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Commons of the Standing Committee on
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Chair

Mr. Scott Reid

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•(1110)

[English]

The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)): Order.

We have Duff Conacher as our guest today. He leads a number of groups and is certainly no stranger to anybody who is a denizen of Parliament Hill. Mr. Conacher has submitted a presentation that has been translated.

Mr. Conacher, I invite you to please begin your presentation.

Mr. Duff Conacher (Chair, Government Ethics Coalition): Thank you very much to all members of the committee for this opportunity to present on this important ethics issue today.

[Translation]

Excuse me, but I have to practice my French. There are many technical terms, and I will therefore try to answer your question.

[English]

The Chair: I'm sorry, there's a translation problem.

Okay, go ahead, Mr. Conacher.

[Translation]

Mr. Duff Conacher: I will try to answer your question in French, but my presentation will be in English.

[English]

I will be very brief today, in part because I have to run to another committee. There was a scheduling mix-up with that other committee and they changed things on me, but I wanted to appear before you today because I am heading off on an unfortunate matter involving the health of a friend for the next three weeks. I know you're off for two of those three, but just in case, I wanted to make this presentation and am happy to answer questions afterwards, in written form as well if we don't have time to get to them today.

This area of gifts and benefits has been highlighted by the ethics commissioners who enforced the code as one of the most pressing areas, just because of the number of questions that surround it. Unfortunately, neither commissioner who has been in place since the code was created in 2004 issued a public interpretation bulletin that draws a line and gives some clear definition to the decidedly vague and loophole-filled rules in the code itself. Neither have the committee or MPs as a whole, through the House, added such interpretation provisions to the code, so it remains unclear what gifts

and benefits are legal or illegal, and as a result, since there's no line that can be crossed, no one can be found guilty of crossing the line.

This is not a small matter, if you know anything about the situation of former cabinet minister Sinclair Stevens and the whole inquiry into his activities in the late eighties and early nineties. He challenged that in court. The Federal Court many years later, in 2004, said he is not guilty of anything because there was no definition of private interests or conflict of interest in the code for cabinet ministers at the time, and therefore he didn't know what line there was, and therefore he couldn't cross the line. He was not given adequate notice of what the rules were.

So these rules have to be fleshed out and given greater definition.

As I imagine Conflict of Interest and Ethics Commissioner Mary Dawson told you when she appeared before the committee, or as you may be aware in any case, she has issued such a guideline on gifts for the Conflict of Interest Act, which covers the cabinet ministers and other senior public office holders. This guideline, in case you don't know, sets out the world's best standard, and essentially what I'm hoping will happen very soon is that she will do the same guideline for the MPs' code and it will set the same high standard.

To do so, the key principle in the code that should inform the interpretation and the drawing of the line is paragraph 2(e), the principle that "Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity."

Because it's "might reasonably be seen", it's a standard that is not where anyone would have to prove for sure that you had changed your mind about something because of a gift. They would just have to look at the situation and say that a reasonable person would say you might change your mind. That's a very high standard. It's in the Conflict of Interest Act as well, and that's why essentially the same guidelines should be issued.

In the guideline on gifts, one of the key lines the Ethics Commissioner set out is "The donor's existing or future relationship to the public office holder is of particular relevance." Then really the key line is: "If a gift is being offered by someone whose interests could be affected by a decision the public office holder may be called upon to make"—and the key words in there are "could" or "may", so it's again perception, and potential conflicts are covered—"then the Act will likely apply and prohibit its acceptance."

She extended that to even small gifts from friends if they have a relationship of possibly being affected by a decision of the public office holder.

Unfortunately, though, the code currently has an exception that's vague, in subsection 14(2), that allows for gifts received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a member's position.

• (1115)

What I'm suggesting in the brief is that it must be very strictly interpreted to prohibit payment for a speech or appearance at any event. It must prohibit any gift of any sort—money, property, or services—that's given in the context of communicating with the MP concerning any issue, program, or funding addressed or overseen by the federal government. It must prohibit any benefit, including the provision of significant volunteer services to a nomination race or election campaign or party leadership campaign or riding association. It must prohibit awards of any kind and any other gift, except the most nominal expressions of courtesy, protocol, or hospitality, such as a meal served at an event you attend.

In other words, and this is essentially what the Ethics Commissioner said in her guidelines for the Conflict of Interest Act, it would essentially make the disclosure requirement for gifts over \$500 irrelevant, because no MP would receive gifts that would be worth more than \$500 from anybody over any 12-month period.

You may be saying to yourself, well, ministers have so much more power than we do, so we can't introduce an act that could definitely pass in a majority government, for example. We can't shape a contract offering the way a minister can. But I would urge you to consider that any MP can easily become a cabinet minister as a result of an election. There can be a party leadership race, and all of a sudden the person is the Prime Minister or is the opposition party leader, with much more influence than just a backbench MP.

Because of this, I think you have to operate this way all the time. It's what the public expects. It's also democratic and ethical to essentially say that we're not going to allow gifts or benefits of money, property, or services to be used as a means of influence for anyone who is in any decision-making situation. Of course, MPs are in decision-making situations.

However, you'd have to go further than just this interpretation. Most specifically, I hope you will delete section 15 of the code, which allows for sponsored travel. It's an exemption that contradicts, directly and significantly, every other word in the code about gifts and benefits. It just does not make sense to allow the gift of free trips, wherever you want to go, for you and your guests—that's what the exemption says—all paid for by lobbyists. And many of the trips are paid for by lobbyists.

It contradicts it totally. As long as it's there, it will result in an annual story, which should embarrass all MPs, about the number of MPs

who took free trips from lobbyists in the last year in complete defiance of the principles in paragraph 2(e) of the code and subsection 14(1), which says that you can't accept any benefit other than the compensation you receive as an MP.

You should also put in some minimum penalties and empower the Ethics Commissioner to impose those minimum penalties. I think that would be an improvement of the code.

Extend the MPs code to cover the staff of MPs, at least with respect to gifts and benefits. And extend that measure, as well, that prohibition, to all members of the MPs' families, not just the very limited number that are included in the definition of a family member now.

Overall, I would suggest, given the concerns that have been raised about conduct in the House and given what the Speaker has done recently on that issue, that this committee, or the parent committee of this subcommittee, hold hearings to extend the code into other areas of conduct by MPs.

Really have a discussion about the proper role of an MP and these things that have never really been discussed. Is an MP a lobbyist for constituents, a representative of the will of the majority of constituents in the riding, or a representative of all the constituents and the public interest? Where is the line in helping one constituent? Do you have to help them all equally, whether they voted for you or not? Are you allowed, under an ethics regime, to give unequal service to your constituents, to help some of them but not others? These things have never been discussed. As well, there should be a cooling-off period before becoming a lobbyist after leaving office.

• (1120)

I think it's time to have a debate about all these issues, and on the proper role of MPs and the operation of MPs' offices, in particular with regard to relations with voters. Then measures could be added to the code to strengthen it and to cover these key areas of conduct.

I'll leave it at that. I welcome any of your questions.

The Chair: We have only 20 minutes before Mr. Conacher has to leave us, unfortunately. If we do seven-minute questions, which is the typical practice, that will give one question each.

[*Translation*]

Would you like the committee to continue to sit in public or to go in camera?

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): I think we should go in camera.

[*English*]

The Chair: All right, then let's go in camera.

[*Proceedings continue in camera*]

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