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Chair

Mr. Joe Preston

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• (1635)

[English]

The Chair (Mr. Joe Preston): I'll bring us all back, please.

I thank our witnesses for joining us today. Hopefully, you have at least a little knowledge of what we're trying to accomplish here and what type of questions you might get.

We're in the early stages of trying to move forward with the reference we've been given from the House. If you have opening statements we'll do them both first and then we'll go to questions from all the members.

Mr. Heard, I always try to do the ones on teleconference first in case the wire gets pulled some place and we lose you.

Please, go ahead. You have five minutes or less on an opening statement. We'll move on after that.

Prof. Andrew Heard (Associate Professor, Department of Political Science, Simon Fraser University, As an Individual): Thank you for inviting me to participate. I'm tickled pink to do it, even from this distance.

The committee is looking at a very important policy development and I think it's high time that a code of conduct was developed to govern relationships between MPs. This would close a gap but others remain, as we'll see later in the discussion.

One of the things I would like to talk about in the opening comments is the complexities of what you are dealing with. One of them is the complex nature of the interactions between MPs. You know this better than I do that the business of the House of Commons is a subset of the business of an MP and the work that you do. In that regard the opportunities for MPs to interact with each other occurs not just within the precincts but off Parliament Hill as well within official House business as well as with party business, caucus business, civic affairs, diplomatic and municipal affairs, as well as private functions. The context in which possible aberrant behaviour arises is quite a complex setting.

From what I understand this code of conduct that you're looking to put in place would govern the work of MPs within the workplace of the House of Commons and that includes both on Parliament Hill as well as when you would be travelling. In that regard it would mirror something that the Senate has. I think it's vitally important to cover as much of the work of an MP as possible, both on site and off site.

The other complexity is the peculiar ways in which MPs do their work and the context of working within party caucuses. It's almost as if you were working for rival companies, if one were to use a private

sector analogy. One needs to devise a policy that is trusted across those divides and ones where people from one party who have a complaint about the behaviour of another can have full confidence that the complaints will be looked at and dealt with seriously. One has to imagine a process in which competing camps with an adversarial nature have confidence that the process will treat everyone fairly. The other is that while there is a hierarchy in relations among MPs within a caucus there is also a theoretical equality. The code has to deal with MPs as equals but within the reality of working in a hierarchical framework.

Another problem is the legal framework in which Parliament works: the collective and individual privileges and immunities. On the one hand, there is the seemingly vast range of powers that Parliament has to deal with that, but this is also in some senses quite limited in geographical reach. If one were to put a code in place one has to look for an effective mechanism to deal with complaints that's fair, transparent, and wins public confidence. It would be necessary to have some third party investigate and mediate as appropriate. Different models could be following on the existing MP's staff model. It could involve whips, the chief human resources officer, or one could go to an outside official such as the Conflict of Interest and Ethics Commissioner.

Finally, there's the problem of deciding about sanctions. Is this process simply to mediate, remediate, and make things better in relations between MPs or is one envisaging a process that might ultimately lead to a report to the House and possibly formal discipline, suspension, or expulsion? If the code were to go that far then there are some other considerations to bring in.

Thank you.

The Chair: Thank you.

Madam Beagan Flood, please give us your opening statement. Then we'll ask questions of the two of you.

Ms. Catherine Beagan Flood (Partner, Blake, Cassels & Graydon LLP, As an Individual): Thank you, Mr. Chair.

I should start with a bit of a disclaimer. I believe I was asked here today because I have represented the House of Commons as your counsel in a number of cases that raise parliamentary privilege issues. However, I don't currently have a solicitor-client relationship with the subcommittee. So today I won't be providing you legal advice as your counsel, but rather I'm appearing as an individual, and to the extent that I have expertise that may be helpful to you in fulfilling this important mandate I'm very happy to provide that to you.

One of the parliamentary privilege cases I worked on that's relevant to your mandate today was the the Supreme Court of Canada's decision in the Vaid appeal. Some of you may remember that case. Mr. Vaid had been the chauffeur to the Speaker and he had filed a complaint under the Canadian human rights code, alleging both discrimination and harassment on the basis of race against the Speaker and against the House.

The Supreme Court held that parliamentary privilege attaches to the employment relationship between the House and some of its employees, but not all of its employees, and Mr. Vaid, as a chauffeur, didn't have a role that was so central to the constitutional functions of Parliament to fall within the privilege. Therefore, he could make a complaint under the Canadian Human Rights Act by filing a grievance under a statute that applies specifically to parliamentary employees.

At the same time, the Supreme Court did say that the Canadian Human Rights Act does not apply directly to internal affairs of the House that properly fall within privilege. For example, the Supreme Court said:

It would be intolerable...if a member of the House of Commons who was overlooked by the Speaker at question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker's choice of another member of the House discriminated on some ground prohibited by the Canadian Human Rights Act, or to seek a ruling from the ordinary courts that the Speaker's choice violated the member's guarantee of free speech under the [Canadian Charter of Rights and Freedoms]. These are truly matters "internal to the House" to be resolved by its own procedures. Quite apart from the potential interference by outsiders in the direction of the House, such external intervention would inevitably create delays, disruption, uncertainties and costs which would hold up the nation's business and on that account would be unacceptable even if, in the end, the Speaker's rulings were vindicated as entirely proper.

However, the Supreme Court went on to say:

In matters of privilege, it would lie within the exclusive competence of the legislative assembly itself to consider compliance with human rights and civil liberties.

That really is your mandate today. You're clearly dealing with a relationship that falls within privilege, the relationship between two members of Parliament. Yet, in exercising your privileges, it's completely within the competence of the House of Commons to determine that you want to voluntarily comply with certain human rights obligations that can't be applied by an external body, but where to the extent that it's not inconsistent with your constitutional functions, you could choose to comply with human rights obligations to the greatest extent that is consistent with proper functioning of the House, including ensuring that investigations are done by someone who understands the unique features of the legislative functions.

I reviewed the very helpful and informative evidence given by Mr. Denis, the deputy law clerk, and also by Mr. Parent, as the chief human resources officer of the House, at your last meeting. In the discussions at that meeting, there were two categories of parliamentary privilege that seemed to create some concerns about the extent to which human rights obligations could be applied to the House.

The first was freedom of speech and the second was the exclusive jurisdiction of the House to discipline its members. I'm happy to discuss these further in response to questions, but I would just say,

briefly, in relation to freedom of speech, one option that the subcommittee may want to consider is to define harassment in the context of speech in the House or in committees as being conduct that demeans, belittles, or causes personal humiliation or embarrassment to a member and that is based on a ground of discrimination that is prohibited by the Canadian Human Rights Act.

• (1640)

Those would be race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, physical or mental disability, or conviction for an offence for which a pardon has been granted.

The Standing Orders already prohibit offensive words against a member and harassment of a member would also be a breach of privilege in itself, yet if you wanted to, you could make a statement about the significance of human rights and the fact that any of these grounds that are prohibited under the Canadian Human Rights Act, such as a racial slur or a sexist comment, is not something that adds to a debate in the House of Commons or that is in any way necessary to the proper functioning of the House. That might be one way of ensuring that freedom of speech is preserved, yet offensive comments that are certainly not necessary to debate are clearly not prohibited by the Standing Orders.

On the exclusive jurisdiction of the House to discipline members, I would simply mention that the House does have the ability to circumscribe its own privileges, so to the extent that you were to determine that, you would have an external expert body make decisions about proper discipline to ensure that confidentiality is preserved. You could choose to do that even though it is limiting a privilege that the House currently has. In exercising its own power, the House can make its own delegation or circumscribe its own privileges, to the extent that you find that's an appropriate step.

Those are my statements. Thank you.

• (1645)

The Chair: Thank you very much, both of you. We will move to our seven-minute round and we'll go to Madam Crockatt first. You have seven minutes or less, please.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you very much, and I think I'll leave some of my time to share with my colleagues.

I appreciate your testimony today and I'm just wondering about the recommendation that you're putting forward about utilizing the Canadian Human Rights Act as the basis for this. I'm wondering how you think that might intersect with the freedom that MPs currently enjoy to discuss really problematic areas in society that are often the subject of very intense emotion and debate.

Ms. Catherine Beagan Flood: I agree. It's extremely important that free speech within the House be preserved. That is clearly essential to proper functioning of the House.

At the same time, if you had quite a narrow definition that only prohibits offensive speech that is demeaning a member on the basis of their sex or race or another prohibited ground, I think as long as the definition were clear enough, that this would only prohibit the kind of speech that would never in any way advance a discussion even of difficult topics, because it would be a slur or something of that type.

Ms. Joan Crockatt: I appreciate that you've just been asked in so I'm not trying to put you on the spot, but have you come across any examples where this did apply to parliamentarians in any way?

Ms. Catherine Beagan Flood: I grew up on Prince Edward Island and I remember Joe Ghiz, who was our premier. He was the first premier of non-European descent. He was the subject of a racist slur in the legislative assembly. Something I thought was interesting about that was that there was some discussion about hierarchy. He was the premier, yet he was being demeaned by a racist slur.

As I was trying to find the news reports of that incident, I happened upon a statement that Mr. Ghiz had made at the time he was running in that election and he was being asked whether race was playing a role. One thing that he said I thought was quite relevant to your deliberations. He said, "Bigotry is part of the human condition. It is the ugly weed of democracy. It can never be allowed to spread unchecked in a society based on tolerance and respect for human rights and equality."

So he, as premier, as someone who clearly felt that freedom of speech in the legislative assembly was crucial, was also of the view that tolerance and human rights are key and must be protected, as much as freedom of speech must be protected.

Ms. Joan Crockatt: I'm going to turn the rest of my time, Mr. Chair, over to Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you to both of you for coming in.

The issue in terms of debate doesn't seem to be the one that is captivating this committee. To be honest, I think there's a general sense that the Speaker has the ability through the Standing Orders to control debate in the House of Commons and request that a member apologize, and in some cases, sanction members if they are not willing to apologize for offending comments. So I think we're generally comfortable with that.

It really goes outside of the context of the House or the committee where really privilege doesn't exist between members to the extent it does in this setting so that's really where we're spending a fair bit of time. To be honest, increasingly I think committee members understand there are provisions through the Human Rights Tribunal, or different things, to address our debates or what we might call each other outside of that context.

We really are concerned I think to a larger extent about the ability for an employer, or for us as an institution, to control the activities as it relates to sexual harassment, oftentimes even outside the places of our employment. We haven't defined what our employment jurisdiction is here. We as MPs often think we never leave the role we're playing.

Have either of you some suggestions as to how we might better address issues of sexual harassment to ensure we protect the

identities of those people who might feel uncomfortable coming forward if they do feel there is a chance their identities would be exposed, but also to ensure there's fairness within the system?

Then in a legal context, can you comment on what jurisdiction this House or this entity might have regarding people's personal lives?

We do have a group of people who are essentially executives. We aren't one another's employers. We do have provisions to deal with employee-employer sexual harassment, but in terms of colleagues we don't. That's really where we're at. We're trying to put all the pieces together to care for all the things I described, but it really is between peers that we need some kind of protocol.

Is there any suggestion or insight either of you can give us on that front?

• (1650)

The Chair: Madam Beagan Flood, please go first. Mr. Warkentin has left a minute for both of you to answer.

Ms. Catherine Beagan Flood: Just briefly, in the code that applies to members as employers there is a definition of workplace that includes all offices or other premises where the business of the House is being conducted. But it also extends to locations and situations including business travel, conferences, and work-related social gatherings where House of Commons-related activities are performed, and where inappropriate behaviour or comments might reasonably be perceived to have a subsequent impact on work relationships, environment, or performance.

Mr. Chris Warkentin: I understand that. What I'm trying to find out is what is legally possible for us as an entity to control outside of the workplace? I understand what our definition currently is. How much further could we go without being completely outside of our jurisdiction? Can we go into the personal houses of respective members?

The Chair: We're under about eight seconds now so I think we may get to another question before Mr. Warkentin's question gets answered.

We now are at another question.

Madam Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thanks, Mr. Chair.

Ms. Beagan Flood, I want to come back to the point you made that there is nothing to prevent us as parliamentarians from setting a code of conduct predicated upon the Canadian Human Rights Act's discriminatory provisions. Correct?

With regard to freedom of speech, I would actually argue there is some responsibility around freedom of speech. It's not just a right around freedom of speech. There's a responsibility. I'm reminded of conflict resolution programs, mediation programs, that talk about being hard on the problem and soft on the people. So I take your point that we could actually talk about freedom of speech with the limits, which you outlined very ably, about conduct that demeans, belittles, and so forth.

Ms. Catherine Beagan Flood: That's correct. That was the suggestion I was making, which is open to you if you should choose to adopt that kind of process.

Ms. Jean Crowder: Yes, because I would argue that most of us are intelligent, capable people, and if we can't make our point without harassing somebody either sexually or otherwise, then probably we should seek another job.

Mr. Heard, I want to turn to you for one second. You indicated that one of the challenges we have is that in the current configuration, without changes, it's parliamentarians who are going to sanction another member if it ends up at procedure and house affairs or in the House of Commons with a report. Can you see any other way around that given our current context?

• (1655)

Prof. Andrew Heard: I think that when it gets to the case of a serious issue, where discipline needs to be public, then it should go through the usual process for disciplining a member. So usually it would be referred to the committee and then back to the House for a final sanction, if needed. Most harassment issues, I would imagine, would be dealt with at the mediation stage. They would be dealt with in the phase of confidential dealing with the complainant and the respondent trying to sort out the issues and have a satisfactory conclusion worked out.

In some cases that's not going to be possible. You may have a repeat offender. The situation may have been so serious it may verge on criminal behaviour. The person involved may have raised a question of whether they're fit to remain a member of the House, and I think only the House can deal with that through the normal process where they would consider suspending or expelling a member.

Ms. Jean Crowder: I'll put this to both of you. One of our big challenges is with regard to confidentiality. For many complainants, our political careers are on the line once we go public. That's what happens to us. The experience of women, generally speaking, is that once we go public, we are judged as being guilty. That's what happens. I wonder if either of you could comment on another way to approach confidentiality.

Perhaps I can start with you, Ms. Beagan Flood.

Ms. Catherine Beagan Flood: As I mentioned in my opening statement, while the usual process would be that discipline would be by the House or by a committee of the House, you could choose to set up a process under which the ultimate decision on discipline is made by an external body, and that is automatically applied either by the whip or by the clerk. You may decide that's not in the public interest. It's a difficult question. Is the public interest in encouraging complaints to be made, and therefore keeping the process confidential for that reason? Should that outweigh the public interest in the disciplining of a member of Parliament for engaging in this

kind of conduct being transparent and public, and having Canadians know about the facts of the particular case? Those are very difficult interests to weigh.

But I think it is available to you to come up with a process whereby the disciplining isn't being done by the House.

Ms. Jean Crowder: Mr. Heard, do you have a brief comment because I want to turn it over to my colleague for a quick question?

Prof. Andrew Heard: Yes, I think it would be possible for a third-party fact-finder to have an anonymized version of the statement of facts of what had occurred, and for that to be presented to the House for consideration. Based on that finding of fact, should the House proceed with the disciplining of a member? I think one could still maintain some degree of confidentiality in the process, with the third party establishing the facts and the House or committee proceeding as to whether those facts are serious enough to discipline the member.

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Very quickly, I'm just curious whether there has ever been an example of the House carving away its authority for discipline elsewhere, or whether there are examples of that internationally in comparable Parliaments.

Ms. Catherine Beagan Flood: I don't know that there are. Certainly there are to the extent that the House has already set up certain independent bodies like the ethics commissioner. Those are tasks that in the past were done completely by the House. But with the ethics commissioner, for example, you end up with a recommendation that the House ultimately rules on, so while a certain degree of responsibility has been delegated, the ultimate decision remains with the House.

Ms. Mylène Freeman: That is it for me. Is there any more time?

The Chair: There's about one minute left in your round.

Ms. Jean Crowder: Mr. Heard, you talked about a fair and transparent process. Are there a couple of key elements that need to be in place for that to be deemed a fair, transparent process?

Prof. Andrew Heard: One question I have is whether one can rely on the existing model for MP staff harassment to go through the whip. The Senate harassment policy goes through the whip. There's a question whether there could be sufficient public confidence that the whip would deal with internal matters satisfactorily. There is a question in my mind as to whether transparency can occur through a model that depends upon the party whip, or whether the party whip needs to work with, let's say, the chief human resources officer or a commissioner, and so on, in tandem, or whether that should be taken completely out of the whip's purview.

• (1700)

Ms. Jean Crowder: Yes, we've raised concerns about having the whips involved as well.

I'm pretty sure I'm out of time.

The Chair: Yes.

Madam Bennett.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you.

I think it is this issue of the whips that is upsetting people. I think the issue is for people to enter into a process where at the beginning they're seeking advice as to describing what happened and finding out whether it's mediation, restorative justice, or what other possible avenues are open. I think what some people have said is that if there's a trusted female who is identified as being the person, you go with that, and somehow people are more likely to report and then hopefully have it settled.

Can you see that there would be a place where it would have to come to the House if it seemed that the recommendation was that this person should no longer serve? That's really what we do. Our job is to say this isn't in keeping, as though they had been found guilty of an offence. Is there a way of setting some possible disciplinary levels, so that only certain ones have to come back to the House?

I've forgotten my other one. Anyway, answer that and I'll remember what the other thing was.

Ms. Catherine Beagan Flood: In my view, I think that would be possible, to have a procedure for discipline that is less serious, that is recommended solely by the outside investigator who is responsible for this process or the appeal panel, if there is an appeal, if you were to adopt a process that's similar to the policy that applies to members as employers. As Professor Heard had mentioned, even when it does go to the House, you may be able to anonymize the facts sufficiently to protect the identity of the complainant.

Hon. Carolyn Bennett: Professor, just for a second, in medicine it only becomes public if they're found guilty, right? In medicine, the chief of your department or your hospital is only made aware of the allegation if there's found to be some truth in it. I think in this situation there is some concern that the whips would want to know right away if there's an allegation. I just wonder if you could help us through that.

Prof. Andrew Heard: It is very problematic, and I don't have any ready answer. I can share that there are three layers of problem-solving that I could see. One is at the initial lower level where it is really an interpersonal issue where mediation and reconciliation can occur, and that's a good, positive healing thing for having a positive work environment.

The next one is at what I would call the political level where the whips I think have a legitimate interest in knowing whether a member should be reassigned to different duties. There's a layer of essentially informal political sanctions that could be in place, such as taking somebody off the preferred committee meetings, taking them off the travel list, and so on. There's a range of medium-level sanctions a whip can impose, which I think are meaningful and can bring a message home to an MP.

But beyond that, there's a question of whether someone's behaviour raises the question of whether they are fit to remain a member of the House, and that to me is a very high bar to reach. But once you reach that level, then I really do think that's a decision that should be dealt with in the normal way through the House.

● (1705)

Ms. Catherine Beagan Flood: I agree with the analysis that you could have a multi-levelled approach that offers different levels of confidentiality depending on the severity of the sanction, but in all cases attempts to preserve the confidentiality of the complainant.

The Chair: Thank you.

We'll go to Mr. Warkentin.

I think I'll use about three-minute rounds here, folks.

Mr. Chris Warkentin: Sure, very good.

I will just get back to asking the question about the ability for this body to intervene in the personal lives of members, because oftentimes relationships do spring up, or non-reciprocating relationships. I don't know how you define that. But people find themselves in personal locations, and obviously that impacts the workplace maybe down the road.

But in terms of activities, what can this body do reasonably as it relates to people's personal lives in personal locations, as could any employer, I guess?

Prof. Andrew Heard: What you can do depends on the instrument you've employed. If this is done along the lines of the conflict of interest attached to the Standing Orders, I think it has to be related to formal parliamentary functions, which as you recognize is only a limited subset of an MP's contact with other MPs.

My initial concern, using that approach, is that you may only cover a subset of possible interactions. Parliament can legislate anything it likes so it may be you need to go to a legislated authority for an expanded range. The trouble is where you break that off. You have the House of Commons functions and there are party functions as well, which are in a sense meshed in by independent, and then there's a whole range of civic and private relationships as well. It may be that you can only easily control one subset at this stage. The caveat to that is that the House can remove a member for any reason for anything done in their private life. If you are found beating your spouse, and so on, the House can remove you for that private behaviour as rendering you unfit. Working backwards, one should be able to say, if this will render you unfit we can regulate it.

Mr. Chris Warkentin: Usually that would require a criminal sanction for the House to act. It would be uncommon for the House to act simply on allegations.

Prof. Andrew Heard: No. You would need to establish facts. I strongly believe you do not need a criminal finding of guilt to remove a member because that's a technical thing: are you guilty of that charge? From a political point of view the suitability of the House is: have you done things which undermine our confidence in your ability to function as an MP? That can fall far short of the criminal finding, but you do need some finding of fact to base that on.

Mr. Chris Warkentin: Yes. It would have to be public then.

Prof. Andrew Heard: You could make the facts anonymous but the facts should be known.

The Chair: Thank you.

We'll move to Ms. Crowder.

Ms. Jean Crowder: I'm going to give Ms. Beagan Flood an opportunity to respond to that.

Earlier you started to read the definitions of how our lives are not all that personal and all the different kinds of things that we're engaged in that are considered part of our roles and responsibilities.

Could you go back to that?

Ms. Catherine Beagan Flood: It was the definition in the policy that applies to members as employers. It is quite broad already so it includes locations in situations including business travel, conferences, and work-related social gatherings where House of Commons-related activities are performed and where inappropriate behaviour or comments might reasonably be perceived to have a subsequent impact on work relationships, environment, or performance. To me that is already a very broad definition in general for relationships that are truly personal, truly private, and completely outside of any connection to parliamentary functions.

The ordinary law would usually apply to those relationships; certainly, the criminal law, if any criminal activity were to take place. As you get into the completely personal realm it becomes more difficult for the House to regulate that behaviour. At the same time the behaviour that could be regulated as being connected to parliamentary activities is quite broad because you engage in so many activities that are in some way connected to parliamentary or party functions.

• (1710)

Ms. Jean Crowder: It would seem reasonable I would think, if we're using that kind of definition with regard to employees, to apply that same definition to members of Parliament. I can't see a downside to it.

Ms. Catherine Beagan Flood: I expect that the definition was chosen specifically because it captured all the employer-employee relationships between MPs and their employees that were likely to give rise to potential harassment claims.

Ms. Jean Crowder: Professor Heard, can you comment on the particular definition that Ms. Beagan Flood just read?

Prof. Andrew Heard: I think it is a good one. The Senate policy on harassment is slightly more ambiguously worded and I think I approve of it a bit more.

It says that the policy applies to "work-related activities conducted away from the Senate workplace" in addition to things conducted in the workplace. All work-related activities conducted away from the Senate workplace covers a wide range of potential things. I think it's slightly wider than the existing Commons policy.

The Chair: Thank you.

Ms. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): I'm going to go back to the line of questioning of my colleague again, in terms of the definition. I've put it in terms of defining our reach.

We've heard from many of our witnesses about the challenges we have because we're dealing with members of Parliament, peer to

peer. We've heard about some other jurisdictions that have made definite decisions and how far they are going to go.

Professor, I think you've alluded to contempt of Parliament. I'm assuming that's what you're talking about when you're talking about the ability to remove a member from the House. There's already a structure in place for dealing with a member of Parliament whose actions are unbecoming and bring down the reputation of the House of Commons.

What I'm looking for from you today is: what would you recommend? How far would you go in defining our reach when it comes to reaching into the personal lives of members of Parliament? Even when we've cited the Senate policy or the House of Commons policy, we're still looking at policy that's definitely dealing with employer-employee or employee-employee, but not member of Parliament to member of Parliament.

I'm looking for a recommendation on defining our reach. Then, where do we start when it comes to taking a look at what's already in place and how we fill in the gaps?

Prof. Andrew Heard: I understand the struggle you're having, and all I can say is that I'm glad I'm on this side of the table rather than the other.

It really does depend on how you are viewing this code. Is this a workplace code intended to create a healthy work environment? If it is that, then the gamut and the tools of discipline should be fairly limited.

If this is really, truly, a code of conduct for members, period, that covers a whole range of harassment, from verbal harassment, discriminatory harassment, sexual harassment, and so on, and the concern is that ultimate forms of this really do undermine the member's capacity as a member of Parliament, and ultimately the House should be able to discipline members, then it is a different kettle of fish. You need some way to transition from the normal human resources, healthy environment, anti-harassment process through to a House of Commons disciplinary process.

That is where I have trouble, and I know you do too. If third parties are involved in the human resources dimension of it—let me call it that—how can they be put in the position of, say, we think this is serious enough that the House should consider it as a disciplinary matter?

Partly it depends on who you have involved. If it's someone like the Conflict of Interest and Ethics Commissioner, who is usually a former judge, that person has reputation and status, and one might say the informal authority to take an informed opinion as to whether this is really serious. That person may be better suited to do that than, say, the human resources officer in the House of Commons, who could do well with a mediation issue.

You may want to have a hybrid system whereby if something is deemed really serious, it's passed up to another level of consideration and investigation and information gathering. You might have an initial process that determines some of the facts. If it can be dealt with through conciliation and mediation, terrific. If it really exposes some pattern of egregious behaviour or even a single egregious behaviour, then it might be passed up to someone with a higher level of authority and prestige who could then make the recommendation back to the House that this be investigated.

• (1715)

The Chair: Thank you.

Madam Beagan Flood, do you want to—

Prof. Andrew Heard: Sorry.

The one thing I wanted to add in there is that there needs to be a process to keep track of complaints. You need to be able to find out if someone has been repeatedly complained about. I'll leave it at that. Sorry, thank you.

The Chair: Okay.

Do you want to add a little to that? Then we'll have to suspend and move into a session that the committee needs to do tonight before we leave at 5:30.

Ms. Catherine Beagan Flood: Of course.

I agree with the advice that Professor Heard just gave, including the last point that you certainly need to have a limited number of initial points of contact in order to be able to keep a record of all complaints in relation to a particular individual. It may be that in many cases the issue can be resolved through mediation completely confidentially and in a way that results in an apology or some limited measure of discipline.

However, if a formal investigation is needed, I think you do want to have that done by someone with external expertise with a significant amount of gravitas, whether that's a retired judge or experts who regularly investigate these kinds of complaints. I think you do want to have an appeal process available as well and to ensure that the appeal panel is chosen with input from both the complainant and the respondent, and that it includes people with sufficient sensitivity to the special nature of the House of Commons.

The Chair: Thank you. I'm so sorry about the shortness of our time together today, because I know we could have confused each other even more if we went on longer.

I thank you both. We will suspend for just for a moment while we go in camera to do some committee planning.

[Proceedings continue in camera]

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