside the territory of Canada, in my view, although there are ways of doing it. But just to phone somebody up and say, "Hey, go over and get an affidavit from somebody"...? Who knows? That process might be against the law of the land there in terms of the way that information was obtained. Maybe there is some charter of rights or something in that jurisdiction, of a kind that the person should have had a lawyer or should have had some kind of advice. I don't know. I have no idea. But there are these kinds of legal issues that could be out there when you go to a foreign jurisdiction that you have to be mindful of, if only out of caution.

But as to strict legal powers, the legal powers are here in Canada.

The Chair: Thank you.

[Translation]

The next question will be asked by Mr. Guimond.

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): I prefer to pass, because I'm waiting for a document from *Journals*.

The Chair: We will move to our next speaker.

You have the floor, Mr. Hill.

[English]

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

Thank you for appearing today, Mr. Walsh.

I'm going to preface my remarks by saying that I'm not a lawyer—and I also always say that I'm sometimes quite proud of that fact.

My interpretation of what I think I heard you say in reply to my colleague Mr. Reid caused me a bit of dismay. It seemed to me that you were suggesting that because of your perception of the ambiguity of the way in which section 27 has been written into the code, a self-initiated inquiry under subsection 27(1) and the requirement for the Ethics Commissioner to give the member reasonable written notice under subsection 27(4) are somewhat distinct from one another.

Mr. Rob Walsh: Distinction, Mr. Chairman, is there insofar as subsection 27(1) doesn't apply to self-initiated inquiries.

Mr. Jay Hill: As I said, I'm not a lawyer, so why wouldn't it be under a different clause, then? It would seem to me that they're all subsections of the same clause, yet you're telling me that's not required under subsection 27(4). If it's a self-initiated inquiry, you'd have to have that written into subsection 27(1), is that what you're telling me?

• (1135)

Mr. Rob Walsh: Correct.

Mr. Jay Hill: Going down further, I really have a problem with this, in the sense of splitting hairs, if you will. I think the intent is very clear: if an inquiry is launched, the member is to be notified. You can play these legalistic games here and say it's not required if

it's under subsection 27(1) but it is if it's under subsection 27(4), but quite frankly, I don't buy that. I don't see that as the intent of the code the way it was written.

I refer you to subsection 27(7), which states:

The Ethics Commissioner is to conduct an inquiry in private...

That was another one of the charges by Mr. Obhrai: that this particular clause was breached when Mr. Shapiro conducted the interview that I questioned him about during his last appearance.

It then goes on to say:

...with due dispatch, provided that at all appropriate stages throughout the inquiry the Ethics Commissioner shall give the Member reasonable opportunity to be present and to make representations to the Ethics Commissioner in writing or in person by counsel or by any other representative.

Are you trying to tell me, Mr. Walsh, that subsection 27(7) would not apply to subsection 27(1) as well? The way I read that, it doesn't say "an inquiry under subsection 27(4)"; it says "The Ethics Commissioner is to conduct an inquiry". To me, "an inquiry" would be whether it's a self-initiated inquiry or one that's requested by some other member.

Mr. Rob Walsh: Mr. Chairman, I don't want to offend the member, but he's very astute in his judgment. He's talking like a lawyer.

Voices: Oh, oh.

The Chair: No comment. The committee will record that as a compliment, Mr. Walsh.

Mr. Rob Walsh: Subsection 27(7). Mr. Chairman, in my view the member is correct in indicating that it applies, by its terms, to all inquiries.

Mr. Jay Hill: Hear, hear. Thank you.

Mr. Rob Walsh: And I think—this is where I thought you were going but didn't quite get there—the reference to giving the member a reasonable opportunity to be present would suggest that that would include being present in terms of being aware of the investigation pretty well from its outset, so that he or she can then make an intervention on his or her own behalf in respect of the investigation.

What I think is the concern of committee members is the idea that there is some kind of secret investigation going on and secret questions being asked and the member doesn't know anything about it. There's a sense of unfairness about that.

Strictly speaking, the notice requirement of subsection 27(4) applies in respect to only self-initiated. That requirement could have been put in subsection 27(1), it could have been put in subsection 27(3), and it wasn't. The statutory interpretation rules would say it's not there for a reason: because it doesn't apply, it isn't meant to apply. It's meant to apply in subsection 27(4). However, when you get down to subsection 27(7), which is not dealing with notice, by its terms it would appear...it says "commissioners conduct an inquiry", whatever kind of inquiry it is.

By the way, I should draw the committee's attention to a point that I think warrants some attention relative to the meaning of the word "private" in English. The French is *à huis clos*. It's not often that "private" in English...it's not translated that way in French. This supports the argument that what's private is the sittings, the meetings, the interviews, the in camera. *À huis clos* is French for usually the English in camera, as opposed to the fact of the investigation itself. That itself may not be what's in private.

I think that's the view the Ethics Commissioner has taken, that the fact of the investigation is not private, it's just what I do in the investigation that is private. To some extent, that is supported by the reference to the French. I defer to francophones in the room, who may have a better sense of the French versus the English here, Mr. Chairman, but the use of *à huis clos* instead of saying *privé* suggests to me that maybe it's meant to refer to the proceedings itself, as opposed to the fact of the investigation.

The Chair: Can you come back, if you don't mind? We're way over time.

Madam Longfield.

Hon. Judi Longfield: In subsection 27(7), you're not suggesting that a representative of anybody who is being investigated has to be in the room. It's all right to have representation or a lawyer. So the Ethics Commissioner can conduct investigations and talk to... without anybody else present.

Mr. Rob Walsh: I believe that's true. The phrase is "reasonable opportunity", and the French is consistent with that. I can't find it at the moment at a glance. Yes, at the discretion of the Ethics Commissioner.

As you may expect, Mr. Chairman, there may be occasions when the Ethics Commissioner needs to speak to somebody privately, without the presence of the member being there, only to make sure that there is no improper influence upon the person.

•(1140)

Hon. Judi Longfield: So that's quite proper. So there was nothing improper in that. We're trying to determine what "in private" means, whether it's the content or the fact that it has happened.

Thank you.

The Chair: Thank you.

Before going to the next round, I have a question for Mr. Walsh. Maybe I'm asking you to speculate, and if it's unfair please tell me, sir. Could it be that part of our conundrum is simply the fact that the rule in French is not the same threshold at all as it is in English?

Mr. Rob Walsh: It depends, Mr. Chairman, on whether you as a committee feel, for purposes of this question of privilege, obliged to respect the privacy intentions of subsection 27(7).

The Chair: I'm sorry, that wasn't what I was asking. It wasn't about this committee, but about the way the process was conducted.

Could it be that the difference in interpretation lies in part in the fact that the rule that you've told us does not seem to suggest a similar threshold in both languages? Having read one, interpreted it that way, could the work have been done in a somewhat different way had the other version been read? Is that possible?

Mr. Rob Walsh: Well, sometimes reading statutes is a venture into *Alice in Wonderland*. What we're talking about here, in the jurisdiction of bilingual legislation, is that each section is equally authoritative, as you well know. If you're not clear on one language version, you look to assistance from the other language version, and you read the two together. The French version might bring the meaning of the English down from what it otherwise would be, or vice versa.

The Ethics Commissioner obviously does his best to read the governing rules—and with the benefit of legal advice from time to time, I expect. My sense of it is that these matters are meant to be looked at, at arm's length, by the Ethics Commissioner, outside of public gaze and outside of public comment, if you like, by, ideally, the member involved, other members, or the media. That's the ideal. But there's no rule here, in the case of every inquiry, that there be no public comment. There's only a rule that there be no public comment in respect of an inquiry that follows a request for...

And it stands to reason: if the House were to pass an order that there be an inquiry, well, it's public knowledge by virtue of the debate on the resolution and the resolution being adopted. There's no possibility of secrecy at that point. If it's self-initiated, well, no one knows about it anyway, because it's the Ethics Commissioner who decides in the privacy of his office to do it, and then he gives notice to the member involved.

So to some extent, the requirement of not commenting seems inappropriate, but it needs some rewording, in my view, to make it more straightforward.

[Translation]

The Chair: You asked for the floor a little earlier, Mr. Guimond, but then you asked to wait until later. Are you ready now, or do you still wish to wait a minute or two?

Mr. Michel Guimond: I will let others go ahead.

The Chair: Fine.

[English]

According to this, the next person would be Mr. Reid, I believe.

Mr. Scott Reid: Thank you, Mr. Chair.

Like Mr. Hill, I'm not a lawyer, but was it not the case, in the Feeney decision in 1997, that the Supreme Court, when faced with slightly different wordings of the English and French versions of parts of the Charter of Rights, chose to take the version, in this case the French version, that was more open to the rights of the individual under investigation, which basically is the principle that applies when you face two conflicting wordings? Or am I mistaken in that?

Mr. Rob Walsh: I can't specifically recall the Feeney case, but the way you describe it, I think it could well be the decision of the court. Particularly when it is a penal statute, they will look for an interpretation that favours the accused as opposed to the crown. If the commonality of meaning between the two languages is the more lenient interpretation, naturally they would go to that. And I say "naturally", but that's my judgment of the courts, that they generally will resolve ambiguity in favour of the private citizen or the accused rather than the crown.

I presume the English version in the case you're talking about called for a more stringent approach, or a more harsh response, or some higher standard, and the French language suggested a lower standard. The lower standard, of course, is included within the higher, so in effect the court would have brought down the English to the level of the French, and applied that under the principle that ambiguity in statutes should be resolved in favour of the accused, not in favour of the crown.

• (1145)

Mr. Scott Reid: The next thing I wanted to ask you about relates to another provision of the code, which states, in paragraph 29(1)(a), as follows:

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;

Would it be reasonable to interpret that as meaning that if the Ethics Commissioner believes from the start that there has been a breach of an act of Parliament, he ought not to even commence the investigation, but ought to turn over any relevant material to the proper authorities—the RCMP, say—and just leave it there?

Mr. Rob Walsh: That would appear to be what's intended by subsection 29(1), assuming that, in a case of information provided to the Ethics Commissioner in support of a request for an investigation, and to which subsection 27(6) would apply, he has decided it is not frivolous or vexatious or made in bad faith. If he were to decide it was all of those, he might not refer the matter to the other authorities, notwithstanding the language of the allegations. But in the absence of that finding, if what he's presented with seems to be not of that kind, then yes, this section would suggest that this would be reasonable grounds to believe the allegations here support an offence and ought to be investigated by the appropriate authorities.

Mr. Scott Reid: I have one last question.

In his testimony last Thursday, Dr. Shapiro gave us copies of the processes he uses in support of self-initiated inquiries under the code, inquiries requested by an MP, and inquiries requested by the House. There's nothing wrong with these processes that he lays out, as far as I can see, but I note that subsection 30(1) of the code states, "The Ethics Commissioner shall submit any proposed rules for the administration of this Code to the Standing Committee on Procedure and House Affairs." From the wording of that, I'm left with the impression that processes like this ought to be submitted to us in advance of actually being used. However, I'm not certain that I've interpreted that correctly, so I ask for your wisdom on this.

Mr. Rob Walsh: In a very good, lawyer-like fashion, Mr. Chairman, the member has recognized that the word "proposed" in that section would suggest that they are submitted in advance.

Mr. Scott Reid: Thank you.

[*Translation*]

The Chair: Mr. Guimond.

Mr. Michel Guimond: I reread carefully the question of privilege raised by our colleague from Calgary-East and the decision that was made. If I understand correctly, there are two contentious issues. The first question we have to answer—and please correct me if I am wrong, Mr. Walsh—is this: Did the Ethics Commissioner fail to do his duty by not notifying the member being investigated? Second, did he fail in his duty to refrain from public debate by making statements to the media?

Do you think these are the two points we should be dealing with?

Mr. Rob Walsh: Mr. Chairman, the two issues raised by the member touched on the key matters referred to the committee. I am no judge of this type of issue. I prefer not to answer the question, because it is up to the committee to make these decisions.

• (1150)

Mr. Michel Guimond: I was just trying to get a better idea of the problem. You were not present, but you have read our colleague's question of privilege and the speaker's ruling. I'm not asking you to compromise yourself, I just want to know whether we have properly identified the two issues. Let me restate my question.

Have you seen the chronology of all the events prepared by Mr. Robertson? Based on that document, when, in your view, was Mr. Obhrai, the Member for Calgary-East, notified by the Ethics Commissioner?

Mr. Rob Walsh: That is another question of fact. Did Mr. Obhrai really receive notification before July 18, either by telephone or by e-mail? I do not know; we would have to ask him that. It is clear from Mr. Robertson's chronology of events that he had heard that Mr. Shapiro had some questions about this matter before that date. However, this formality is important. It must be respected and the member in question must be properly informed about what is going on with respect to the Ethics Commissioner.

Mr. Michel Guimond: To answer a question asked by my colleague, Mr. Hill, I would mention that the appropriate provision is subsection 27(4) of the Conflict of Interest Code for Members of Parliament. It states:

(4) The Ethics Commissioner may, on his or her own initiative, and on giving the Member concerned reasonable written notice, conduct an inquiry [...]

It is section 27, entitled "Inquiries" that applies to this type of inquiry, is it not? You may have noticed the legal wording. We know that there are three types of inquiry. In this case, we are dealing with an inquiry under subsection 27(4).

Mr. Rob Walsh: I must say, Mr. Chairman, that the inquiry really started before. In the chronology, there is a reference to May 9. That is the day on which Mr. Volpe made two statements to the Ethics Commissioner, Mr. Shapiro. An inquiry was started on that date. Now, was it an inquiry under subsection 27(1) or under subsection 27(4)?

Is it possible to change horses in midstream, after the event has happened? Can the process be started, and, on the pretext that a mistake was made, can one say that this was one's own investigation, not one requested by a member of Parliament? This is a question of process: there was a change of horses in midstream.

Mr. Michel Guimond: What you say is crucial. We may be talking about an inquiry under subsection 27(1). It reads:

27.(1) A Member who has reasonable grounds to believe that another Member has not complied with [...]

If Mr. Volpe had reasonable grounds to believe that this applied to the Member for Calgary-East, there was an obligation to give notice. The fact is, the code is silent on this.

Mr. Rob Walsh: Mr. Chairman, at a certain date, Mr. Volpe explained that he had not requested an inquiry. Is that shown in the chronology? I see, there is a reference to May 16. I imagine that at that time, or perhaps later, the Ethics Commissioner decided to change horses, so to speak: he said at the time that this was his own investigation, not one requested by a member. He may have thought that this was his own inquiry and that he had to give notice.

There is a reference to May 16, but Mr. Shapiro gave his notice on July 18. That was a two-month delay. Mr. Shapiro could perhaps explain that he had given notice to Mr. Ohrai before that.

• (1155)

The Chair: We are way over time. We will now turn to Mr. Simard.

[*English*]

Hon. Raymond Simard (Saint Boniface, Lib.): Thank you very much, Mr. Chair.

Thank you very much for being here, Mr. Walsh.

I guess when the Speaker referred this issue to our committee, one of the things he indicated in his brief was that this is a fairly new process—the ethics commissioner is obviously a new office—that the process may in fact be flawed, and that he'd like our committee to examine that.

When you referred to subsection 27(7), in fact I think this is a classic example of a flaw. You spoke of, in English, “The Ethics Commissioner is to conduct an inquiry in private”, when in French it's “Le commissaire procède à huis clos”. This is not a lowering of a threshold; this is a different meaning altogether.

So in my mind, we have some work to do here in terms of going over this code and maybe ensuring that in the future a very strict code is put into place. I don't know if you want to comment on that.

Mr. Rob Walsh: Mr. Chairman, I can advise the committee that a similar situation arose before the Standing Committee on Access to Information, Privacy and Ethics in the spring. Commissioner Shapiro and Mr. Benson were there, as was I, and we have since that time been working on a joint project to report to that committee on how the legislation and the code for public office holders might be improved.

There are some problems identified by my office, and there are problems identified by the Ethics Commissioner's office, and we will

in due course report to that committee in respect to public office holders.

The only response I can make to the member's question is to suggest that this committee may well wish to encourage the Ethics Commissioner's office and my office together to undertake the same project relative to the code for members of Parliament and the applicable legislative provisions.

Hon. Raymond Simard: The second question is, does the code provide for a pre-inquiry period?

In other words, someone may make an accusation or someone may bring accusations forward. The Ethics Commissioner is not bound at that point to send a letter to the person being investigated. Is there a period—whether it's a week, a month, or two months, or three months—when the commissioner would have an opportunity to look at facts and then decide whether or not there's an inquiry? Does the code provide for that?

Mr. Rob Walsh: The code doesn't specifically address that issue of a preliminary inquiry, if you like. In my view, there isn't any such allowance for a preliminary inquiry and it's inconsistent with provisions of the code to engage in one.

I believe the Ethics Commissioner explained that for purposes of determining whether a request is frivolous or vexatious, he has to address some issues and ask some questions. But I don't think that warrants him leaving his office, as it were, and asking questions outside. He may well reflect on the information provided. He may talk to the person who made the request. He might talk to his colleagues in the office. But I think as soon as you leave the office, as it were, and go onto the street asking questions, you have launched an inquiry.

Hon. Raymond Simard: But it's still not clear when a reasonable written notice should be sent.

Mr. Rob Walsh: As soon as he's decided to launch an inquiry.

Hon. Raymond Simard: That's at his discretion.

Mr. Rob Walsh: As soon as he's decided, that's when the inquiry begins. Then notice is given. It may take two months to come to that decision—

Hon. Raymond Simard: That's what I'm saying.

Mr. Rob Walsh: —but there shouldn't be questions asked, in my view, outside the office of people to assist him in making that determination, because that's when the inquiry starts. If you ask the first question, you've started your inquiry.

Hon. Raymond Simard: Okay, thank you very much.

Thank you, Mr. Chair.

[*Translation*]

The Chair: Thank you very much.

Mr. Hill.

[*English*]

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

Mr. Walsh, it would seem from my earlier line of questioning that we agree that, regardless of whether Dr. Shapiro launched his initial investigation or preliminary investigation, or whatever term he wishes to use to apply to that, under subsection 27(1), because he was originally notified—or at least the information we have thus far is he was originally notified of a suspected breach by Minister Volpe—or whether he did it ultimately under subsection 27(4), a self-initiated inquiry, if I understood your reply to my earlier questioning, under subsection 27(7) it was incumbent upon him as per the code to provide at all appropriate stages throughout the inquiry an opportunity for the member to be present. In other words, how can he be present if he doesn't even know that he's being investigated?

Mr. Rob Walsh: I responded to your earlier question and also the question, I believe, of another member of the committee on this same provision. Yes, you could interpret that “to afford a reasonable opportunity to be present” necessarily involves notice. I mean, you have to tell him about it, so he shows up and makes himself present. But that doesn't necessarily mean that he's entitled to be present at every meeting the Ethics Commissioner may have on it.

• (1200)

Mr. Jay Hill: I know. That's not the point I'm making. The point I'm making is that he would obviously have to be notified. What would be the legal interpretation of the phrase “at all appropriate stages”? How would you interpret that?

Mr. Rob Walsh: I interpret that to mean that, as with a trial, so also with an investigation. There are stages.... I know that doesn't answer your question, but there are points at which the investigation—in this case, investigation—moves forward. It has arrived at a point of obtained information and now it's moving forward with a new level of inquiry or a new approach to the issue.

I would call those stages. The opening of an inquiry is a stage, you know—

Mr. Jay Hill: And by your definition in your reply to an earlier question, if I heard you correctly, you've stated that in your opinion the minute the Ethics Commissioner takes his preliminary inquiry outside of his office—for example, started to question Mr. Obhrai's sister-in-law—that would then suggest that an actual inquiry, not a preliminary inquiry, is under way. I would understand that would then be an appropriate stage at which the member should be notified. Is that correct?

Mr. Rob Walsh: Mr. Chairman, that's the member's judgment, and it might be my judgment, but it might not be everyone's judgment in this room that this is the way it should happen. It's a judgment call. But generally speaking, yes, if you're asking me, because I'm the one here on the stand, as it were, yes, when I started an investigation I'd want to tell the person I'm investigating. “Hey, heads up. I have something here I'm investigating about you. I'm not going to tell you much about it right now, because I don't know much about it, but yes, the investigation's under way.”

As soon as I got information of a kind that really was material to the investigation, I'd want to go back to that member and say, “Sit down, this is what I've been told. What do you have to say about that?” and so on as I went through the investigation. I'd always be checking with the member, “What do you have to say about this, what do you have to say about that?”

That's what I'm thinking of as stages. When you have new information of a material kind, that ought to be brought to the attention of the member so he can offer a response. Then you're not going down some road on some information you have that, if you'd heard from the member earlier, might have been explained. You might not need to go down that road. It's just....

Mr. Jay Hill: That's the point Mr. Obhrai was making.

Thank you, Mr. Chairman.

The Chair: Before I recognize the next member, I have a question.

When we talk about these stages, is there also another possible interpretation of what a stage is? For instance, you determine that you're going to start the process of listening to witnesses. Then, at some point later, you begin the process of, say, writing what your tentative decision is. Then you decide, at a possible other stage, that now is the time to report all of this to the Speaker.

Is that another possible way of looking at stages, as opposed to every single different witness—I know that's not quite what you said—being considered a stage?

Mr. Rob Walsh: In any process, Mr. Chairman, there certainly is more than one way of looking at the meaning of the word “stages”. As you've described it, it could well be the way you read stages. But again, this is where the judgment of, in this case, the Ethics Commissioner comes into play: is this an appropriate stage for including the member? In some cases, it's not appropriate; it wouldn't serve any purpose.

The Chair: That helps me.

Monsieur Godin.

[Translation]

Mr. Yvon Godin: Thank you, Mr. Chairman.

Welcome, Mr. Walsh.

We decided as members of Parliament to appoint an Ethics Commissioner. Of course, we must support the fact that there can be inquiries. We have to agree that the commissioner should talk to people, not to the walls. We have to be careful not to handcuff someone who is trying to do his job.

We have had an opportunity to read the document that Mr. Shapiro was supposed to present to the committee this morning. He said that as soon as he announces to the House of Commons that he will be conducting an inquiry—I believe it is part of his mandate to advise the House of Commons...

• (1205)

[English]

Mr. Rob Walsh: Mr. Chairman, I'm not able to find—

[Translation]

Mr. Yvon Godin: Unless I read the document incorrectly.

[English]

Mr. Rob Walsh: —any authority for the Ethics Commissioner advising the House that he has started an investigation. I'm not saying it's wrong for him to do so, I just don't see any mandate in the—

[Translation]

Mr. Yvon Godin: From his text, it is clear that once he announces an inquiry in the House, the matter becomes virtually public. However, I think it is going too far when we read in the newspapers, if it is true...

[English]

The Chair: Colleagues, your attention, please. Monsieur Godin has the floor.

[Translation]

Mr. Yvon Godin: ...Mr. Shapiro had begun the inquiry after determining that documents sent to him in the spring deserved to be reviewed. Then it is said in quotation marks that he had some information which suggested that some inappropriate things had happened. That was a judgment at that state, and that is the problem, not the inquiry.

As a member of Parliament—and I think this could be the view of any member of Parliament—I think that the Ethics Commissioner exists in case someone does something wrong. But do not judge us before conducting an inquiry! Once things get into the newspaper, all Canadians think that the person named is guilty. That is why I think this matter is before our committee and that is what caused the concern. In any case, I would be concerned.

However, I am not concerned because the Ethics Commissioner is doing his job. I am not concerned because he is conducting an investigation. The only thing is that I do not want him to conduct it by talking to the walls. I want him to talk to people. We pay him to do that.

Finally, we don't want the individual to be judged prematurely by newspaper articles. Even if the person is not guilty, I think he or she has already been judged publicly. So hearings should be held in camera, we know what that means.

That is my problem, and I would like to hear your comments. We are not talking about subsections 27(1), 27(4) or 27(9) of the Conflict of Interest Code for Members of Parliament. That is not the problem. It is just a matter of common sense, and in this case, I think there was a lack of common sense, unless I am mistaken.

The Chair: We know that we're asking for your opinion once again, Mr. Walsh. Please proceed.

Mr. Rob Walsh: That is not a question for me, Mr. Chairman. I understand the member's comment. Of course, no one likes the idea of being found guilty before the inquiry has even started. That is common sense, as you say.

However, is that what happened here? The committee should be able to determine that. You quoted a comment that appeared in the newspapers. Did the Ethics Commissioner really make a judgment before conducting the inquiry? It will be up to the committee to consider these matters.

The Chair: You are free to continue asking questions. However, I would like to remind members of the objective of the last meeting. We agreed to keep a half hour for Mr. Walsh and another hour for Mr. Shapiro, so that we would end at 1 p.m.

Since it is already 12:05, we can continue in this way until you tell me to change witnesses. It is up to you to decide. However, I would

point out that there are still two members who wish to ask our current witness some questions. I have the names of Ms. Longfield and Ms. Redman on my list. It would be good if we could agree to proceed quite quickly so that we do not keep Dr. Shapiro waiting indefinitely.

[English]

Can we maybe do it that way, Madam Longfield?

Hon. Judi Longfield: Okay. Thank you. I'll be very brief.

Just to clarify in my own mind, it's your view that the code is silent on that pre-inquiry period. You have some personal views about when there should be notice, but the code doesn't specifically say what the conduct should be prior to the commissioner determining that he's going to initiate an inquiry. Is that correct?

Mr. Rob Walsh: I believe that's correct. There's no provision pertaining to that.

Hon. Judi Longfield: Okay, so it's hard to break the code if there's nothing there, but that doesn't mean there shouldn't be some....

I guess I'll turn it over to Ms. Redman.

The Chair: Madam Redman.

Hon. Karen Redman (Kitchener Centre, Lib.): Thank you very much.

It strikes me that we are dealing far more with process than content, and I think that's part of the challenge. It seems to me that our purview as a committee is to deal with process. I would probably ask Dr. Shapiro these same questions, but, Mr. Walsh, there is an appeal process in place after there is a ruling. Is my understanding correct?

Mr. Rob Walsh: Mr. Chairman, as I commented earlier, in my view, this is all about process. The problem is there isn't an appeal process as such. What you have is an opportunity for the member to make a statement in the House after the report is tabled. To use the rough metaphor I used before, at that point it may be little more than a post-mortem plea from a political grave. If the report has come in and the member has been found in non-compliance, then I expect the opportunity for the member to make a statement is something in the nature of a mea culpa, or some kind of it won't happen again, or an acknowledgement of responsibility—an attempt at redemption and forgiveness.

But if the report is in, I don't know if there's any way a member can appeal the findings of the Ethics Commissioner. That's why the process is so important. As I said earlier, when you're in the House and you see something taking place against the procedure, the point of order is expected to be made, and the sooner the better, so that the wrong procedure can be corrected and the proper procedure applied.

On this occasion, the member for Calgary East has, by his point of privilege, raised this concern about process. I don't think the member for Calgary East wants to challenge any substantive issue in terms of what the Ethics Commissioner may or may not be finding. It's the process.

•(1210)

Hon. Karen Redman: Finally, I guess one of the challenges we have as a committee is the fact that everybody around this table is a public person. I can think of many other issues that have been referred to the Ethics Commissioner. The fact that there has been a referral and the fact that we're all public people leads me to wonder what the remedy is if someone thinks injury has been done. Clearly, Dr. Shapiro, in his role, has an obligation to follow up on anything that's referred to him, yet by the mere fact that there has been a referral, there may well have been injury regardless of whether the final ruling is indeed that there was a breach.

Mr. Rob Walsh: Mr. Chairman, obviously the Ethics Commissioner cannot be responsible for injuries done to persons by virtue of following the process prescribed in the legislation or the code. Customarily, the issue is a member's compliance or non-compliance with the obligations. If you look at subsections 27(1), 27(3), and 27(4), there are, in those three provisions, and perhaps elsewhere as well, references as to whether the member has complied with his or her obligations under this code.

There are obligations on the Ethics Commissioner too, under this code. That's what this point of privilege is about, and it's for this committee to recommend to the House whether the obligations of the Ethics Commissioner under this code have been met by the Ethics Commissioner. That's the nub of the issue. Those obligations are essentially one of process. No one's questioning his conclusions of fact—those will come in due course—except to the extent that the conclusion might be of a kind that the member for Calgary East and other members feel is unduly influenced by an improper process.

I'm talking like a trial lawyer, and I'm making an analogy to a trial situation. You don't feel good about being convicted if you feel the trial was a kangaroo court. That's not to suggest that's the case here at all. Process is all part of justice, not just the end result.

Hon. Karen Redman: Thank you.

The Chair: Mr. Walsh, thank you very much for being with us this morning, and thank you for changing your schedule to testify earlier as opposed to later. We very much appreciate your help to clear up—certainly on my part, and I'm sure I speak on behalf of all of us—some of these process questions that many of us had.

Mr. Rob Walsh: Perhaps I can close by emphasizing that you are a parliamentary committee: the House of Commons is the one that's in charge here. While you've appointed the Ethics Commissioner, as the Speaker said in his ruling, to govern it in certain matters, the Ethics Commissioner is to look into the facts of an alleged breach of conduct and to report to the House. The fundamental privilege of the House is control of its own members and the discipline of its own members. That's the House's privilege. It belongs to no one else. This House and its members are not under the supervision of the Ethics Commissioner. Members of Parliament are under the supervision—as you know, of course—of the people of Canada, and they face their accounting later, at another time, in another circumstance.

So you have a role here, on behalf of the House of Commons, in terms of seeing to it that the scheme that's set up here is respected, effected, and effective. I'm happy to help this committee look at this to see whether in fact there are some changes that could be made to enable it to be more effective, and indeed to relieve the Ethics

Commissioner of, in many cases, the difficult situation he finds himself in where the code is difficult; he intuitively sees what the right thing is to do, but the code is not helping him because the language isn't there to support what he thinks he needs to do.

On that, Mr. Speaker, I would close.

The Chair: Thank you very much, Mr. Walsh. We may call upon you in the end to assist us in our recommendations about processes, pursuant to what you just said. Of course, that will be up to the committee members to decide. Thank you very much.

Dr. Shapiro, Mr. Benson, we apologize for keeping you waiting, having changed the agenda a little bit. In a way, though, I think maybe the testimony was beneficial to everybody, perhaps even to you, Dr. Shapiro.

With that, I'm informed that you do have an opening statement to make, so please proceed. After that we will have questions from honourable members.

•(1215)

Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner): Before I go to my opening statement, I'll mention that I did in fact appreciate the opportunity to listen to Mr. Walsh. I certainly learned several things myself, just in the process of listening to him.

The most important thing—and I don't mean important in the long run, I mean important to me at the moment—was the reference to the difference between a statutory authority and a parliamentary authority. I think that's a useful distinction, and one we should take into account. I think it would require an in camera meeting in order to do so, but I'd certainly be quite willing to do it. That would not be a problem.

Finally, I just want to say two things. One, I did not decline to suspend the investigation. What I provided in my opening statement last time was the suggestion that I didn't think it was wise but that I would do it. I didn't decline, because I was very reluctant to do so. I think the suggestion of the committee, although worded very respectfully, is very serious, and it needs to be taken into account. So I didn't decline, and I think it's important to put that on the public record.

Finally, Mr. Walsh referred to the joint committee we have working on the code for public office holders, as between his office and my office. I would certainly be glad to participate in any such effort—irrespective of this particular case; I don't mean that. There are a lot of ambiguities and a lot of issues that need to be resolved, I think, if the system is going to work properly. Some of this will be in a report that I intend to issue in the next week or two, just on issues and challenges, which I'll be glad to make available to you and anyone else.

Let me begin my remarks today by informing the committee that in accordance with subparagraph 29(1)(b)(i) of this Conflict of Interest Code for Members of the House of Commons, I have suspended my self-initiated inquiry into allegations made against the member for Calgary East. My action is not, I have to say, in response to the question of privilege presently being considered by the committee—that is, of course, for you to consider—but as a consequence of my office being formally advised by the RCMP that this matter is under investigation.

That said, if the committee has no objection, I would like to resume our discussion initiated last week on the process of inquires pursuant to the code for members of the House of Commons. When we last met, I described the constraints and parameters within which I try to fulfill my duties as Ethics Commissioner, so I will not repeat that here. I do, however, want to thank the members of the committee for their input last week. Please allow me to address some of the specific issues raised by members, although certainly not all of them; this is not an attempt to give a comprehensive response.

One had to do with what you might refer to, in French, as
[*Translation*]

breach of confidentiality with respect to the inquiry with respect to the Honourable Member for Calgary-East.

In an effort to resolve the conundrum in which this committee and my office find ourselves, and further to the referral of this matter by the House, Mr. Guimond asked me whether I would agree to waive the requirement for confidentiality if the member for Calgary-East was willing to waive this requirement himself. I would first like to thank the Bloc Québécois whip for his suggestion.

[*English*]

Because I have suspended my inquiry due to the ongoing investigation of the RCMP, I don't have any further comments to make on this issue, although I have thought about it and would be willing to discuss it with the committee if it so wishes, in the light of what the parliamentary law clerk has educated me about today. I think that was very useful.

On the question of the public knowledge that an inquiry is under way, last Thursday there were also discussions as to whether my acknowledgement of the existence of an inquiry was a breach of subsection 27(7) of the code. As I said last week, although the inquiry's substance and progress are and I think should remain confidential, the code itself implies that the House is to be made aware of the initiation of an inquiry, although it does not require it. It clearly doesn't. Indeed, subsection 27(5) of the code states:

Once a request for an inquiry has been made to the Ethics Commissioner...

And you've heard all that before, so I don't need to read it out, but I am concerned.

To refer members to the Speaker's ruling of June 7, he stated:

Informed by the commissioner that an inquiry has begun under his terms of reference, I will then formally communicate that information to hon. members so that they may govern themselves accordingly.

It does seem to me that the acknowledgement of the existence of an inquiry initiated under the code does not in itself breach subsection 27(7) of the code, and it certainly does not imply that a

prejudice is being introduced vis-à-vis the outcome of the investigation. At least that's my point of view. It has been my practice to inform the Speaker of the launching of an inquiry so that he can in turn inform the House.

I find it difficult to imagine a situation in which the fact that I'm conducting an inquiry is kept confidential. My experience thus far is that the number of ways in which leaks occur are infinite, and that we'd be better off to be transparent about that rather than trying to conduct an inquiry in such a way that no one even knew it was taking place. I think it would just generate rumours and difficulties that would be even worse than the ones we face at the moment.

I do accept the notion that the sheer launching of an inquiry creates a problem for the members. I think that's true. I'm not quite sure how to deal with that, but if you have suggestions, I'm certainly glad to deal with them.

In the case of the honourable member for Calgary East, once I had determined to use subsection 27(4) of the code to launch a self-initiated inquiry following the preliminary analysis phase, I informed the member in writing. I acknowledged that the notification to the Speaker of my launching an inquiry might have been given at the same time, rather than waiting, as I did, until the return of the House.

There was also some discussion last week on the need for a preliminary phase to precede the official launching of an inquiry. In fact, one member of the committee stressed the need for appropriate guidelines and procedures to cover this part of the process. My recent experience has certainly highlighted the importance of this matter, and I share this concern. Presently, neither the code nor the Standing Orders include any explicit standard against which the Ethics Commissioner is to assess the information available to him or her in order to determine if an inquiry should be self-initiated.

For the information of the committee and the House, I have been using or have been trying to use the standard of reasonable grounds to believe, which is the same standard the code places upon members, pursuant to subsection 27(1) of the code. The standard doesn't guarantee, of course, but it does help to ensure that such inquiries are not initiated on mere suspicion alone. I think that's important to keep in mind, although people will differ.

And I should say that relative to the issue of when a criminal matter occurs or might have occurred, for example, then I am assessing the standard of reasonable grounds relative to breaching of the code and not relative to breaching the Parliament of Canada Act, which is another issue that other authorities need to deal with.

In regard to inquiries launched under the members' code, there was also some discussion last week with respect to the involvement of persons other than the members themselves, on whether these persons should be subject to the inquiry process. The concerns of members, and rightly so, revolve particularly around the involvement of family members. The honourable member for Cumberland—Colchester—Musquodoboit Valley made a very compelling plea in that regard, and I continue to try to be sensitive to the issue.

I do recognize that the participation of family members within an inquiry could be intrusive and distressing, and it must be treated with special caution. I don't think, however, that I can limit my interests to members and/or those individuals not related to them. A complete inquiry must include anyone with substantial information relative to the inquiry; otherwise the inquiry process would place my office and the House in disrepute.

• (1220)

At last Thursday's meeting there was some concern about my confirmation to the *Ottawa Citizen* of the existence of an inquiry relative to the honourable member for Calgary East. I addressed the issue last week, and I will only repeat that I did not reveal to the *Ottawa Citizen* any substantive details of the inquiry or anything that would in fact stand to prejudice the outcome.

I've always followed the practice of not granting an interview in which the announced purpose relates to any ongoing inquiry. In the future, however, I will perhaps have to be more careful to not provide any comment should the matter be raised unexpectedly within a more broadly based media interview.

Finally, you will recall that I made a suggestion to the committee last week to await the report on my inquiry, so that you may decide the matter through a more generally informed basis. We have another option in that area right now, which you heard from the law clerk a few minutes ago.

Putting that aside, given that I have suspended the inquiry because of the RCMP investigation, I don't think that I really need to comment further on that particular issue.

Thank you.

The Chair: Thank you very much, Dr. Shapiro.

Mr. Bernard Shapiro: Could I add one more comment?

• (1225)

The Chair: Yes, please do, Dr. Shapiro.

Mr. Bernard Shapiro: Today I informed both Mr. Obhrai and the Speaker of the House that I had suspended the inquiry, simply by writing them a note and hand delivering it to them. If you're interested in the note itself, I have it here, but I don't think it particularly relates to your concerns.

The Chair: Very well.

Hon. Judi Longfield: Is that a suspension, or have you ceased the inquiry? Did you just suspend it?

Mr. Bernard Shapiro: It is a suspension.

Hon. Judi Longfield: Then you could go back to it.

Mr. Bernard Shapiro: Possibly.

Hon. Judi Longfield: Okay.

Sorry. That was all I had.

The Chair: Thank you.

Let's please await our turns.

Let's start with Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chair.

Thank you, Dr. Shapiro, for appearing before us again today.

Before turning to other matters, I want to deal with the matter that you no doubt overheard me raise earlier with Mr. Walsh.

Subsection 30(1) of the code states:

The Ethics Commissioner shall submit any proposed rules for the administration of this Code to the Standing Committee on Procedure and House Affairs.

Last week you presented a number of procedures or processes that you use for dealing with inquiries. When reading them, I saw nothing wrong with them, but it was the first time that I'd seen them. You also no doubt heard Mr. Walsh observe that the wording of the code implies that at the very least they ought to be submitted beforehand.

With that in mind, I would ask this. First, will you undertake to submit as soon as possible to this committee all the processes and procedures or, as it is put here, "rules for the administration of this Code" that are currently in place? Second, prior to implementing any future rules for the administration of this code, will you submit those to this committee as well?

Mr. Bernard Shapiro: I have a slightly complex answer to that, but I'll try to deal with it in a straightforward way.

I agree with the interpretation that if one proceeded in absolutely the most appropriate way, this would be done in advance. I think "proposed" does suggest that, as Mr. Walsh suggested.

The difficulty I faced this year was that there was no lead-in time on making the code work. There wasn't a day, so to speak. If you're going to handle things with due dispatch, etc., there's enormous pressure to try to respond relatively quickly.

Mr. Scott Reid: I'm sorry to interrupt you, and I apologize. I hate it when people badger witnesses and cut them off. But if you notice, I did not put this in a way where I was questioning what you had done in the past. I'm asking about the future course of action.

Mr. Bernard Shapiro: No, I understand that.

Certainly relative to that, your suggestion is entirely appropriate. I'm certainly glad to do it.

Mr. Scott Reid: Thank you very much.

The next thing I will turn to is a question relating to the investigation.

I have here a copy of a letter written by you to Mr. Obhrai on July 18, in which you state:

Dear Mr. Obhrai...I refer to your letter of July 14 in which you raise concerns related to the strain the Inquiry initiated at the request of Minister Volpe is having on your family.

Among the documents that Mr. Obhrai gave us, this is the very first time you confirmed that the investigation was under way.

These are my questions. Is this the first time that you had contacted Mr. Obhrai? If not, what was the date of your first written contact with Mr. Obhrai in which you informed him that an investigation was under way?

Mr. Bernard Shapiro: I don't know quite how to respond. I know the actual factual answer to the question, and if we are going to go into talking about things involving a process in which the various people I spoke to were guaranteed confidentiality, I really do think that an in camera session of the committee should be considered. I can't speak for what the members would wish, but I'm very reluctant, although I'll certainly do so if asked, to respond and begin to enter into what I consider to be a confidential process in public.

The Chair: Before we get into that—I don't know if it would help the committee—maybe it would be easier just answering the following...if we just asked you, for instance, if there was a previous communication with the member.

Mr. Scott Reid: Where it was stated in writing that an investigation was under way.

The Chair: Well, we may agree or disagree that there shouldn't have to be, but if we knew that there was one....

Or would you prefer to reveal even that in camera?

Mr. Bernard Shapiro: I would prefer it.

The Chair: Okay.

Of course, if some of you do want to move in camera, the chair is quite prepared to entertain that. I'm not suggesting that we do, but if that's what you want to do at some point, please indicate it to the chair and we'll act accordingly.

Mr. Reid.

• (1230)

Mr. Scott Reid: In his comments to the committee, Mr. Walsh came up with the same conclusion that I had privately arrived at. It may be incorrect, but he concluded that initially you probably were operating under the belief that this was an investigation that you had not initiated yourself but that had been initiated by Minister Volpe. And you actually say that in the July 18 letter, "the inquiry initiated at the request of Minister Volpe". I note as well that Minister Volpe's letter to you is very artfully worded. This is dated May 9. It says:

Dear Dr. Shapiro:

I am writing to you today to forward to you two unsolicited affidavits I have received with respect to a fellow Member of Parliament, Mr. Deepak Obhrai, the Member for Calgary East. I believe the affidavits are self-explanatory, and I leave it to you to conduct your investigation as you see fit.

Then he said some other things as well. Frankly, had I read that I would have concluded that it was a request from Mr. Volpe for an investigation. It said, "I leave it to you to conduct your investigation". It doesn't say he's asking for an investigation, but it certainly presumes you will do so.

So my question is, did you initiate the investigation under the belief that it was a subsection 27(1) investigation, as opposed to subsection 27(4)?

Mr. Bernard Shapiro: Again, Mr. Chairman, I have a very clear answer to the question; I just don't like to get into the process of the inquiry in an open session of this sort. There's a police investigation going on, and we have the member for Calgary East's reputation to uphold to the extent possible. It makes it very awkward for me. If you insist, I will, of course, answer, because I'm—

The Chair: All right, okay, hold on, folks. Let us not have many of us engage at the same time. There is a point of order from Mr. Hill.

Mr. Hill.

Mr. Jay Hill: Mr. Chairman, with all due respect to our witness, I think we're on very tenuous ground here with this business about a police investigation. I've been down this road once before with a colleague, where the interpretation could be that the police were investigating when in fact the police were trying to ascertain whether there should be an investigation. There's a world of difference. So I would just caution our witness before he confirms—or I'm suggesting he's confirming—that the police have indicated that they are investigating. It comes down to an interpretation of whether it's an actual investigation, where they have deemed already that there's sufficient evidence to warrant an investigation, or whether they're still looking into whether there's sufficient evidence.

The Chair: Okay, well, let's hang on. A point of order has been raised in that regard. Of course, I don't happen to know the answer to that, whether it is a formal investigation, whether it is not. It was written in a letter that was sent to Mr. Speaker, as we have just been told by the witness before us. I don't know if it's the wish of the committee that I ask Dr. Shapiro to clarify that point or even if that should be sent to us in camera. I'm trying not to put things on the floor that don't have to be there, for the protection of everyone involved, including our colleague. That's why I have tried to be very prudent from the very start with this issue, and I hope I have everyone's support.

Mr. Reid, are you rising on a point of order as well?

Mr. Scott Reid: This is on the same point of order, Mr. Chair.

I cannot believe the RCMP is conducting an investigation as to whether this was launched by Dr. Shapiro or by Mr. Volpe and what Mr. Shapiro's understanding was at the time. That is absolutely not germane to the issue of whether or not Mr. Obhrai took a bribe, as alleged in the affidavits sent to Mr. Volpe and thereafter to Dr. Shapiro.

To say this is being done to protect Mr. Obhrai's reputation.... Let's face it: this stuff was leaked, whether by Mr. Volpe or by some other person, as his staff alleges, for the purpose of destroying Mr. Obhrai's reputation. To say now that it's being protected by not answering questions that would determine whether or not Mr. Obhrai's privilege is being abused is just nonsense. It's a complete red herring and is done not to protect Mr. Obhrai but to protect other individuals—Dr. Shapiro himself, or Mr. Volpe. I think it's entirely appropriate that he answer these questions not in camera but in open committee.

The Chair: Colleagues, please let us be careful what we say—all of us—for everyone here in attendance.

Does someone else want to speak to the same point of order? I'm not exactly inviting it here. I hope we'd go back to the substance of what we are asking, which is of course to have Dr. Shapiro explain the processes to us.

Monsieur Simard, are you rising on the same point of order? I'd like to return to the agenda as soon as possible.

•(1235)

Hon. Raymond Simard: The last part of Mr. Reid's intervention had to do with whether or not we should be in camera. Mr. Chair, the reason we're here today is because of the discretion factor of the Ethics Commissioner. It seems to me that if we ask him here at this meeting to divulge information he got in confidence, we are going against the exact reason we are here.

It seems to me we should at least be respectful of the privacy issues that concern the Ethics Commissioner and move in camera at this point.

The Chair: Let's hold on just a second, please. We're not finished with the point of order, and if at some point after we finish it someone wants to move that we go in camera, I'll receive that, and of course members can vote for it or against it at that point. We're not there yet. We're going to try to conclude on the point of order.

Madam Longfield.

Hon. Judi Longfield: This is a clarification to Mr. Hill, who says he doesn't know how the thing got to the RCMP or whether that could prejudice Mr. Obhrai. I would point out that on September 16 Mr. Obhrai actually asked Dr. Shapiro to refer this to the RCMP. That's in a letter from Mr. Obhrai.

The Chair: With respect, that's not really a point of order. These are facts known to all of us. Let us not use them to engage in debate with one another. If there is a real point of order—I'm sorry to put it that way—I'd like to hear it, and if not, let us get back to asking the questions.

Mr. Scott Reid: I have another point of order, then.

The Chair: We're not finished with the one before. When one raises a point of order, Mr. Reid, it does generate sometimes other points of order, and I think that's what we're hearing now.

Mr. Broadbent.

Hon. Ed Broadbent (Ottawa Centre, NDP): Technically, I don't know whether what I'm raising is a point of order; I will respect your decision on it. I'd just like to agree with Mr. Simard's point. I think we should have a closed session soon to get the answers the Ethics Commissioner wants to provide; otherwise we're not going to get the answers. I think it is a reasonable request that we go in camera for it.

The Chair: Mr. Reid—and after that, maybe we could either proceed with a motion or continue asking questions.

Mr. Reid.

Mr. Scott Reid: Is a motion to go in camera debatable?

The Chair: Well, there's not one before the committee at the present time.

Mr. Scott Reid: No, but if we made one, you'd have to state—

The Chair: I'll check with the clerk. I didn't think it was, personally, but we'll check into it. I see it as a motion similar to motions to table or to adjourn, which are usually not. But the clerk will verify and give me the answer to that in a minute.

Meanwhile, maybe while that's being verified, if someone else could ask—

Mr. Scott Reid: My concern here is if it's not debatable, because it concerns our witness. My concern is just this. If we go in camera—

The Chair: Mr. Reid, with respect, there is not such a motion before you. It's someone else's turn to ask questions, and if it's not debatable and you're making the debate before it is held in the event that it's not debatable, you're making it debatable in advance, and the chair has some concern with that. And it's someone else's—

Mr. Scott Reid: Oh, for Christ's sake! Look, this is just ridiculous.

The Chair: Order, please, Mr. Reid.

I have been respectful of everyone here, and I would expect the same thing. I don't believe I've been unfair with anyone on either side. I think I have been trying, on every occasion, including today, I would hope, to be fair with everyone else.

Mr. Scott Reid: This has occurred in this committee before.

This is a point of order. Look, in this committee before, there was discussion that occurred in camera, which was then talked about in open Parliament. We can't do that. I actually raised a point of privilege on this very fact. If we go in camera again, we are all bound not to reveal what Dr. Shapiro reveals to us, thereby ensuring that if Dr. Shapiro reveals that what's he done has violated Mr. Obhrai's privileges, we can't pursue it. I think that's a reasonable reason not to go in camera and have that information revealed there until we've decided that we are willing to accept that consequence of that action. That's a reasonable thing to be concerned about.

The Chair: I've received information from our clerk. If there is such a motion, it is not on the list of those motions that are debatable—meaning, of course, that it is not.

Mr. Jay Hill: That means it's not debatable?

The Chair: That's correct. But of course I'm not saying you want to vote for it or against it. That's committee members' business, and I'm not influencing—

•(1240)

Hon. Raymond Simard: Mr. Chair, on a point of order, I move that we go in camera.

The Chair: That's not a point of order, but if you—

[*Translation*]

Hon. Raymond Simard: I moved the motion.

[*English*]

The Chair: The motion for the committee to meet in camera at this point has been moved. What is the wish of the committee?

Mr. Scott Reid: We'd like a recorded vote, please.

The Chair: Mr. Clerk, a recorded vote.

(Motion agreed to: yeas 6; nays 5)

The Chair: The motion is carried.

That said, I will ask those who are not to be in the room for the purpose of an in camera meeting to leave, please. Of course, our witnesses and our legal adviser are to remain.

An hon. member: Mr. Chair, on a point of information—

The Chair: Just a second. There's no such thing as a point of information, but if there is a point of order, we'll entertain it once we complete the process here of evacuating the room, shall I call it, for lack of a better word.

[Proceedings continue in camera]

●(1241) _____ (Pause) _____

●(1313)

[Public proceedings resume]

The Chair: Shall I entertain a motion to adjourn?

The meeting is adjourned.

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