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Chair

Mr. Tom Wappel

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•(1535)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): I see there is a quorum and I call the meeting to order.

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

The Chair: Just before I was about to introduce our guests, you have a point of order, Mr. Zed.

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

I'd like to ask this committee for unanimous consent to go to a steering committee meeting for just one minute so that we can invite the Privacy Commissioner of Canada to appear before October 4 in order to respond to allegations of a violation of the Privacy Act with respect to the revelation of the names of individuals requesting documents under the Access to Information Act.

That's my point of order. I was wondering whether there would be unanimous consent to go to a steering committee meeting for this purpose.

The Chair: Is there unanimous consent to turn this into a steering committee meeting for the purpose of inviting the Privacy Commissioner next Wednesday?

Some hon. members: No.

The Chair: There's not unanimous consent.

Mr. Paul Zed: Okay. Mr. Chairman, I was actually just looking for a one-minute intervention.

I respect the fact that you've not given unanimous consent, so on that basis I would like to file a notice of motion that the Privacy Commissioner of Canada be invited to appear before this committee by October 4, 2006, in order to respond to allegations of a violation of the Privacy Act with respect to the revelation of the names of individuals requesting documents under the Access to Information Act.

The Chair: Thank you, Mr. Zed.

As you know, we have a rule in this committee that there has to be 24 hours' notice to receive the motion, so we'll have the clock start ticking at the appropriate time.

Mr. Paul Zed: Thank you very much, Mr. Chairman. Thank you, colleagues.

The Chair: Once those 24 hours are up, then of course you're welcome to bring your motion forward at the earliest opportunity. Thank you.

Today we are very privileged to have with us the Ethics Commissioner, Mr. Bernard Shapiro, and a phalanx of people from his office, whom I'll encourage him to introduce. We welcome everyone. We're looking forward to Mr. Commissioner's remarks, and then we'll have questions and comments, and hopefully some answers.

I will just remind committee members that we're starting a little late, but notwithstanding that, there is a vote in the House this afternoon, more or less at around 5:30. We'll see how the time goes.

Mr. Commissioner, the floor is yours.

Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner): Thank you very much, Mr. Chair and members of the committee.

First I'd like to thank you for inviting me to meet with the committee. As this is my first appearance during the current Parliament, I wish you, Mr. Chair, and the committee all the best in your proceedings and business. My office and I look forward to working with you in the 39th Parliament.

Before I proceed, I wish to introduce the officials who are with me today.

[Translation]

They are: the Deputy Commissioner, Mr. Robert Benson; the Director, Strategy and Policy, Mr. Stephen Tsang; The Director, Corporate Affairs, Ms. Lyne Robinson-Dalpé; and the Director, Communications and Parliamentary Relations, Ms. Micheline Rondeau-Parent.

As far as today's meeting is concerned, I do have a few brief opening remarks, firstly on the various issues related to the new *Conflict of Interest and Post-Employment Code for Public Office Holders*, thereafter called the Prime Minister's Code, which was referred to your committee pursuant to Standing Order 32(5) on April 6, 2006.

Secondly, I will comment on the draft process and set of procedures for examinations of public office holders under the Parliament of Canada Act.

And thirdly, I will talk about my last annual report on activities in relation to public office holders, which has also been referred to your committee.

[English]

At the outset, I recognize that some or most of our discussion today may be affected by the coming into effect, or the possible coming into effect, of the Federal Accountability Act currently before Parliament. With respect to related substantive issues, members may refer to my testimony on May 16 to the House of Commons subcommittee on Bill C-2 and my September 5 appearance before the Standing Senate Committee on Legal and Constitutional Affairs, which is reviewing the bill at the moment.

Briefly, I am pleased to see the initially proposed bill has been amended to include some of my recommendations, namely, a five-year mandatory review of the proposed conflict of interest act, a declaration in the public registry within 60 days of recusals by cabinet ministers, and sanctions for breaches of post-employment prohibitions by lobbyists.

In my final remarks later today, and looking ahead to future challenges, I will share with your committee some of my office's preparation and readiness initiatives in anticipation of the possible coming into effect of the Federal Accountability Act.

As a reference for members, on May 5 I sent the committee a briefing book outlining some issues on which I would like to work together with you in the coming months. Some are outstanding from the last Parliament, but others are new. Among these, I do have one priority that I would like this committee to address: a proposed process and set of procedures for the conduct of examinations on public office holders. Currently, my powers of examination in relation to ministers, secretaries of state, and parliamentary secretaries are prescribed in section 72 of the Parliament of Canada Act.

In support of these examinations, my office has developed a process and a set of procedural guidelines. These were provided to this committee in the briefing book sent on May 8 under tab 4. Without going into details at this stage, I would simply point out that this proposed process is very similar to the one used by the Parliamentary Commissioner for Standards in the United Kingdom Parliament. As well, some of its proposals are based on my office's limited experience in the conduct of inquiry in relation to public office holders pursuant to the Parliament of Canada Act—that is the Sgro inquiry whose report was released in June 2005.

Although the approval of this committee is not required, I would welcome a thorough discussion with the committee on this issue. Indeed, regardless of the legislation governing my examination powers—as requests may only be submitted by MPs, which will still be the case under Bill C-2—I feel it is important for you as parliamentarians to not only be informed but also consulted. This would enhance the transparency for Parliament and the public, and would provide legitimacy and credibility for the public office holders to whom this process would apply—particularly as the commissioner's investigative powers will be enlarged to include all current and former public office holders under Bill C-2—and for the parliamentarians empowered to make such requests.

Although this is entirely up to the committee to decide, my particular preference would be to work with a subcommittee of the

group on this process, which is quite detailed and difficult to discuss in a large group, but that would be up to you to decide.

As the Prime Minister's code and my annual reports in relation to activities of how public office holders are referred to this committee, it is a suitable body to play that role. I look forward to working with the full committee or, my preference, a subcommittee, but whichever option the committee prefers.

Although my main estimates for the fiscal year 2006-07 were referred to your committee on April 25 of this year, they are not an agenda item for today's meeting. I would, however, be pleased to come back to address them in a separate meeting, if that is what the committee wishes.

My second annual report was released on July 19 and automatically referred to this committee. The report outlined the operational challenges of administering two different conflict of interest and post-employment codes for public office holders—the previous one in effect in the 38th Parliament—and the February 6 revised code of Prime Minister Harper. Indeed, a change in government always leads to a temporary increase in the office's workload insofar as it results in the appointment of usually 400 to 500 new public office holders, thereby creating compliance challenges represented by the turnover in the public office holder clientele.

At any given time, the client base for the public office holders' code is approximately 1,350 full-time public office holders and 1,940 part-time GIC appointments. In 2005-06, for instance, the office completed 1,196 cases, of which 228 were ones of initial compliance and 968 consisted of annual adjustments.

● (1540)

With respect to Prime Minister Harper's new POH code, its administration had to take into account some noteworthy changes from the previous code.

The first is the addition of a twelfth principle to the code in relation to its administration. On a corollary issue, it is worth noting that under the proposed Federal Accountability Act, there are no ethical principles enunciated. From my point of view, that is a flaw in the bill, as I have mentioned in my testimonies in both the House and Senate committees.

The second is an addition to my duties that provides for any member of the public to request an investigation into the conduct of a public office-holder through a parliamentarian.

The third change is that post-employment restrictions were enlarged with the inclusion of a five-year ban on lobbying activities by former ministers, senior public servants, and designated ministerial staff.

In addition, our usual operations consist of administering the reimbursement of costs associated with blind trusts and blind management agreements. In 2005-06, we revised the reimbursement rates for trustees' services based on a survey of Canadian legal and accounting firms. A similar revision will now take place each year.

The year 2005-06 was also challenging with respect to recusals. Our office recommended recusal on 15 occasions for former Prime Minister Martin as follows: seven recusals related to marine transportation policy, two to shipbuilding, one to the St. Lawrence Seaway, and five to other various issues. Similarly, there were 11 instances of recusal for former Minister Stronach, of which 10 dealt with auto and steel industry issues. There were also five other instances of recusal for various public office holders, including one for the Honourable David Emerson with respect to Canfor and another for the former ambassador to the United States, the Honourable Frank McKenna.

With respect to human resources issues, in 2005-06 our office employed 34 full-time equivalents. In managing our personnel, we established an employer-employee committee to provide recommendations on policies, practices, and procedures on human resource management issues such as training and professional development policy and leave policy. We also used, for our executive cadre, a 360-degree assessment tool.

As well, in conjunction with the House of Commons Information Services, we conducted in the fall of 2005 a threat and risk assessment for our data and information. Our most important security and confidentiality safeguard measures are listed in the briefing book already provided to you last May, in this case under tab 5.

Finally, with respect to internal operations, we initiated, with the assistance of the Centre for Public Management, an operational review to assess our practices in support of our clientele and their compliance with the two codes we administer in terms of their efficiency, appropriateness, consistency of application, and quality management approaches. This was done after consultation with the Auditor General, on whose list we never appear, because we're not included in her particular clientele; she suggested this would be the best way of substituting something relatively appropriate for our particular office.

In any case, as a follow-up to this review the office identified certain areas of action. In 2006-07 we'll work on the following specific ones: the merger of the executive and legislative affairs branches into one operations directorate; the enhancement of information technology, with particular focus on the digitalization of records; the delegation of authority, in order to have a flatter structure inside the group; and the lifetime assignment of a client file, so that particular advisors would be particularly familiar with individual clients.

● (1545)

[Translation]

I will now address, in conclusion, my office's preparedness in looking ahead to the implementation of Bill C-2, the Federal Accountability Act. If enacted in its current state, it indeed presents several challenges as it will result in a major structural change, the replacement of the currently distinct roles of the Ethics Commissioner and Senate Ethics Officer with a new Conflict of Interest and Ethics Commissioner, and would legislate for the first time a Conflict of Interest Act, covering much of what is now currently included in the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

[English]

Under that act, many new or expanded functions are proposed. These include: an expanded number of people potentially subject to inquiries, including any current or former public office holder, as opposed to the current situation, which covers only ministers and parliamentary secretaries; a prohibition on the use of line management agreements; a new power for the Conflict of Interest and Ethics Commissioner to initiate on his or her own inquiries on any current or former public office holders; the expansion of coverage in the new regime to a new category of ministerial advisors, who would be any person providing advice to a minister, either full or part-time, paid or unpaid; the use of administrative penalties up to \$500; expanded reporting and monitoring requirements, including a new requirement for former public office holders to report to the commissioner when (a) receiving or accepting an employment offer during his or her cooling off period, and (b) lobbying former colleagues; and finally, an expanded public registry to include recusal information that would not otherwise breach cabinet confidences or harm national security.

These expanded requirements, as described in Bill C-2 as it now stands before Parliament, mean that the office will need additional human resources, particularly in areas such as legal services, for interpretation and compliance with the legislative regime and for the conduct of inquiries. A regime will also have to be developed to implement and apply the new administrative penalties.

As well, again, as per its current status, there will be many implications for the office's information technology and management systems, to support the reporting and monitoring requirements of the new system as well as to track the penalties.

Additional resources, financial or otherwise, will therefore be needed, for instance, in accommodation and physical security to deal with the expanded mandate and clientele.

● (1550)

[Translation]

In preparation, my office has already been considering the potential impact of the above-mentioned likely changes expected from the Federal Accountability Act and has initiated several measures in preparation for its coming into effect.

Any of our initiatives, of course, would need to be revisited and adjusted, as needed, in accordance with the final outcome of the legislation adopted by Parliament. Although some of the changes will require more time to implement than others, in the area of staffing and technological adjustments, for instance, we expect to be ready by 2007, at least for the beginning of the short and medium-term adjustments.

[English]

In closing, I repeat that we would welcome the opportunity to work with the committee or a subcommittee at its earliest convenience on the proposed inquiry process in relation to public office holders.

I'd like to thank you for your attention. My staff and I would be pleased to answer your questions to the best of our ability.

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

We'll now go to questions. During the first round, as we've previously agreed, the questioner will have seven minutes.

We'll start with Mr. Zed.

Mr. Paul Zed: Thank you, Mr. Chairman.

I may be sharing my time, but we'll see how far I get, if that's acceptable.

Thank you, Dr. Shapiro, for being before our committee today.

You once stated that the ultimate objective of the Office of the Ethics Commissioner is to sustain and, where possible, enhance public confidence in our system of government at the federal level and in our parliamentary institutions. I'm paraphrasing some things you've said over the years.

In a CanWest article that was published today, it was revealed that Prime Minister Stephen Harper's communications director, Sandra Buckler, along with several other members of the Prime Minister's Office, were informed of the name of a journalist, James Bronskill, who had made an access to information request to the Department of Public Safety and Emergency Preparedness. If the action of the leaking of the name of a journalist, James Bronskill, contravenes the Privacy Act, I was wondering, is this behaviour ethical, and would you have the jurisdiction—

Mr. David Tilson (Dufferin—Caledon, CPC): I have a point of order.

The Chair: He's in the middle of a sentence.

Mr. David Tilson: I can take a point of order in the middle of a word.

The Chair: Mr. Tilson, I'd like him to finish his sentence, and I'll take your point of order.

Mr. Paul Zed: I wanted to know if you would have the jurisdiction to commence an investigation under your office.

The Chair: We'll go to Mr. Tilson's point of order.

Mr. David Tilson: Mr. Chairman, Mr. Zed is raising an issue that I would interpret as an inquiry for investigation. I don't think it's within the purview of this committee to get into a complaint by an individual, who appears at this point to be Mr. Zed and I guess other people. Most certainly, I think it would be most inappropriate for the commissioner to get involved in this type of discussion in a public forum on a matter he may be investigating. I think the question is completely out of order.

The Chair: Well, I rule your point not well taken. Of course, the commissioner is entitled to answer in any way he wishes, or not answer in any way he wishes, a question posed by a member of Parliament.

I'll ask the commissioner if he wishes to answer, and if so, what's your answer?

Mr. Bernard Shapiro: I am not at all familiar with the event you describe, so I'm certainly not going to make any further comment on the substance of it at this time.

• (1555)

The Chair: Fair enough?

Mr. Paul Zed: Thank you, Mr. Chairman.

The objective of the Office of the Ethics Commissioner, though, is about enhancing public confidence and, where possible, restoring or ensuring that public confidence in its institutions is maintained. Would you agree, Dr. Shapiro?

Mr. Bernard Shapiro: First of all, I think at the very beginning you quoted me correctly; it may not have been exact, but the sense of it is correct. I need to point out that the Office of the Ethics Commissioner has a certain range of purview relative to this matter. There are huge other kinds of issues that come up that would be quite beyond the powers given to me inside the act. So I wouldn't say that I'm in charge of confidence, period; I would say that I'm trying to enhance the confidence by doing things within my terms of reference that are appropriate in that respect.

Mr. Paul Zed: I just wanted to add, while I'm speaking, that I didn't have a complaint, Mr. Tilson, just further to your comment earlier—

The Chair: Make your comments through me, please.

Mr. Paul Zed: Mr. Chairman, I didn't have a complaint. I was in fact sharing information that's been brought out. In fact, I quoted the source of my information. It was a CanWest news article.

I guess what I'm curious about is if a complaint were to be brought to you and that complaint involved the breach of laws of our country, do you have the jurisdiction to sanction and receive an investigation or begin an investigation if a breach of the Privacy Act occurred by a public office holder or by an employee of a public office holder?

Mr. Bernard Shapiro: Certainly, if the breach of law you're talking about is a criminal matter, for example, I would not have the jurisdiction. My obligation would be to refer it to the RCMP, as per the legislation. If the complaint is about a public office holder in terms of the breach of the code that we're talking about, which is the limit of my jurisdiction, then I would have to consider the matter and respond appropriately.

Mr. Paul Zed: So, for example, the breach of the Privacy Act is not something that you.... In other words, are you in an ethical dilemma about whether you have jurisdiction over the breach of the Privacy Act?

Mr. Bernard Shapiro: I don't find myself in an ethical dilemma; I find myself in what I would call a nominal dilemma, that is, the title of Ethics Commissioner is much broader than the powers I actually have and am entitled to exercise. So it's a misnomer, in a sense. As I've said to the committee before, I think a better title would have been the conflict of interest commissioner because that is what in fact I'm entitled to do. However, that's a totally different issue.

Mr. Paul Zed: Dr. Shapiro, the Privacy Act is a means to shield the names of those who request access to government documents, in part to protect them from possible reprisals on the part of government. If I were to suggest to you that a member of the Prime Minister's Office was in fact leaking the names of individuals who were making requests through the Privacy Act, or sharing those names, and that matter was brought to you, would that conduct be considered ethical?

The Chair: Mr. Tilson on a point of order.

Mr. David Tilson: It's essentially similar to a point of order that I raised previously. Now Mr. Zed has indicated that he has a complaint with respect to a particular context.

Mr. Paul Zed: No, I don't have a complaint.

The Chair: No, he did not say that.

Mr. David Tilson: It doesn't matter. A member of this committee is asking the commissioner to comment on a matter where most likely—at least the way Mr. Zed is speaking—there could be an investigation. If there is any remote possibility of an investigation it would be most inappropriate for the commissioner, in my view, to comment on the line of questioning that Mr. Zed is proceeding with.

So, Mr. Chairman, accordingly, I believe his line of questioning is out of order.

The Chair: I'm sorry, but I have to rule that your point is not well taken, again, for the following reason. I think the question is fair, but it could be restated in this way: if there is a breach of the Privacy Act, do you have any jurisdiction, in your view, with respect to breaches of the Privacy Act?

• (1600)

Mr. Bernard Shapiro: No.

Mr. Paul Zed: Thank you, Mr. Chairman.

If you do not have jurisdiction for breaches of the Privacy Act, do you have jurisdiction for breaches of ethical conduct as it relates to the Privacy Act?

Mr. Bernard Shapiro: My jurisdiction is very limited—as I said before—much more limited than the title suggests. When the jurisdiction is limited to breaches of the code that would be applicable to any particular person, relative to inquiries, it would be further limited simply to ministers, secretaries of state, parliamentary assistants, etc., and not to public office holders, more generally speaking.

Mr. Paul Zed: Mr. Chairman, if a breach of the code was considered a breach of ethics, and that code breach was in fact an illegality pursuant to the breach of the Privacy Act, would you, in fact, Dr. Shapiro, have the authority to commence an investigation should an investigation be launched?

The Chair: Or could you request it, presumably?

Mr. Paul Zed: Could you request it? That's right.

Thank you.

Mr. Bernard Shapiro: In any request for an investigation, my first response is always to know if it's within the powers that I have as the Ethics Commissioner. I don't want to try to decide in advance in a hypothetical situation whether or not that would be the case.

Mr. Paul Zed: Thank you.

The Chair: Thank you very much.

Thank you, Mr. Zed.

Now we go to the Bloc, Monsieur Laforest.

[Translation]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): I'd like to focus on the legislation that governs your office, namely the Parliament of Canada Act. Pursuant to the Act, a parliamentarian may ask the commissioner to examine a matter related to the rules and obligations established by the Prime Minister — in other words,

the Prime Minister's Code. Pursuant to the Act, reports must also be made public, although some information may be kept confidential.

Can you be more specific as to what information must be kept confidential and what information must be disclosed?

[English]

Mr. Bernard Shapiro: There isn't any specific answer to the question you ask, in the sense that what might be kept confidential will differ *d'un examen à l'autre, par exemple*. What I do is reveal only enough information to support the conclusions I'm offering in the report. Remember that the investigations are conducted in private, and we try to guard confidentiality as much as possible. The only exception we make is when we feel we have to reveal something in order to support the recommendations the report is making. We don't know in advance what kind of information it's going to be.

[Translation]

Mr. Jean-Yves Laforest: Therefore, you have discretionary authority.

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

Mr. Jean-Yves Laforest: Earlier, you talked about preparations under way at your office to implement the provisions of the new Federal Accountability Act. You stated that this legislation will result in some changes, specifically, the fact that the Conflict of Interest and Ethics Commissioner will now be able to initiate his own inquiry into any current or former public office holder.

What's new here? Is it that you now have the power to initiate your own inquiry, or is it the reference to “current or former”?

Mr. Bernard Shapiro: Both are new.

Ms. Paule Brunelle (Trois-Rivières, BQ): I'd like to continue in a similar vein, Mr. Chairman.

Mr. Shapiro, you stated that some of your recommendations have been acted on and that Bill C-2 has been amended to include, among other things, sanctions for breaches of post-employment prohibitions by lobbyists.

Can you be more specific about these sanctions? Would they apply to a former parliamentarian turned lobbyist? How about to a lobbyist turned parliamentarian? Can persons who have worked with parliamentarians become lobbyists?

[English]

Mr. Bernard Shapiro: The whole law does not apply to members of Parliament particularly because this is not the members' code; it's the public office holders' code. So it doesn't relate to what happens as a member of Parliament, or as a member of the Senate for that matter.

My concern with Bill C-2, as I've mentioned a number of times, both in front of the Senate committee and in the House of Commons, doesn't have to do with the issue of restrictions on lobbyists, or of, for example, the penalties. I think that's a useful kind of addition to have. There are many useful things in the proposed act. My concern has simply been the lack of principles enunciated in the preamble to the act that would enable us to understand what it is we're trying to achieve through this legislation and what the standard behaviour is that's being held up for public office holders, *les titulaires de charges publiques*. That's my major concern. I have others, but that's a whole different question. There are many good things in the act as well.

• (1605)

[Translation]

Ms. Paule Brunelle: According to your report, your Office completed 1,196 cases in 2005-2006. To satisfy my curiosity, could you tell me what these cases consisted of primarily?

[English]

Mr. Bernard Shapiro: Not entirely, but these would primarily be new appointments to the office of a public office holder. We receive the confidential documents and then we try to make sure they've arranged their private affairs in a way that's suitable for their public responsibilities. That would be the major issue. Almost all of those would be that...either because they are new appointments or because there's an adjustment to be made because something has happened in the intervening year.

[Translation]

Ms. Paule Brunelle: Thank you.

[English]

The Chair: Merci.

Mr. Martin, seven minutes.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Chair, and thank you, Commissioner, for this opportunity.

I was tuned into CPAC the night both you and Mr. Wilson were at the Senate. That generated some interest in the media as well, partly because if you took isolated comments out of the larger context, you would come away with the idea that both of you were quite critical of Bill C-2 in many areas.

I don't know if it was you or Mr. Wilson who said that by putting what is now the code for public office holders into legislation, it actually becomes more weakened as it becomes more rigid. That may have been attributed to Mr. Wilson and not you, but that was certainly the tone.

I guess I'd like you to explain that a little bit more, because elsewhere in your testimony you did admit that you liked aspects of Bill C-2 that expanded the code to the 2,400 part-time appointees, etc. So do you feel that the shortcoming is enough that it warrants amendment? Are you critical to the point at which you think you're better off under the current regime than what is being proposed under Bill C-2? I suppose that is the question.

Mr. Bernard Shapiro: I don't have an easy answer to that question, but you are quite right that I do have mixed views on the proposed legislation.

There are many good things in it. For example, the definitions are better than they were before. It covers more people. It provides for more public information. There is an expansion of the public registry. There are many things like that that I think are really steps forward in terms of the regime.

You are right that it was said by Mr. Wilson. I did not say that it weakened the regime. I did say that adopting it into legislation, on the one hand, has the value of announcing how important this is. It gives it a kind of status it might not otherwise have, but the reverse of that is that should you ever want to change the code, it's a much, much more complex procedure, for obvious reasons. And one could argue that one balances the other, without trying to say anything more specific than that.

My main concern with the legislation is not the various details that people have been focusing on, but on the question of its lack in the preamble—or wherever it's seen to be appropriate—of a set of principles that would be clear as to what the ethical standards are that are expected of public office holders. That, I think, is a flaw in the legislation. I don't mean it's a legal flaw or anything like that, but I think when you think about ethics more generally speaking, no set of rules will cover the ground. It isn't possible. So it's useful to have a set of principles, however minimal, and they certainly wouldn't have to be the ones that are currently in the code. That's a matter people need to consider.

It does give you a chance to interpret the legislation—and there's going to be a lot of interpretation that will be required as we go along—in the light of something that would make sense to the people subject to the legislation. I don't want to say it's a fatal flaw, but what you see in the legislation is a movement from what is called a principles-based regime to a rules-based regime. I think there are good arguments for both of those and I don't want to say it has to be one or the other.

• (1610)

Mr. Pat Martin: I don't disagree with you; I also don't know.

First of all, the idea of voluntary compliance to a list of ethical guidelines hasn't served us all that well. That was some of the frustration that led to Bill C-2. There was a hue and cry to toughen up the ethical standards being exercised in Ottawa, so I think that was the temptation to go with legislation. But I also don't know if you really need to tell people that they shouldn't steal things, or that they should... I mean, when you hire somebody or elect somebody, it's kind of implied that they shouldn't do bad things. I don't know if a preamble stating that would help the interpretation.

Mr. Bernard Shapiro: My view is, if it's implied, it certainly won't hurt to state it, but you are right that no set of rules, no set of principles, will guarantee appropriate behaviour in the future. I don't think we've been served all that badly. I think most people who are public office holders, and most people who are members of the Senate or the House of Commons, have done perfectly well and continue to act in the appropriate way. I think we're incredibly well served. Perhaps the ethics regime has played some small part in that, but it certainly can't be called the cause of it.

Mr. Pat Martin: The word “honesty”, for instance. I notice there were some people who criticized that under the current Prime Minister's code it does say that people shall conduct themselves “with honesty”. There's no reference to that now, but surely it's implied. You'd have to be an idiot not to think that you're supposed to be honest, and you certainly can't use that as an excuse—I'll contravene this code because it didn't tell me not to anywhere. That shouldn't be necessary, I think.

Mr. Bernard Shapiro: Then we can relax about the whole thing.

Mr. Pat Martin: I'm not too exercised about it, but one of the frustrations was that some people have felt—I know this applies to Mr. Wilson maybe more than you—that it seemed the tone of those hearings at least started from the premise that the system wasn't broken and this is much ado about nothing. In fact I think he even said he preferred the ethical regime that he was administering when he was the Ethics Commissioner than what we're proposing in Bill C-2. I have to tell you that this is not shared by the general public. A lot of people are frustrated that Mr. Wilson never found anything wrong with anything that anybody ever did ever, but we knew there was bad stuff going on.

Mr. Bernard Shapiro: Without comment on the very last comment, I do believe the currently proposed act is an advance in many ways.

Mr. Pat Martin: Fair enough. Thank you.

The Chair: Thank you, Mr. Martin.

Mr. Tilson.

Mr. David Tilson: Thank you, Mr. Chairman.

Dr. Shapiro, I'd like to turn to the report that you have referred to in your comments, the 2005-06 annual report of the Ethics Commissioner dated June 2006, and specifically to appendix I. I interpret what you're stating as to what it's going to take to operate your office for the year 2006 is \$5,389,884. From 2005, although I see that's for 10.5 months...so ignoring that fact, it's roughly a 60% increase, and that's if Bill C-2 doesn't happen. For 34 employees, that's one heck of an increase. Obviously, it's not 60%, because 2005 is for less than a year, but that's one heck of an increase for 34 employees. Can you tell us why you need that increase?

Mr. Bernard Shapiro: I'm going to ask Lyne Robinson-Dalpé, who's in charge of financial arrangements in the office, to respond to that question.

Mrs. Lyne Robinson-Dalpé (Director, Corporate Affairs, Office of the Ethics Commissioner): Basically, the 2006 figure that you see there is for the 2005-06 fiscal year, so that was last year. This year's budget has been adjusted for this year. Basically, the difference between the two years is because, as you will note, there's \$1,200,000 just in salaries. In terms of the 2005 figure, I don't know if you remember, but there was a transitional period for the office at that point in time and we went down to about 12 to 15 employees; therefore, the salary budget was not as required as it was last year. For the last fiscal year we had 34 employees, and this is reflective of the 34 employees who were there. So the \$1.2 million difference is in salaries, basically.

The other increase was in professional services, where we had to negotiate agreements with the House of Commons and the Library of

Parliament for some of the services offered, and that's where some of the increases in financial requirements were identified.

• (1615)

Mr. David Tilson: Mr. Chairman, I raised that issue because I remember there was a certain amount of outsourcing, particularly of legal services for investigations. Is that where some of the increase is, with respect to the outsourcing of legal services?

Mrs. Lyne Robinson-Dalpé: Last year we spent about \$112,000 in legal services. That was the amount for judicial advice provided by lawyers.

Mr. David Tilson: Outside your office.

Mrs. Lyne Robinson-Dalpé: We spent \$112,000 outside our office, which is very reasonable.

As I said, the major amount was for the House of Commons IT support services to the office, which was \$300,000-plus.

Mr. David Tilson: Mr. Chairman, what's the average percentage increase for salaries?

Mrs. Lyne Robinson-Dalpé: The economic increase is 2.5%.

Mr. David Tilson: Mr. Chairman, this is with respect to Bill C-2.

You say on page 16 of your report:

The expanded requirements of Bill C-2 means that the Office will need to acquire additional human resources, particularly in areas such as legal services for interpretation and compliance with a legislated regime, and for the conduct of inquiries. A regime will also have to be developed and administered to implement and apply the new administrative penalties process.

Dr. Shapiro, or your staff, can you give us an estimate as to what you anticipate that increased cost might be?

Mr. Bernard Shapiro: It's very, very difficult to know, and I feel that we've been dancing on eggs, so to speak. We don't want to act as if we know what the law is going to be when we're not entirely sure.

Mr. David Tilson: You're quite right, because the law may not become law. But you've obviously anticipated this or you wouldn't have made that statement.

Mr. Bernard Shapiro: I think it would probably be something in the area of \$2 million to \$3 million, because there are huge new data requirements, huge new reporting requirements, huge increases in the public registry. There are all these things that are indicated in law, many of which I think I'm quite in favour of.

Mr. David Tilson: So that's over and above the \$5 million?

Mr. Bernard Shapiro: That's right. It also depends on whether the office includes the Senate, and there are all those other... When I say that, it's assuming the full law passes more or less as it is.

Mr. David Tilson: Can you give us any more details as to how you expect the new office will be run as a result of C-2?

Mr. Bernard Shapiro: I'm not sure exactly what you mean. Could you be a bit more clear?

Mr. David Tilson: To make the statement that you did in your report, you're obviously anticipating something. With all due respect, probably that's your obligation, because if the bill passed, all of a sudden Parliament is going to require you to perform magic. You must have some concept as to the new process that you'll be obliged to follow. I assume you've philosophized as to where you think the commission should go.

Mr. Bernard Shapiro: Without using the term "philosophized", I certainly have thought about how to organize in order to deal with the new legislation. My sense of it is that it doesn't require so much a change in process. I think many of our processes will stay the same; there will just be a lot more of them. Assuming the law passes as it is, the data requirements will be much larger. We'll have to keep more records about more things, and the registry will have to expand to include much more information than is currently the case.

We will need expanded legal services inside the office. Once we're interpreting legislation, we have to be careful, and we've got to make sure we proceed in an appropriate way in each and every case. We need expanded IT services and expanded legal services. It seems likely, although we can't be sure, that we'll need expanded services for investigations, since the law makes it somewhat easier for people who have an issue they wish to be investigated to approach the commission through an MP or a member of the Senate. There are all these things that will happen. Our estimate is that it will take a certain increase in human resources—we're not sure how many—which depends on a lot of other things. The cost will be roughly \$2 million to \$3 million on an ongoing basis.

• (1620)

The Chair: Mr. Shapiro, just following up on Mr. Tilson's questions, could I ask you to turn to appendix I, just so that I understand how you've done appendix I. This is on page 18 of your report in the English version.

Am I reading it correctly that salaries and employee benefits for the year ended March 31, 2006, were \$3.3 million? Is that correct?

Mr. Bernard Shapiro: That's correct.

The Chair: You have 34 employees. That's an average salary of approximately \$100,000 for each one of your employees. I find that startling, and I'd appreciate a comment on that. I can't believe that everybody is earning \$100,000, which means a lot of people are earning more than \$100,000 to average it at \$100,000.

Secondly, according to your report, which Mr. Tilson was talking about, specifically page 13, 64.5% of your budget went to salaries. I'm wondering if you've compared that with other commissioners, like the Information Commissioner or the Privacy Commissioner, and whether or not their budgets for their FTEs are in the same range of 64.5% of the entire budget going to salaries.

Mr. Bernard Shapiro: I have not made the comparison, so I can't respond to that question, although I'd be glad to get back to you on it.

The Chair: Thank you, if you wouldn't mind.

Mr. Bernard Shapiro: I'm wondering if Ms. Robinson-Dalpe might comment on the salary question.

Mrs. Lyne Robinson-Dalpe: Basically, the organizational structure states that we have 34 employees, but we also have some people who are seconded within the office. They are not actually

accounted for in the structure itself, but they are working within the office. There are three of those, plus there are student salaries as well that are included there. There's also the employee benefits plan that is covered there. Around \$580,000 in benefits for the employees is covered there. That's how we come up to that number.

There are also accrued expenditures for accumulated leave; there's unused overtime and accumulated leave for the employees who are covered—

The Chair: Unused overtime? What does that mean?

Mrs. Lyne Robinson-Dalpe: Unpaid overtime that has to be paid. Staff do overtime. If they accumulate time off and at the end of the fiscal year they don't have time to use it, then we have to pay it out.

The Chair: I'm not going to take the time of the committee, but should the committee decide to examine your estimates, I would really appreciate it if you would be ready for some hard questions on 34 employees and \$3.4 million in salaries.

Mr. Peterson.

Hon. Jim Peterson (Willowdale, Lib.): I have just two questions. From your presentation, Dr. Shapiro, on page 5, point 2, your duties include taking requests from a member of the public with respect to the conduct of a public office holder, but that request must be made through a parliamentarian.

Mr. Bernard Shapiro: That's correct.

Hon. Jim Peterson: What is the rationale for requiring a parliamentarian to come to you? Why can't a member of the public do it directly?

Mr. Bernard Shapiro: Since I am not the author of the code, I can't pretend to know exactly what the rationale is. When it was explained to me, I understood it to be a way of making sure that the office in a sense wasn't inundated by a number of requests that hadn't perhaps been examined carefully, that hadn't had some other kind of filtering system to limit the number that came forward. I may be wrong about that, but that's how it was explained to me at the time.

• (1625)

Hon. Jim Peterson: In the past, a member of the public could make a request directly of the commissioner, could they not? No? It's always had to come through a member of Parliament?

Mr. Bernard Shapiro: That's correct. It's always been that way.

Hon. Jim Peterson: Do you agree with that rationale?

Mr. Bernard Shapiro: I actually think it's helpful, in the sense that I don't think the office as it's currently organized could in fact organize to cope with what I think would be a flood of requests for investigation, and even deciding which of those were trivial or not appropriate would take an enormous resource. I think it does make it somewhat simpler if an MP or a member of the Senate has in fact taken a look at the material and decided that there seems to be something substantial there. But obviously it limits access. Clearly that's the case.

Hon. Jim Peterson: Thank you.

Secondly, in terms of post-employment restrictions, it's now a five-year ban. Do you know of any other jurisdictions that have a five-year ban?

Mr. Bernard Shapiro: No, I do not, but it may be a question of my own ignorance, as I haven't done a survey. The ones I'm familiar with do not, but that's all I can say.

Hon. Jim Peterson: Apart from the five-year ban, what is the highest that you know of?

Mr. Bernard Shapiro: The highest I know of is two years. But I don't want to pretend I've done a survey. That would be inappropriate.

Hon. Jim Peterson: Do you see any rationale for a five-year ban?

Mr. Bernard Shapiro: I can only assume the rationale is to impress upon both public office holders and the public that there will be no toleration for this kind of activity. Presumably, that is what was intended. It was a way of indicating that we are serious about this and that you should take this into account before agreeing to become a public office holder.

Hon. Jim Peterson: Do you agree with some who say this will preclude a lot of people from wanting to become public office holders, including public servants?

Mr. Bernard Shapiro: I don't know the answer to that question. I imagine it would be something they would take into account much more frequently now than they may have previously, but I don't know.

Hon. Jim Peterson: Have you seen examples, in the course of your work, where you thought a five-year ban was really necessary, as opposed to a two-year ban?

Mr. Bernard Shapiro: I have not.

Hon. Jim Peterson: And you've seen quite a few cases so far.

Mr. Bernard Shapiro: I've seen some. "Quite a few" may be overstating it, but I have certainly seen some.

Hon. Jim Peterson: Thank you, sir.

The Chair: Thank you, Mr. Peterson.

There's one minute left. Mr. Dhaliwal, did you want to ask a question?

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Chair.

My question is, again, to Dr. Shapiro. In the act we are bringing in we say there should be a five-year clause. But there is also a clause whereby if an employee works for the minister and the minister states in a letter that this employee did not have duties that were at a high level or where he or she was providing advice to the minister, that employee does not fall into that category. So what is the advantage of bringing in that clause? It's all on the onus of the minister then.

Mr. Bernard Shapiro: The only point I want to make is that a great deal of this entire regime depends on the goodwill and honesty of the people involved in it. The whole review system of the confidential document depends on what people are telling us being actually the truth. We don't audit the documents; we review them and try to make the appropriate arrangements. So the whole structure depends a very great deal on the goodwill and integrity of the people involved.

My experience thus far is not that there has been no difficulty, but by and large, people in fact illustrate the integrity that was intended.

There are exceptions, clearly, and if the clause you mentioned is misused, it's like any other clause that's misused; it will weaken the effect.

The Chair: Thank you.

Mr. Stanton, please.

Mr. Tilson, could I ask you to take the chair for a couple of minutes? Thank you.

Go ahead, Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chair.

Through the chair to our presenter today, Dr. Shapiro, in your last report to this committee in the 38th Parliament in November 2005, you raised some issues with respect to some ambiguities, as you referenced them, with the Parliament of Canada Act that you indicated would be the subject of a review, and you were working with House of Commons counsel to come up with a report on that, presumably, I think, to quote, "to the end of the calendar year or early in 2006".

I may have missed it in your presentation, but would you be prepared to report on the status of that review, and would any of those issues identified with those ambiguities be addressed by the current legislation in Bill C-2?

• (1630)

Mr. Bernard Shapiro: I'll ask Stephen Tsang to respond to the question.

Mr. Bruce Stanton: Thank you.

Mr. Stephen Tsang (Director, Strategy and Policy, Office of the Ethics Commissioner): Mr. Chair, we have been working hard with the law clerk and counsel to the House of Commons on this particular project. We have provided some input, and many discussions have taken place over the last several months. I understand from the law clerk's office that the law clerk is waiting for the outcome of the Bill C-2 deliberations before he issues a report to this committee.

Some of the issues that were raised have been covered by Bill C-2. That's why I think there's some hesitation in terms of when he should present this particular report. Some of them have been included in Bill C-2 already. So that's behind the standing of the status of this report.

Mr. Bruce Stanton: I have a supplementary, Mr. Chair, if I could.

Could you give us the general nature of these ambiguities, just for the benefit of the new members of this committee? What's being investigated?

Mr. Stephen Tsang: For example, the issue of under what code a member of Parliament can request the commissioner to conduct an inquiry—there are two codes involved—and things of that nature. Also, some clarification vis-à-vis at what stage the commissioner should give the person being inquired about an opportunity to comment on the report.

Those are more procedural questions.

Mr. Bruce Stanton: So perhaps at some point, then, after Bill C-2 has passed—presumably when it's passed—there would be a report coming, later this year.

Mr. Stephen Tsang: I would expect so, but the law clerk is going to be doing that, I hope.

Mr. Bruce Stanton: Thank you, Mr. Chair.

If there are any other—

The Vice-Chair (Mr. David Tilson): You have a couple of minutes. Are you finished?

Mr. Wallace.

Mr. Bruce Stanton: Yes, I was going to say, my learned colleague from Burlington might have a....

Mr. Mike Wallace (Burlington, CPC): I have two questions that are completely unrelated.

As a new member of Parliament I've actually called your office a couple of times with ethical questions, and I do appreciate the responses I've received.

I have one question for you—and I know this isn't the right committee, so you don't have to chastize me for that; I know it's under the House affairs committee. It's on the use of electronics— websites, blogs, and so on. Do you think we need, as a Parliament, rules and regulations on what can be said by a member of Parliament on these things, whether they're paid for by the public purse or not?

It's a basic question for you.

Mr. Bernard Shapiro: I certainly haven't thought about it, so I'm not going to respond, except to say in the most general way that relative to members of Parliament, the fewer limitations there are on their capacity to express their views, the better off we'd all be—I think. But whether in this particular case, relative to electronic communications, something special arises, I haven't thought about it and I just don't want to respond.

Mr. Mike Wallace: The response I got from your office, just so you'll know, is that no, there are no regulations around it. That is what the response has been.

Thank you for coming today, by the way, and I'm sorry I was late, Doctor, but correct me if I'm wrong. Your position on the FAA has been that there really should still be an ethics commissioner for the Senate and an ethics commissioner for the House of Commons.

Is that an accurate statement?

Mr. Bernard Shapiro: That is not the case.

What I have said on this are two things. First of all, I don't have “religion” on which administrative structure is used in order to realize the objectives of any particular piece of legislation. Any administrative structure will work if people are committed to making it work. That's how I feel about it.

What I said when I was appearing at the Senate committee that may have led you to make this comment was that I can easily imagine one, which is what has actually been proposed, working. I can imagine two, which is what we currently have. And I can imagine three, which is where you'd have a different one for the

House, a different one for the Senate, and a different one for public office holders.

If we're talking about synergy or efficiency, clearly one has more to offer than any of the other alternatives I've mentioned. On the other hand, some people feel that's not an important value, that the important value is a sense of ownership; therefore, I want my own— whatever “my” is.

So any of these things can be made to work, including the one that's proposed in the bill, and I don't have a strong view about which—

• (1635)

Mr. Mike Wallace: Thank you very much for that clarification, Doctor.

[Translation]

The Chair: Do the Bloc members have any questions?

Go ahead, Mr. Laforest.

Mr. Jean-Yves Laforest: Commissioner, you indicated during your presentation that your Office has identified various areas of action for 2006-2007, specifically the merger of Executive and Legislative Affairs.

Briefly, can you tell us how responsibilities are split between these two directorates and if, in your opinion, a merger will result in staff cuts, given that earlier, mention was made of the average salary level which was rather high? Could a merger eventually lead to staff cuts with a view to achieving greater efficiency?

[English]

Mr. Bernard Shapiro: I think the reason for doing it in the first place has to do with the enormous overlap of process that occurs between the two. First of all, there are people who are public office holders and members of the House of Commons, or in one case the Senate. On the process for dealing with the codes, although the codes are slightly different, it seemed to us that we'd get much more synergy if we had a single group working on this so they could learn from each other. People would be able to deal with both sides of the operation—public office holders and members of the House. We thought it would be a better human resource, both training and option, relative to efficiency and relative to how we could use information in a way that would serve all these ends at the same time.

It is possible that the fusion will enable us to make some savings. We'll have to wait and see whether that will turn out to be the case. Certainly if we can, it will be better. There's no doubt about that. But it remains to be seen. We're trying in a number of ways to sort of flatten the structure of the office, so as to empower more people inside the office to do as much of the work as possible in any particular case.

So that's the thinking we had. It was a result of the review we had done by the external operation review people. That is what they suggested, and that's the direction we're moving in. We've begun to do it to a modest extent, and we're finding it very useful as a way of having better employees and more efficient employees.

[Translation]

Mr. Jean-Yves Laforest: Thank you.

Ms. Paule Brunelle: You've stated that the primary aim of the Office of the Ethics Commissioner is to preserve and, if possible, strengthen the public's trust in our system of government and in our institutions. As we know, this is also the stated aim of Bill C-2.

In your opinion, how much progress have we made on this front? According to public opinion, we generally catch the small fish, while the big one manages to get away without any trouble. Nonetheless, are you optimistic and satisfied with the progress made?

[English]

Mr. Bernard Shapiro: I'm optimistic without being satisfied.

[Translation]

Ms. Paule Brunelle: That's right. We're not likely to have a good catch today.

[English]

The Chair: Mr. Martin.

Mr. Pat Martin: I have no questions, thank you.

The Chair: Mr. Tilson and then Mr. Wappel.

Mr. David Tilson: Thank you, Mr. Chairman.

I'd like to return to your report, on a matter of clarification. On page 12 of your June 2006 report under "Parliamentary Relations"—it may have been that I wasn't at a lot of the committee meetings early on, as I was somewhere else—and I think you referred to this in your opening comments, the final sentence says:

The Office submitted a proposed process to the Committee on the conduct of inquiries in relation to public office holders pursuant to section 72.08 of the Parliament of Canada Act for that Committee's review and feedback.

This is fairly important, and I don't recall ever getting that.

•(1640)

Mr. Bernard Shapiro: We did bring it to the committee. It was a result of questions raised at the committee.

Mr. David Tilson: I asked the clerk and we don't know where it is. We've never seen it.

The Chair: I have the same question in the margins of my notes on your report. Where is it?

Mr. David Tilson: If it came here, Canada Post must have lost it, because I don't think we've seen it.

Mr. Bernard Shapiro: I doubt we sent it through Canada Post, although it's possible.

Mr. David Tilson: I'm trying to add some humour to it, sir. I'm just telling you that obviously you're looking for committee feedback, and the reason why you haven't had any committee feedback is because I don't think we've received it.

Mr. Bernard Shapiro: That's possible. Clearly you haven't received it for sure. I think that's true. But anyway, we will re-send it.

The Chair: You don't have to. Mme Rondeau-Parent has told us that it is this document, which all of us have in front of us as today's paperwork. So if we haven't received it before, we have it effective today.

Mr. David Tilson: Is it dated May 4?

The Chair: It is dated May 4, 2006. That's the document.

Mr. Shapiro, am I correct that this is in fact the document you're referring to on page 12?

Mr. Bernard Shapiro: That's correct.

Mr. David Tilson: That's my question. Thank you.

The Chair: Thank you.

All right. If I might, Dr. Shapiro, I'll refer you to pages 5 and 6 of your annual report. There you're talking about the Prime Minister adding the twelfth point. Am I right?

Mr. Bernard Shapiro: That's correct.

The Chair: That's the same thing you're talking about on page 4 of your opening comments today, correct?

Mr. Bernard Shapiro: Yes. Well, it's the same type of thing.

The Chair: It's the same type of thing. There's a very interesting statement on page 6 about a legal opinion you received. It was that the part about the public using a parliamentarian to raise a question—which Mr. Peterson asked about—was, according to the legal opinion you received, ultra vires. I don't see any mention of that legal opinion in your remarks. Is that an omission, or have there been further discussions, further legal opinions? Could you bring us up to date?

Mr. Bernard Shapiro: No, there have been no discussions or further legal opinions. What was being referred to here is that the Prime Minister could not change the code to do something that was not made possible inside the Parliament of Canada Act. The Parliament of Canada Act made it necessary to go through the MP—unless they changed the act; then the Prime Minister could change the code in order to be appropriate.

The Chair: All right, but then I'm not following, because subsection (4) at the top of page 6 of your report indicates that it would have to be brought to his—meaning your—attention by a member of Parliament. Is that right?

Mr. Bernard Shapiro: That's right; that's correct.

The Chair: Isn't that what the Prime Minister is saying?

Mr. Bernard Shapiro: That's correct, but the issue that came up is the issue that Mr. Peterson raised earlier this afternoon, which was whether we could change the code so that a member of the public could approach the commissioner. The legal opinion was we could not, unless of course the Parliament of Canada Act was changed in the first place.

The Chair: I hate to belabour this, but I'm still confused. Your report says, "This addition to the duties of the Ethics Commissioner"; I presume you mean by "this addition" the addition that members of the public, through their parliamentarians, could bring issues to your attention. Am I right in that? These additional duties of the Ethics Commissioner provide a way for individual members of the public to request investigations.

You sought a legal opinion, and the legal opinion said that it would be ultra vires. You say the legal opinion, in your view, still stands as the advice given to you by whomever you hired for that purpose.

Mr. Bernard Shapiro: I've obviously not been very helpful in responding to this question. I'm going to ask the deputy commissioner. Hopefully, he can state it in a way that's clearer to you.

The Chair: Thank you. It's undoubtedly me, not you, but bear with me.

Mr. Bernard Shapiro: Well, I wouldn't put it that way.

Mr. Robert Benson (Deputy Commissioner, Office of the Ethics Commissioner): The Parliament of Canada Act says that it's a member of Parliament or senator who can make the request for an examination in relation to the public office holders who are covered. That's what the act says. The amendment in the code was making a statement that could have been interpreted in two ways. One was that a Canadian citizen could lodge a complaint with a member of Parliament, and the member of Parliament could essentially just post it through their office to us.

What we sought there was to know if that essentially allows a complaint to flow through a member of Parliament to us. The advice we got was that it could not; it has to be the member's request. The member can take into consideration information that he or she may receive from a member of the public, but it has to be the member's request, not just a case of a member of Parliament receiving documentation and just essentially posting it to the Office of the Ethics Commissioner saying it's a request for investigation.

• (1645)

The Chair: All right. If I can paraphrase what you've just said, your legal opinion would prevent someone like me from telling Dr. Shapiro I've received a complaint from my constituent and asking him to please deal with it. On the other hand, if I write you a letter directly, under my signature, reciting the facts stated by my constituent and asking you to investigate that, it would be in accordance with something the commissioner could do. Is that correct?

Mr. Robert Benson: That's correct.

The Chair: Thank you. That clears it up.

Now on page 8 we're talking about "Examinations pursuant to the Parliament of Canada Act". What does the word "examinations" mean?

Mr. Bernard Shapiro: It means the inquiries we have just been referring to.

The Chair: Okay. You say, "I replied that the Parliament of Canada Act provides for examinations of ministers, ministers of state and parliamentary secretaries, but not Governor-in-Council appointees." That's pretty clear. When I turn to page 11, I note that there are recusal arrangements for Governor in Council appointees. I'm wondering how it is that you can make recusal arrangements for Governor in Council appointees, but can't examine them.

Mr. Bernard Shapiro: That, in fact, is just the nature of the legislation.

The Chair: Do you find that odd?

Mr. Bernard Shapiro: It's certainly something that Bill C-2 would change. Although I wasn't there at the time, I imagine in the first instance as the government was introducing the possibilities of inquiries, their interest was in the ministers and parliamentary

assistants, etc. As time went on this interest widened, I would say, which is how then you see it reflected in Bill C-2.

It's one of the reasons in preparing for Bill C-2 that we imagine we'll need significantly increased resources to deal with the requests for investigation since many more people are eligible to be examined.

The Chair: Thank you.

Also on that page, I made a point of order at the very beginning of this Parliament about the nature of members of Parliament during an election, and the Speaker ruled on it. I notice that you have essentially said the same thing, which, if one reads between the lines, is that basically an MP is not an MP during an election campaign except for the purposes of collecting his or her cheque.

I wonder if you had, in support of the statement you make in bullet 3, any documentation that you could file with the committee examining the specific legal role that a member of Parliament has during an election campaign.

Mr. Bernard Shapiro: I'll refer the question to the deputy commissioner.

Mr. Robert Benson: We actually dealt with this issue in the Grewal-Dosanjh inquiry that was conducted under the member of Parliament code. The issue there was also the status of an individual to raise a complaint. We have cited some references in that, so if you wish, I can bring that document to your attention through the chair. It cites authors and constitutional experts and documentation that exists out there.

The Chair: All right. So based on that, it is your position that during an election campaign a member of Parliament does not have the capacity to make any request of the Ethics Commissioner?

Mr. Bernard Shapiro: That's correct.

The Chair: Fascinating. Why are we getting paid?

Mr. Bernard Shapiro: That's another question.

The Chair: Exactly.

I'm through, so by all means, I'm happy to take questions from anybody. Yes, Mr. Tilson?

Mr. David Tilson: It's an issue, Mr. Chairman, that I've often asked about. We're all accepting our salaries until we're either part of the next Parliament or turfed out of office. We also have constituency offices that are open. We have our offices here that are open. We are assisting constituents, and so doing could involve an ethics issue or a question on the conduct of a member of Parliament during that period of time.

So I can only say—I think as the chairman said—it's an interesting position, because I've always taken the position that you're an MP until you leave.

A voice: Until midnight on election day.

Mr. David Tilson: Absolutely.

• (1650)

The Chair: That's the position I'd take, but that's not the position of the Speaker of the House.

Mr. David Tilson: Well, I know, but we're dealing with the commissioner, specifically with requests to him. And if that's the case, we might as well not have our offices open for members of the public who may wish us to raise issues, or who may have ethical questions that may go to you through the member of Parliament. You're saying we can't do it. We might as well close our offices up.

Mr. Bernard Shapiro: I would imagine there are a number of different purposes served by your offices being open, and I don't want to comment on those.

Mr. David Tilson: Well, you can say that, but one of them could be one of these issues.

Mr. Bernard Shapiro: It could be, and there's always an opportunity some weeks later to raise the issue—

The Chair: If you're lucky enough to be re-elected.

Mr. Bernard Shapiro: Or if you're lucky enough to have an MP who would like to bring the matter forward.

The Chair: Has this apparent hole been brought up at any stage of Bill C-2 or at any time in any discussions? Ministers, of course, continue to remain ministers during an election campaign, and they continue to run their departments. They continue to issue orders, and theoretically they, as well as office holders, could breach the ethics code during an election campaign, and yet not a single one of the sitting 308 members of Parliament has the capacity to bring that to your attention. That, to me, is a glaring hole. Was it ever brought up by anybody?

Mr. Bernard Shapiro: Not that I know of, although I haven't been party to all of those discussions.

The Chair: Fascinating!

Well, I don't know that it's going to do us any good, but it's very frustrating to me to find out that for all intents and purposes we're nothing once a writ is dropped. I'm sure my constituents and the ones who come to me during an election campaign to help with their immigration matters, etc., would be flabbergasted to hear that. Theoretically, then, the entire bureaucracy could, as a right, simply say, "I'm sorry, we're not going to talk to you." Anyway, that's not your problem, but it's an interesting one.

Would anyone else like to ask any questions of the Ethics Commissioner?

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

To continue what you were saying, is there any way we could bring that clause in when it comes to...? Personally, I feel we should be very transparent and open in this process. In fact, it limits the public when even one of the 308 members does something that is

unethical and that complaint can't even be put forward until election day. I'm just wondering if you could ask Mr. Shapiro if it can be taken care of one way or the other.

The Chair: Mr. Shapiro, would you view it as in your purview to bring this matter to others' attention, or not?

Mr. Bernard Shapiro: I would not take that step. That's a personal comment, not a comment on a theory about who should take the next step, or how.

The Chair: Among other things, including possible notice of motion, next Wednesday's meeting will be devoted to future business of the committee. It might be an idea that we discuss this to see whether there are some hearings we might have, assuming it's within our mandate, to perhaps make some recommendations to the government.

Mr. Benson.

Mr. Robert Benson: I just want to clarify something. I said it was in the Grewal-Dosanjh case, but it was in the Harper-Emerson case.

The Chair: But you will provide it to the committee, in any event? Thank you.

Are there any other questions of Mr. Shapiro or his staff at this time? All right.

This has been absolutely fascinating. I want to thank everybody for coming. I hope we'll have you back for estimates. If there's anything else that any committee members think of later, by all means let us know and we'll ask the commissioner and his staff if they can respond in writing.

Mr. Wallace.

Mr. Mike Wallace: Mr. Chairman, what is on Monday's agenda?

The Chair: At this point there is no Monday agenda because we're going to be attending the seminar on access to information.

• (1655)

Mr. Mike Wallace: Oh yes, my apologies.

The Chair: If that is not approved by the House, there won't be any meeting anyway, because we won't have any agenda. So the next meeting is Wednesday.

Mr. Mike Wallace: And will it be on the balance of this session's meetings?

The Chair: On the workplan, exactly.

Thank you very much, everyone, and thank you, Dr. Shapiro.

The meeting is adjourned.

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