



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 031 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, October 27, 2016

—
Chair

Mr. Blaine Calkins

Standing Committee on Access to Information, Privacy and Ethics

Thursday, October 27, 2016

•(1105)

[English]

The Chair (Mr. Blaine Calkins (Red Deer—Lacombe, CPC)): Good morning, colleagues. Thank you for being here. We're pleased to have today, at our 31st meeting of the Standing Committee on Access to Information, Privacy and Ethics, our Commissioner of Lobbying, Karen Shepherd, pursuant to Standing Order 108(3)(h) (iv).

Ms. Shepherd, this is not the first time that this has happened for you. We welcome your opening remarks, and then we'll proceed to some questions and see what's on your agenda in the very near future.

So, welcome. The floor is yours.

[Translation]

Ms. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Good morning Mr. Chair and members of the committee.

I am pleased to be here today to speak about my mandate and experience as Commissioner of Lobbying.

I have been part of the federal lobbying regime for 12 years, and the deputy head for eight years. It is an honour to be the first Commissioner of Lobbying of Canada and to have had the opportunity to establish its first fully independent office.

[English]

As Commissioner of Lobbying, my role is to administer and ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct. The act and the code contribute to the confidence of Canadians in the integrity of government decision-making by ensuring lobbying activities are conducted in a transparent manner and according to the highest ethical standards.

Much has been accomplished since I became commissioner. I am grateful for the opportunity given to me to guide the lobbying regime in its early stages, establish an office with a highly skilled group of professionals, and put all the elements in place to ensure transparency and accountability in lobbying.

I am particularly proud of the new Lobbyists' Code of Conduct, which I brought into force in December 2015. Unlike the lobbying legislation, which has been amended several times over the past two decades, the code had not changed since it came into force in 1997. Given the importance of the code in outlining the high ethical standards expected of lobbyists, I felt it was important to hear from

key stakeholder groups to ensure it was as strong and clear as it should be.

I am also proud that the Canadian model stands out among countries with lobbying legislation. The Organisation for Economic Co-operation and Development, the OECD, established 10 principles for transparency and integrity in lobbying that should be part of a lobbying regime. The Canadian regime reflects these principles. Many countries believe that there is much to be learned from Canada and have sought advice and expertise from my office over the years.

I have put three excellent programs in place to deliver on my mandate: namely, to establish a registry, raise awareness through education, and ensure compliance with both the act and the code.

The registry of lobbyists is at the forefront of online registration systems and is considered to be a model for similar offices around the world. I made significant investments in the registry to make it secure, searchable, and user-friendly, so lobbyists can easily disclose their lobbying activities and Canadians can access the wealth of information on federal lobbying.

As I mentioned at my last appearance, we successfully moved the hosting of the registry to the Office of the Privacy Commissioner. This provides more control over system development of the registry.

For individuals to comply with any legislation or codes of conduct, they must understand their responsibilities and obligations. I was pleased that Parliament recognized the importance of outreach and education when a specific provision was added to the Lobbying Act, giving me an explicit mandate in this regard.

Since 2008, my staff and I have met with more than 8,000 stakeholders. We intensified outreach activities around regulatory changes, such as the introduction of the Lobbying Act, the amendment of the designated public office holder regulations, and the coming into force of the new Lobbyists' Code of Conduct.

[Translation]

During the consultations held on the Lobbyists' Code of Conduct, I heard from about 200 individuals, associations, organizations and corporations. The views expressed helped me develop the new code and get buy-in from key stakeholders. I believe the code is changing behaviours by making what is expected of lobbyists clearer.

While education and outreach are important for ensuring compliance, they must be accompanied by a strong enforcement regime and by demonstrated consequences in cases of breaches.

[*English*]

Since becoming commissioner, I have closed 173 administrative review files and 22 investigations, including 40 files inherited from my predecessor, the former registrar of lobbyists. Results of closed files are anonymized for privacy reasons and posted on my office's website.

I have tabled 10 reports to Parliament concerning breaches of the code by 12 lobbyists. Two of the reports demonstrate how the intersection of lobbying and political activities performed by lobbyists on behalf of public office holders can give rise to apparent conflicts of interest.

Over the last eight years, I have referred 14 files to the RCMP for investigation. Four individuals have been charged with Lobbying Act offences and three convicted. Three other files remain under RCMP investigation.

In July 2013 there was a historic first conviction for a breach of the Lobbying Act, specifically for failure to register as a consultant lobbyist. The conviction resulted in a fine of \$7,500. Following the conviction, I used my authority under the Lobbying Act to prohibit the individual from lobbying for a period of four months. I believe the conviction and the subsequent prohibition sent a message to anyone involved in lobbying the federal government that contravening the act carries consequences.

In May 2016 a second conviction under the Lobbying Act imposed a fine of \$20,000 for failing to register under the act. This is currently under appeal.

In September 2016 a third individual was found guilty of three counts of lobbying while subject to the five-year prohibition on lobbying. The crown prosecutor has suggested a fine of \$50,000 for all three counts. This first conviction for lobbying while prohibited under the Lobbying Act underscores that the prohibition should not be taken lightly.

• (1110)

[*Translation*]

As deputy head, I delivered on my mandate by establishing a solid and efficient organization. I established sound governance, well-documented budget and planning processes, and rigorous management practices.

I also entered into service agreements with other federal government departments and agencies in areas such as human resources management, financial services and information technology. This was an efficient way to leverage limited resources and capitalize on a wide range of competencies needed to fulfill my responsibilities as deputy head in the most economical way possible.

In 2013, the Auditor General accepted my invitation to audit our financial statements and controls. I am pleased to say that each year the office has received an unmodified opinion, which means that the financial statements were presented fairly in all material respects.

[*English*]

I have presented to you a number of accomplishments that I realized during my mandate. I have learned a lot over my tenure as commissioner. I would like to share with you some thoughts for your consideration.

First, as a regulator I found that it was important not only to administer and enforce the act and the code but also to educate the public that lobbying is a legitimate activity that plays an important role in democracy. Government decision-makers cannot operate in a vacuum. Sound decision-making requires knowledge about risks and benefits of choosing one option over another. It is just that it must be done in a transparent manner.

Second is the importance of consultation with stakeholders and considering views when making policy or regulatory changes. I believe the code I put in place is stronger because of the input I received from stakeholders.

Third is that the value of periodic reviews should not be underestimated, especially when it comes to newly enacted legislation such as the Lobbying Act. During the 2012 legislative review, I submitted a special report to the committee. It indicated that while the Lobbying Act was working well in meeting the objectives originally intended by Parliament, there were opportunities for improvement. I suggested nine recommendations that I believed would improve transparency and accountability. Despite a committee and government response, no new legislation was introduced.

As a review is due in 2017, this will be another opportunity to use the benefit of experience in enforcing the act to improve its ability to deliver accountability and transparency while also ensuring open, frank policy discussions between government and stakeholders.

[*Translation*]

It is an honour to have been the first Commissioner of Lobbying, and I am proud of what I have accomplished over the last eight years. However, my successes would not have been possible without the dedication of my staff. I would like to take this opportunity to thank them for their support, professionalism and hard work.

Mr. Chair, this concludes my remarks.

I welcome any questions you or any committee members may have.

[*English*]

The Chair: Thank you very much, Madam Commissioner. We'll now go to our first round of questions, starting with Mr. Massé.

[*Translation*]

You have seven minutes.

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Mr. Chair.

Ms. Shepherd, thank you for participating in our work and for appearing before us this morning. It's greatly appreciated. I very much appreciated your remarks. I also want to thank all the employees who contributed, because I know that preparing an appearance before the committee requires work.

Tell us about your main successes over the past eight years of your mandate. What are your three main successes?

● (1115)

Ms. Karen Shepherd: Thank you for the question.

It's difficult to summarize eight years in three points.

First, as I said in my remarks, I'm very proud to have established an independent agency of Parliament and to have created three programs during my mandate. I'm very proud of the professionalism demonstrated by the people who work with me.

My second success is the Lobbyists' Code of Conduct, which is stronger and clearer. It assures Canadians that lobbying is better regulated. The code is also a clear guide for lobbyists.

My third success was more difficult to achieve. I established a good national and international reputation for the Office of the Commissioner of Lobbying of Canada.

There's also the fact we succeeded in establishing relations with the stakeholders. The consultations were successful. I acted as a regulator, which was appreciated.

Mr. Rémi Massé: Thank you. It's greatly appreciated.

I can see that your consultations with your counterparts had a positive impact. Thank you for mentioning it.

You touched on the regulatory framework that governs lobbying. I believe you want the framework to be strengthened. How can we strengthen the regulatory framework?

Ms. Karen Shepherd: The code was strengthened. In my experience—

Mr. Rémi Massé: You can speak in English.

Ms. Karen Shepherd: The lobbyists want to comply with the Lobbying Act and the Lobbyists' Code of Conduct, as clearly demonstrated by the many calls we've received from people who want clarifications.

As I've always said, for the continuum of

[*English*]

compliance measures and breaches of the act

[*Translation*]

we need to do something between education and oversight, and the government must enforce the code. I think monetary penalties would be an ideal way to strengthen the code.

Mr. Rémi Massé: Okay.

What challenges will your successor need to address in the coming years or months, in order to further improve transparency in lobbying?

Ms. Karen Shepherd: Education is very important. Further investments must be made in education so that more can be done in that area. As I said in my remarks, everyone must understand their responsibilities with regard to the Lobbying Act. To that end, we've started looking at how we could use social media. We'll start by sharing information on Twitter.

I'm very proud of my team and of what we've accomplished. As always, we could do more if we had more money. There's no doubt that, at some point, we'll need to invest in the registry system.

Mr. Rémi Massé: Mr. Chair, do I have any time left?

[*English*]

The Chair: You have another minute or so.

[*Translation*]

Mr. Rémi Massé: Okay.

Ms. Shepherd, you again noted the importance of consultations in your work. I want to hear about the positive and concrete results of these consultations. Tell us about the consultations you held.

● (1120)

Ms. Karen Shepherd: In 2013, I conducted a type of test to see whether the code was meeting its objectives. Since they didn't think there was any problem, the lobbyists wondered why I was asking these questions. However, I immediately noticed that everyone, including lobbyists, had made comments. This really helped me establish a new code. In 2014, I held a consultation, since it was required by the act.

In my view, things worked well because I showed that I was really taking into account people's concerns and expectations. Ultimately, some lobbyists would say that we didn't always agree, but that they respect the way I held the consultation and the fact that I took into consideration what was said. It's very important for me to hear and consider the various viewpoints and to hold the consultations by bringing everyone together for a collective project.

Mr. Rémi Massé: Thank you, Ms. Shepherd.

Thank you for speaking in French. Your French is excellent, by the way.

Ms. Karen Shepherd: Thank you.

Mr. Rémi Massé: Thank you for your answers.

[*English*]

The Chair: Mr. Massé, there are only a handful of seconds left, but we appreciate that.

We'll now move on to Mr. Kelly, for seven minutes, please.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you very much for appearing today. We appreciate your remarks and your presentation.

You mentioned in your remarks, briefly, the intersection of lobbying and political activities. I'm wondering if you could comment on that very issue. There have been reports recently about fundraisers being held by political parties and attended by or hosted by people who are registered lobbyists. Can you comment on the conflict of interest and the appearance of it?

I understand that you are responsible for lobbyists and not the Conflict of Interest of Act, but from the lobbyist side, could you comment on that?

Ms. Karen Shepherd: In looking at those particular events, you're correct in that I look at it from the lobbying perspective. Is lobbying occurring? Looking at it from the act, did lobbying occur? Is it properly reported? Then I look at the code of conduct for lobbyists to ensure they have abided by the code, or in other words that they have acted with the highest ethical standards. What I can say is that in the new code, which I think is a stronger code, it talks about some of the activities that could place public office holders in a real or an apparent conflict of interest. Those terms are specified in the code, namely preferential access, such as where there's a close bond of friendship with a family member, for example, or giving gifts, or political activities.

In the guidance that I have provided on political activities, I have said that some activities create a sense of obligation and some activities do not. For those activities that create a sense of obligation, they should not lobby that particular individual for a period of five years.

Some of the activities I've said do not create a sense of obligation. I appreciate we're in a democracy with other acts like the Canada Elections Act, which are fairly stringent, but you can donate as per the Canada Elections Act, and that would not be seen as creating a sense of obligation. At the other extreme, organizing a fundraising event is something that I have said creates a sense of obligation, but we have been seeing questions on this pay to access recently. Given that I've always said I take allegations of breaching the code or the act seriously, then placing a public office holder in a conflict of interest is something that would be a potential breach of the act.

What I'll say is that I'm currently looking into that matter at this point. I don't have a further comment, but I am looking into it.

Mr. Pat Kelly: Okay, I want to make sure that I understood this correctly. Hosting a political fundraiser is an act of obligation or certainly would be seen to be creating an obligation between the parties.

Ms. Karen Shepherd: Yes, I've provided...and I have the guidance with me if you'd like a copy. I've said some activities are fine, like posting a sign, donating. For other activities, it's almost like the more involved you are, so organizing a fundraising event.... In the report I referred to in my opening remarks, they were individuals who were actively involved in selling tickets and organizing the fundraising event, and were registered to lobby and had lobbied the minister in question.

• (1125)

Mr. Pat Kelly: So hosting an event is something that you can take very seriously and look at, and you are currently investigating—

Ms. Karen Shepherd: To see whether the sense of obligation has been created, yes.

Mr. Pat Kelly: All right. In your time in this role, and maybe since the code came into effect, do you see changes in the behaviour of lobbyists as a result of the new code. Do you see improvement or progress made that Canadians would support or feel good about? How do you gauge the progress that has been made?

Ms. Karen Shepherd: As I've said in numerous appearances, my experience with lobbyists is that they do appreciate the important role they play in democracy and they are wanting to comply with the act and the code. It's the active participation during the consultation

process, where the lobbyists were actively participating and it can be demonstrated that things are changed.

Mr. Pat Kelly: Was it the consultation period between 2013 and 2015?

Ms. Karen Shepherd: The consultation period, yes. And the questions that were coming into the office as to whether they could... before they actually took on certain activities have increased. All of this to me indicates that in terms of trying to reinforce this culture of compliance, lobbyists are actually themselves being an important part of it.

Mr. Pat Kelly: You mentioned the fines that have been levied in some of the instances that have called for disciplinary action. Do you think the fines are reasonable deterrents? A \$7,500 fine is five times the maximum political contribution one can legally make. Is that an appropriate fine level? Do you think that fines need to be higher, or is that too high?

Ms. Karen Shepherd: The maximum fine is \$50,000 for a summary conviction. For the \$7,500, in that particular case, as well, it was the first conviction under the act, and the individual actually pleaded guilty. So in terms of that I think it was a reasonable fine, and I prohibited the lobbyist from lobbying for a period of four months.

I think what we're seeing with the \$20,000 fine, and now the \$50,000 fine, are there are serious consequences to breaching the act, to not respecting why there is an act in place.

November 4 is when the judgment will actually come out, but that \$50,000 is what the crown has asked for.

The Chair: That takes us to seven minutes, Mr. Kelly.

We move to Mr. Blaikie, please.

Mr. Daniel Blaikie (Elmwood—Transcona, NDP): Thanks for coming today and thanks for your work over the past eight years, as well.

If this practice of hosting fundraisers and using ministers as the feature of the fundraising event is normalized, do you think there's a risk that in some of the lobbying activity that right now is happening and being registered, those fundraisers become another place to do lobbying? Lobbyists might be attracted to going to those events and trying to keep their lobbying off the books, as it were, by going to those fundraisers instead of doing it through the more formal channels?

Ms. Karen Shepherd: Actually, lobbying is communicating with a public office holder on one of the registerable activities under the act. If the individual paid and is lobbying that public office holder, there are requirements to register. It doesn't matter where the particular encounter occurs, whether it's in an office, at a reception, or somewhere in the airport lounge. If that becomes, as you say, a matter of course, the issue is, is it properly registered, which is what I was saying earlier. The issue that I'm looking into is this whole idea of whether lobbying is being done to the high ethical standards in those situations. So that's where I have the guidance, depending on what comes out of my looking into the matter, and it may need to be updated.

• (1130)

Mr. Daniel Blaikie: If you're a minister of the crown, when anyone approaches you about any issue, that's an act of lobbying. For instance, suppose I'm a minister of the crown who represents a riding in B.C., and I go to a fundraising event in Toronto.

Do you think it's fair game to say that those rules don't apply because I'm just appearing as the MP for my riding in Vancouver, or do you think ministers of the crown are ministers of the crown wherever they are or whatever the event is?

Ms. Karen Shepherd: You are always a public office holder. If you are communicating with a public office holder, I will be looking at whether the lobbyist is properly registered. That was my point in saying that it doesn't matter where the public office holder is in terms of the airport lounge or sitting in their office. What's important is whether there has been a registerable communication.

Mr. Daniel Blaikie: Indeed.

It wouldn't matter how they attest that they were representing themselves at the event, whether they were there as an MP or a volunteer for a local organization. The fact that they're a minister of the crown means that when people are approaching them, they need to be following those rules.

Ms. Karen Shepherd: Yes, which is why I would be looking at the lobbyist in that situation.

Mr. Daniel Blaikie: What are the consequences for the lobbyist if they're found to be purchasing access to a minister by going to a fundraiser? Are there consequences for lobbyists under the act if that's found to have happened?

Ms. Karen Shepherd: The consequences that exist right now for breaches of the code are reports to Parliament. As I was saying, I've tabled 10 reports to Parliament today, finding 12 lobbyists in breach. There are no fines or jail terms in comparison to the act because the code is a non-statutory instrument. That said, I don't think that the consequences of filing a public report to Parliament should be underestimated. The reputation of a lobbyist is important. Their ability to maintain or attract clients or employment is key. We saw during the review that there was at least one lobbyist who talked about the fact that if he was to be found in breach, he would lose clients.

From having tabled reports to Parliament, I also have seen the number of phone calls that come into the office from people wanting to ensure that they are properly registered. I think those public reports have shown that there are consequences.

Mr. Daniel Blaikie: In the case of cash-for-access fundraisers, do you think there should be further consequences for lobbyists who are contributing at least to the perception that there's inappropriate access to ministers? Do you think that ministers' decisions may be affected by political contributions?

Ms. Karen Shepherd: As I've said, because I take all allegations seriously, I'm currently looking into the matter. At this point I don't have any further comment until I get a chance to analyze the situations.

Mr. Daniel Blaikie: I wanted to ask a couple of more general questions, then, about your experience over the last eight years.

What kind of unfinished business would you say you have, if any? What are things that the next lobbying commissioner should be looking at pursuing?

Ms. Karen Shepherd: The office right now is well established. There are always opportunities for improvement. The registry is something that needs to have investments put in it. Looking at today's technology and so on, we're currently trying to find ways for monthly communication reports to make it more mobile-friendly.

On the compliance side, while it continues to be important to do reviews and investigations, it is important to enhance the compliance programs that we are looking into, to be preventative.

On the education front, we are currently about to launch an evaluation on that particular program to see where it can be enhanced. One of the things that I hope to get into in the next few months is starting things in social media like a Twitter account, for example, and maybe opening something on LinkedIn.

Those are things to continue exploring.

Mr. Daniel Blaikie: Thank you.

The Chair: You have a minute left, Mr. Blaikie, if you'd like. You're good?

All right. Thank you very much.

We now move to the last of our seven-minute round, Mr. Lightbound, the floor is yours, sir.

[*Translation*]

Mr. Joël Lightbound (Louis-Hébert, Lib.): Thank you, Ms. Shepherd, for being here today. It's greatly appreciated. We're pleased to see you here again. We want to congratulate you on your mandate and the services provided to Canadians.

My first question concerns lobbying trends. I want to know what you've observed and what you think are the challenges for the future.

In the past eight years, have you seen changes in how lobbyists approach their work?

What are the major trends?

What should the committee look at in the future?

• (1135)

Ms. Karen Shepherd: From what I've seen, transparency and accountability requests have increased in recent years. More and more cities are implementing regimes to enhance accountability in lobbying cases.

The citizens are asking for more information. They want more compliance and transparency. When I think about the future, I wonder what measures we could implement. The monthly reports, for example, could be more transparent. The reports should indicate which lobbyists attend a given meeting. At this time, the reports provide only the name of the person responsible for the organization or business. They don't say who else is in the room. That's something the committee should review. In 2012, I made many recommendations.

The meetings are now oral and arranged in advance. If the lobbyists are lucky, they can have good discussions with MPs on Thursday and Friday evenings, in the break room. The lobbyists can seize these opportunities. In this case, since the event isn't planned in advance, the lobbyists don't have to register it. They must register it themselves, but they aren't required to disclose it in the monthly report.

Regarding transparency, there is also the concept of "a significant part of the duties." Is that something we could review? My colleagues in the provinces have started basing their calculations on the number of hours. I believe in Ontario, it's 50 hours. It's interesting because that includes more people, but not those who own mom and pop shops.

We have a very strong regime in Canada. However, when I compare it to the regimes of my colleagues in the provinces, I think it's important to have administrative monetary penalties to strengthen the act. On one end, it's part of the continuum of education and oversight. On the other end, there is the transfer of convictions and reports to the RCMP. There should be a mechanism between the two, because it's very important for the regulator to be able to determine the appropriate measure in cases of breaches.

Mr. Joël Lightbound: Please excuse my ignorance, but can you explain what you mean by the 50 hours in Ontario?

Ms. Karen Shepherd: Yes.

The lobbyist must register to lobby. When there has been 50 hours of communication between the public office holder and the lobbyist, it must be registered.

It's easier to implement and calculate. I've noticed that the threshold of 20%, the significant part of a person's duties in a month, is sometimes difficult to calculate. I think that's why the RCMP didn't take into account the threshold in some cases. What does 20% of the duties represent? Is it a 40-hour, 50-hour or 70-hour week? I think using the number of hours would make it easier for the lobbyist to make the calculation and easier for the regulator to strengthen the act.

• (1140)

Mr. Joël Lightbound: Which of the recommendations you made in 2012 have not been applied and should be applied on a priority basis, in terms of lobbying?

Ms. Karen Shepherd: Are you referring to the nine recommendations?

Mr. Joël Lightbound: Yes.

Ms. Karen Shepherd: As I said, in terms of transparency, there's no need to change the act. Transparency needs to be reviewed in the

monthly reports. If the lobbyist requests the meeting, it must be registered.

It will be easier for me to speak in English.

[*English*]

Right now, if the lobbyist requests the meeting, it's registered. If the public office holder requests the meeting

[*Translation*]

unless there is some financial benefit,

[*English*]

then it doesn't need to be recorded.

So when you're looking at getting transparency, having the ability to see who is actually attending the meetings, I think, would increase transparency as well.

You can have the CEO of a company or an association listed on the monthly report, as required by the act, but he or she may not even be in attendance at the meeting. So, having the actual lobbyist in attendance is a priority that I would see, looking at the significant part of duties, and from an enforcement perspective, looking at the administrative monetary penalties.

[*Translation*]

Mr. Joël Lightbound: Thank you.

[*English*]

The Chair: We'll now move on to the five-minute round, and we'll go back to Mr. Kelly.

Mr. Pat Kelly: Thank you, Mr. Chair.

I'll pick up in the same vein about the distinction of who calls a meeting and how that may colour how the activity is perceived.

Getting back to these small-style intimate fundraisers, to which lobbyists either may be invited or may be encouraged to attend, perhaps they think that's the most efficient or effective way to get the attention of a public office holder.

Do you see this style of fundraising as maybe a bit of a trap for lobbyists who really need or want to be able to get the attention of a public officer holder, in order to do their job? They may think that, if they are going to attend an event, they have to deliver, but they have to be able to gain access to the member, and the most effective way seems to be to gather in a small group to be able to interact with the member.

Can you comment on the obligations around both sides and how this creates an appearance, surely, of conflict of interest?

Ms. Karen Shepherd: As I've said, what becomes important is whether lobbyists are actually in attendance, in any encounter. With the act, because events where there are invitations would then be oral and arranged meetings, if lobbying occurred, they would have to be properly registered.

To go back to your question, this is something I consider to be serious, which is why I am currently looking into the matter. At this point, until I get more facts on the situation, I would prefer to wait to comment.

•(1145)

Mr. Pat Kelly: You're welcome to keep it general and not talk about any particular event that you're investigating, but just general.

Ms. Karen Shepherd: Well, it's hard to be hypothetical without having all of the facts, to be honest with you, because there are so many things with regard to people in attendance. I think the importance here is always that things happen to the highest ethical standards.

You're raising some questions that I think my colleague, in terms of the other side of things...are creating obligations. I mean, I think we're seeing in the media and so on that this is an issue that's potentially creating real or apparent conflicts of interest, which is why I'm looking into it.

Mr. Pat Kelly: All right.

So, it's which side calls a meeting then. Again, if a lobbyist is advertising or holding a meeting with a member in attendance, can you comment on the distinction between that type of activity and an office holder holding a public meeting attended by lobbyists?

Ms. Karen Shepherd: I guess I'm trying to understand your question. A meeting being agreed to by both parties is what determines whether a meeting has been organized in advance or not, and it doesn't have to be in a meeting room; it can be anywhere.

As I said previously, if someone were to see you going into the lounge or something and asked to talk to you, I would say that's an oral meeting and they have now arranged it, if you agree to sit with him or her.

So whether you ask to see them or they ask to see you, there's still an encounter.

Mr. Pat Kelly: Okay. How are we doing?

The Chair: You have about a minute left.

Mr. Pat Kelly: Okay, I'll pick up on another thread.

Do you have any other suggestions for new directions that a potential successor needs to look at?

Ms. Karen Shepherd: To be honest, I think I've mentioned them. I have nothing else to add at this point.

Mr. Pat Kelly: All right, I'll keep us moving and let you go.

The Chair: Mr. Saini, please, you have about five minutes.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you for coming here, Ms. Shepherd. I think it's the second or third time you've come before this committee.

I'm going to ask a couple of very specific questions, and I'll get into some general comments. In some of the recommendations you made, and I'm highlighting recommendation number five, you state there needs to be an explicit requirement for lobbyists to disclose clients they are lobbying for rather than the firm that is hiring them.

Could you please speak a little bit about the background of this, and is there a serious problem with using big lobbying firms to disguise activities?

Ms. Karen Shepherd: What we have found in that particular one.... What we have now in the registration is to have them identify who the ultimate client is. But you have some consulting lobbyists

maybe hiring, maybe subletting out, and so if you look at, let's say, the third consultant in line, they would be reporting to the consulting firm, but the consulting firm is not the client. Perhaps a non-profit or organization is the ultimate client. So it's who the ultimate beneficiary of the lobbying is. It wouldn't be that lobbying firm or that consulting firm. It would be the original client, so in the registration we have them now actually indicating that. There haven't been that many, but there have been a few cases, so the suggestion when we were looking at that was to make it explicit in the act, as a change.

Mr. Raj Saini: Okay. The second point I have is this. Does the lack of an immunity provision, similar to the one given to the Auditor General, in any way hamper your ability to do your job, and do you think that having this addition would actually improve the work? Maybe you could cite some particular examples.

Ms. Karen Shepherd: I don't have any particular examples because I have not, in my eight years, actually found anything that has stopped me, but it is interesting that it is in all of the other provisions except for the Lobbying Act, which is why to keep conformity, I would suggest it would be important. Maybe at some point in the future, if it could become an issue, it would be important to have it there.

Mr. Raj Saini: Now here's a general question. Is there anything over the last eight years that you didn't expect, something that you encountered that you weren't prepared for? Did you resolve the issue? How did you resolve the issue? Is that something that maybe your successor should be aware of?

Ms. Karen Shepherd: It's a good question. I think the one thing I would encourage a successor to keep is consultation, and this is where I think consultation has become particularly important. There was an issue that was brought before the courts by Democracy Watch, which found that is where the real or apparent conflict of interest had come in. So the previous code had rule eight, which dealt with conflict of interest but didn't have the specifics of real or apparent, and it was placing a public officer in it. After that ruling, I issued guidance on political activities because, for the particular event, the court case had dealt with fundraising.

What I found was that the guidance went out. There was a lot of stuff by the lobbyists who weren't happy, a lot of stories in the media about the conflict of political activities and restrictions. And the rule became very much known as "political activities" as opposed to "creating a conflict of interest". That was one where—now looking in hindsight, maybe going back from what I learned with the consultation specifically in the code and since then—consulting and getting individuals to understand things would have probably made a difference in terms of that. That was, maybe, I don't want to say a backlash, but the unexpected...of applying a court case; I think it would have been better had there been consultations maybe with the lobbyists to say that this has changed and this is what it means. What I found for a period of time was that the rule really became almost about political activities. People were forgetting that there are other ways to place a public office holder in a conflict of interest, namely the gifts and the whole thing of preferential access. So that would be one of the things I learned over the years.

•(1150)

Mr. Raj Saini: You talked about education as part of your mandate. I know that part of it includes also educating or providing guidance to lobbyists. Do you think there should be a public education forum or somewhere where your office or your successor should try to educate the public on exactly what the office does, what the responsibilities of the office are, and what really defines lobbying?

Ms. Karen Shepherd: Where I can, I've done that. I have spoken to some of the universities and so on to get that message out. But this goes back to the point I had as well; we've managed to do quite a lot with limited resources. Having more resources would allow more of that to occur. In the last eight years, no matter where I am, I find I'm continuously talking about the fact that lobbying is a legitimate activity. It just needs to be done transparently.

Yes, it's educating the public more, and we've been trying to do it from the academic point of view or sometimes in doing interviews, as well, which are read by the public. Could we do more maybe through the Twitter account? We're starting to put our videos on social media, and so on. We're trying to get it out a bit more. It's constantly, when you're running a lean and efficient office, where are the trade-offs?

The Chair: Thank you, Mr. Saini.

Colleagues, we're approaching the one-hour time period. We're going to have a little time used up in the switch of witnesses. According to our list, I have more minutes on the list than I have left in the hour.

Mr. Kelly, I think is willing to forgo.

Mr. Long, I'm sure you have some questions that you'd like to ask.

Mr. Boulerville, do you have anything that you would like to add at this particular point in time? Mr. Blaikie?

If it's okay with colleagues, then, Mr. Long I'll give you five minutes, and that will wrap up this witness and we'll move on from there.

Mr. Long.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you so much for coming and thanks for your eight years of service to all of us.

Truthfully, I may not need five minutes.

I'm just going to read a quote that you said not too long ago. You said that Canadians must have "confidence in the integrity and impartiality of the decisions being taken, and confidence in their government."

Can you tell me if you feel that's happening?

Ms. Karen Shepherd: In my opinion, I would say it is. I think there's the fact that there have been demonstrated consequences to the act. I think we have a number of regimes. All of these are contributing to the confidence that Canadians can have in their governments.

When I look at things around the world, I think sometimes what's of interest is the fact that we can have these rules and so on in place and still have a democracy that's running well.

•(1155)

Mr. Wayne Long: A few more quotes I pulled out here from the code. "Lobbyists should respect democratic institutions. They should act in a manner that does not diminish public confidence and trust in government."

What changes have you seen over the eight years from a culture standpoint? Have you seen a shift? Have you seen more openness and transparency?

Ms. Karen Shepherd: From the lobbyist perspective?

Mr. Wayne Long: Yes.

Ms. Karen Shepherd: I would say yes. We have, at any one time, 5,000 lobbyists registered in the registry, and more than 8,000 in any given year because people are registering and deregistering as they need to.

The questions come into the office as to whether they can do certain activities before they embark on them. They're coming to us and asking, "Can we do these activities? Am I going to find myself in breach or not?" Those have increased and that to me is a sign that lobbyists are taking very seriously the role they play in our democratic process.

That rule or principle that was put into the new code was largely to assure Canadians and public office holders that these individuals were respecting democratic institutions because my experience was that lobbyists were doing so.

The code has two purposes. One is to provide lobbyists with guidance to ensure that they are behaving ethically, but it's also there to ensure that public office holders can know what behaviours to expect and Canadians can look at this and say these things are being done to the highest of standards. The lobbyists are respecting their democratic institutions and so on. They take this seriously. It's in their code.

Mr. Wayne Long: Thank you.

The Chair: Madam Commissioner, we thank you very much for coming and appearing.

Ms. Karen Shepherd: Thank you.

The Chair: I have one quick question for you, if I may.

You spoke a bit about the previous reviews of the Lobbying Act and so on. This committee has approved several reports over its time. I was a member of it in the previous Parliament, on and off.

Does everything hold true based on the recommendations that you had in the past, or potential changes? Did the reports that have been issued by the committee and your comments to them still hold true today? Can we assume that everything is as it was when the Lobbying Act was last looked at?

Ms. Karen Shepherd: If I understand the question correctly, you're saying that if I appeared before the committee during the next legislative review, would I suggest the same things? The answer is yes. I might look to see, in the additional five years, what else could be suggested, but I would stand behind those nine recommendations, yes.

The Chair: Excellent, thank you very much. We appreciate your attendance here today and the excellent way in which you've done an admirable job as commissioner. We wish you well with the continuation of your mandate. Congratulations.

Ms. Karen Shepherd: Thank you.

The Chair: Colleagues, at this particular point in time...Mr. Kelly.

Mr. Pat Kelly: Mr. Chair, I understand there is a meeting request to have a television camera to be brought in for the next portion.

The Chair: I'm just getting to that.

Mr. Pat Kelly: I'm sorry, I didn't know—

The Chair: That's okay. I appreciate that you are bringing it up.

I've reviewed this, folks. One of our media outlets has requested to meet personally just before the meeting commenced, and they would like to put up a camera to televise the meeting because this meeting was not able to be televised through the normal broadcast. I think the House of Commons only has the ability to use two or maybe three rooms where they are able to broadcast, and those rooms were all filled up with ministers appearing, so this meeting was not able to be broadcast.

The Standing Orders and the rules in O'Brien and Bosc do permit the recording. There are some rules about that. It has to be an accredited media outlet, and I have every reason to believe this is satisfactory. The camera must be situated in a stationary position, and it must be tied into the House of Commons system. It must be done while we're on a suspension, and it must stay in place until the committee either goes into suspension again or the committee is over.

Now that everybody knows the terms and conditions about how that happens, I seek the committee's guidance. Would you accept a member of the Parliamentary Press Gallery putting a camera up in the room while we're suspended?

Okay, as long as they understand and accept those terms, we'll do so.

We'll suspend for a few moments, and then we'll resume with the Ethics Commissioner.

Thank you, colleagues.

• (1200) _____ (Pause) _____

• (1205)

The Chair: Welcome back, colleagues. I appreciate the brief interlude.

We're now resuming our 31st meeting, and pursuant to Standing Order 108 and a whole bunch of subsections, we now have a briefing session with the Conflict of Interest and Ethics Commissioner. We would like to welcome back to our committee the very well-known Ms. Dawson to discuss with us her plans on the recent extension of her appointment.

Ms. Dawson, please start us off with your opening comments, and then we'll move to questions. Welcome back to the committee.

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you very much.

Mr. Chair, and honourable members of the committee, I thank you for inviting me to appear before you today.

[Translation]

I am pleased to have this opportunity to share with you some observations from my experience in administering the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons over the past nine years.

I was appointed Conflict of Interest and Ethics Commissioner effective July 9, 2007, the same day that the Conflict of Interest Act came into force. The members' code had been in effect since 2004.

[English]

The act and the members' code have similar rules, but also some key differences. Generally speaking, the members' code is less strict than the act, although more information is disclosed publicly under the members' code than under the act.

When I took office, I set out to apply and interpret both regimes fairly and consistently, with a focus on preventing contraventions. I also undertook to be as transparent as possible.

Given that the act was new, I had to put in place the structures and processes necessary to support its effective administration. Early in my term, I created a legal services unit and an investigations unit, and I developed investigation procedures. I also implemented various process improvements, such as a system of reminders to notify reporting public office holders and members of approaching compliance deadlines. The public registry is accessible online, and my office recently made it possible for reporting public office holders and members to submit their public declarations through a secure electronic portal.

I have built a strong internal management framework that helps to ensure the effective, efficient, and economical use of public resources. When my office was created in its current form, in July 2007, it was given a budget of \$7.1 million. I have never had to seek a budget increase. Instead, I have been able to proactively offer several small reductions. My office has lapsed some funds, and that's because, given the nature of my work, I have always maintained a reserve in order to respond to exceptional circumstances, such as an increase in investigation requests or a particularly complex investigation that could significantly impact our workload.

My focus has always been on prevention through education, outreach, and the provision of advice to public office holders and members. My goal has been to ensure that public office holders and members have the information and the tools they need to comply with the act and the members' code. A top priority has been, and continues to be, to provide clear information to public office holders and members about their obligations under the act and the members' code. I have issued a number of documents for their guidance, and I made them available on my website. Topics addressed under the act include gifts, fundraising, outside activities, and post-employment.

My office has instituted regular direct communications with reporting public office holders and members, including an annual review of their confidential reports and measures to be taken under the act and the members' code. In 2010, my office started sending an annual letter to those public office holders who are not reporting public office holders, in order to keep in touch with them and to remind them of their obligations under the act. My office also provides confidential advice on an individual basis to public office holders and members. I note that the number of requests for advice has generally increased since I became commissioner to over 2,200 a year, and this is over and above the regular communications.

Although my focus is on prevention, I apply the enforcement provisions of the act and the members' code, as appropriate. Under the act, I can impose administrative monetary penalties up to \$500, largely for failures to meet reporting deadlines. I can also issue compliance orders. It took a couple of years to develop internal systems to implement these provisions, but I have found them to be useful tools in ensuring compliance. I have issued quite a few monetary penalties and a number of compliance orders. I can also conduct investigations of possible contraventions of both regimes. Not all of my investigations lead to an examination or an inquiry that results in a report. I follow up on any information related to possible contraventions that come my way, and I often find that there are no grounds to move to a formal examination or inquiry.

• (1210)

I've opened an average of 33 investigative files a year since my appointment. Over the years, the number of published investigative reports has remained fairly constant. I have issued a total of 25 examination reports under the act and seven inquiry reports under the members' code.

The reports on my examinations under the act and inquiries under the members' code have explored important issues such as gifts, post-employment, fundraising, and preferential treatment. In a number of reports, I commented on practices that were not covered by the act and the members' code when I felt it was appropriate to do so.

I believe that my investigation reports have an important educational role, and they can help to prevent contraventions of the act and the members' code.

In keeping with my obligations under the Parliament of Canada Act, I have issued two annual reports each year: one on the administration of the act and one on the administration of the members' code. I'm proud of these reports. They're very comprehensive, and they provide detailed information on my administration of both regimes. They are one method of maintaining a dialogue

about my administration of the act and the members' code with members of Parliament and the broader public.

I've used my annual reports to highlight particular issues and challenges under the heading "Matters of Note". In my last annual report under the act, for example, I discussed political fundraising. The year before I wrote about gifts and other advantages. I also prepare and publish an annual list of sponsored travel under the members' code.

It's been an honour to serve as Conflict of Interest and Ethics Commissioner over these past nine years, but there have been a number of challenges. Given that my title contains the word "ethics", Canadians at times expect my office to be able to deal with any ethical issues, including those that go well beyond my jurisdiction and mandate.

Partisan political conduct is one example of this. I have suggested that the House of Commons consider implementing a separate set of rules in relation to partisan political contact for members and their staff. My experience has been that public office holders and members want to comply with the act and the members' code. Indeed, I found that the act and the members' code worked well overall. This doesn't mean that there's no room for improvement, and I've recommended a number of possible amendments to the act and the members' code in my annual reports, in my investigation reports, and in my submissions during parliamentary reviews of the two regimes.

I contributed to the one-time statutory review of the act. The recommendations that I submitted to the committee and those that I made elsewhere cover a number of priority areas. They recommend increasing transparency around gifts and other advantages; narrowing the act's overly broad prohibitions against engaging in outside activities and holding controlled assets; establishing some disclosure and public reporting requirements in relation to outside activities, recusals, and gifts for public office holders who are not reporting public office holders; addressing misinformation put into the public domain in relation to investigative work; extending the administrative monetary penalty provisions to cover clear breaches of the act's substantive provisions; strengthening its fundraising and post-employment provisions; and harmonizing the act and the members' code to ensure consistency of language and process where possible.

The review of the act did not result in any amendments, and the committee might wish to take up the study again in the future.

I participated in two reviews of the members' code, and many of my recommendations were reflected in subsequent amendments. These included lowering the disclosure threshold for gifts and prohibiting members who have made a complaint about another member from making the complaint public until I've received it and let the other member know about it, as well as the establishment of some deadlines for the completion of the initial compliance process and the annual review process. These were all very much appreciated.

•(1215)

[Translation]

I will conclude by reiterating that, despite any potential for improvement, the act and the members' code have, in large measure, done their job.

I take great pride in the contribution that I have made in administering the act since its inception and in administering the members' code. I would also like to acknowledge the support of my talented and hard-working staff.

[English]

Thank you again for inviting me to appear before you. I will now be happy to answer any questions you may have.

The Chair: Thank you very much, Madam Commissioner.

We'll now start our seven-minute round with Mr. Massé, please.

[Translation]

Mr. Rémi Massé: Thank you, Mr. Chair.

Thank you, Madam Commissioner, for being with us here today and for taking part in the committee's work. Like you, I also thank your staff. Preparing for an appearance before this committee involves a lot of work for them and for you.

I would like to hear about the achievements that gave you the greatest pride in your nine years as commissioner.

Ms. Mary Dawson: I mentioned most of them earlier.

The strength of the organization is probably the most important one. I also worked very hard to promote a better understanding of the act and the code. I am very proud of my reports. I work very hard to examine all the aspects I have to consider in a complete and transparent way.

I have to follow many guidelines, pursuant to the act in particular. As to the code, it is a bit tricky because I have to get the approval of the Standing Committee on Procedure and House Affairs before establishing guidelines. I have, however, found ways of obtaining other information relating to the code.

In addition, there is a network of ethics commissioners right across Canada, and my office is at the centre of it in a way. I receive a great deal of information from each community. I think that makes the group of commissioners better. Those are some of my achievements.

Mr. Rémi Massé: Thank you.

In your remarks, you said that your experience has been that public office holders and MPs want to comply with the act and the code. In particular, you stated:

[...] I have found that the Act and the Members' Code work well overall. This does not mean that there is no room for improvement.

Please tell us about your specific concerns in this regard.

Ms. Mary Dawson: I have prepared a fairly long list of outstanding issues, and partisan political activities are a problem that we have noted recently. A number of changes in this regard should be made. There is also the issue of gifts. After nine years, the

rules surrounding gifts are still not well understood. These are two problems that I believe will persist for quite a long time.

•(1220)

Mr. Rémi Massé: What specific changes would you recommend?

Ms. Mary Dawson: On these two issues?

Mr. Rémi Massé: Yes.

Ms. Mary Dawson: As I recently pointed out publicly, some of the ideas in the Prime Minister's document can be included in the act.

Moreover, subsection 15(4) of the act states:

(4) Nothing in this section prohibits or restricts the political activities of a reporting public office holder.

We have to remember that we have this regulation simultaneously so we have to find a balance.

Mr. Rémi Massé: Thank you.

You talked about the commissioners' network and said that you share a great deal of information in this group. Through this network, have you identified any best practices that could improve the code in the long term?

Ms. Mary Dawson: For the most part, I think we quite agree on what the legislation should contain. The federal system is one of the most advanced, but the systems of some provinces, such as British Columbia, Ontario and possibly other provinces, are quite good. However, our rules are pretty much the same for the most part.

Mr. Rémi Massé: So there are no best practices elsewhere that could benefit us.

In addition to the provinces, do you have discussions with government officials from other countries about an approach that perhaps we could adopt?

Ms. Mary Dawson: I cannot think of any. There are probably little things here and there, but many officials from other countries come to see me to discuss our system. I think it is one of the best.

Mr. Rémi Massé: That's great.

How much time do I still have, Mr. Chair?

[English]

The Chair: You have another minute, sir.

[Translation]

Mr. Rémi Massé: Okay. Thank you.

Ms. Dawson, I have one last question for you.

You have completed your mandate and you have held this position for nine years. From your experience and your expertise, what are the biggest challenges we will be facing in the future?

Ms. Mary Dawson: I think it is very important to be as transparent as possible. I do not see big changes on the horizon because I think the system works well. I myself am in favour of telling the public this as much as possible, but with some limitations. That's the approach I prefer.

Mr. Rémi Massé: Thank you.

Thank you for answering my questions in French. You speak the language very well.

Ms. Mary Dawson: Thank you.

[*English*]

The Chair: Thank you very much.

We'll move to Mr. Kelly, please, for seven minutes.

Mr. Pat Kelly: Thank you, Mr. Chair

Thank you, Ms. Dawson, for appearing again with us.

We've heard a lot of talk this week, both in the media and in the House, about fundraisers, in which cabinet ministers hold exclusive meetings, in some cases with lobbyists and certainly with donors. There appears to be a breach of the Prime Minister's code of ethics, specifically the provisions contained in annex B.

When you met with us back in February, I think it was, or the second meeting that we had, we were talking about where we find improper behaviour and how we determine this. I recall that you talked about seeking authority or referring to authorities beyond just simply your act and that you looked at other rules that exist out there. I saw your appearance on *Power Play*. You had mentioned then that you were not responsible for the Prime Minister's code of ethics and that you do not regulate conduct under that piece. Why not?

You had said at an earlier meeting that you would look at other rules, other guidelines beyond simply the Conflict of Interest Act. I'd like your comment on that, if you can.

• (1225)

Ms. Mary Dawson: I don't have the mandate to enforce that particular document. However, in a number of my reports following investigations, I have made reference to the various rules and noted that they might be relevant. I've also suggested that there are certain portions of those guidelines that might find their way into my act, if it was desired.

I'm not the authority who reacts to those guidelines. I'm not suggesting there shouldn't be some guidelines that the Prime Minister has that don't necessarily go into my act. A number of those particular rules would address some of the issues that are raised, although I have to say as well, none of them are black and white. They all require a good understanding of the facts that are involved. There are other sections in my act that could be implicated, particularly after the fact, but it all depends on the circumstances and the facts surrounding each individual case.

Mr. Pat Kelly: Are you going to open a file on some of the allegations that have been raised about conflicts of interest if there are parts of your act that this could fall under?

Ms. Mary Dawson: There could be one or two that I might look into if I had other information that indicated that there was a possible problem. However, I'm not going to open a file on every single one

of them if there's not some indication of how they would fit under my act.

If a member comes with a complaint, I'm required to take a serious look at that and decide whether there are grounds. If there aren't grounds, sometimes I go on to make inquiries directly to the person involved to get some more information to see whether there is a problem. I also follow up on any complaints, suggestions, or requests that come in from the general public, and I watch the media reports. I don't ignore these things, but there's no point in commencing an investigation if there don't seem to be grounds under the act or the code.

Mr. Pat Kelly: Given that even the mere appearance of a conflict is problematic, according to the Prime Minister's statement on ethics and open government, would you suggest that Canadians would think that a small handful of people, who appear to be hand-selected, appearing for an intimate dinner or an intimate meeting at \$1,500 a pop would at least create the appearance of a conflict of interest?

Ms. Mary Dawson: I'm not surprised that questions are being raised about it. I can read you the section in my act, and it's extremely circumscribed. I don't know if you want to hear it, but it's there in section 16. There's not much to it.

Do you want to hear it? Okay. "No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest."

It is important that they can't personally solicit funds. Conflict of interest is defined only as being involved with a private interest. That's why I often talked about how political activities are not covered. There's no code to cover political activities, as such. My act is limited in large measure to private interests. When you look at the configuration of the act, it really means financial-type, directorships, financial, and that sort of thing.

Mr. Pat Kelly: Directorships, like a port authority appointment.

How am I for time?

The Chair: You have a minute and a half left.

Mr. Pat Kelly: Do you think that the existing legislation ought to be amended to be brought into line with the Prime Minister's statement on ethics and open government?

• (1230)

Ms. Mary Dawson: I think there are certainly many aspects of what's in those guidelines that could fit quite nicely in this act. I note that those guidelines came about, I think, as a result of my Raitt inquiry. That's why I say the reports on some of these investigations are very important, even if I don't find an infraction of the act. In that, I observed that there was an awful lot that could be regulated around the fundraising activities, although under the terms of the act there was not a contravention because she had not done something.

It's as a result of that, I believe, that the guidelines were first instituted. The current Prime Minister has carried forward those very same guidelines.

Mr. Pat Kelly: He said in his guidelines that mere technical compliance is not good enough, and that there has to be a higher standard than simply that.

Ms. Mary Dawson: I'm not going to comment on the Prime Minister's behaviour.

I make the comment that there are a lot of worthwhile rules or suggestions in those guidelines.

The Chair: Thank you very much, Mr. Kelly. Your time is up. We now move to Mr. Boulerice, please.

[Translation]

You have seven minutes.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Mr. Chair.

Thank you, Commissioner Dawson, for being here with us today. You will not be surprised that I have a few questions that are very much in keeping with the statements by my colleague, Mr. Kelly.

In the past year, we have seen that certain bad habits have resurfaced in the Liberal Party. I would like to ask you about this, specifically as regards special access to certain ministers at Liberal Party fundraising activities. This has happened a number of times. The Minister of Justice and Attorney General of Canada was one of the first to hold such an activity.

Moreover, on October 13, 2016, Mr. Morneau, the Minister of Finance, attended an event in Halifax organized by the Laurier Club. The tickets were \$1,500 each. There were just 15 or so people in attendance, some of them from the Halifax Port Authority, which falls under federal jurisdiction. Other attendees included major real estate developers in Nova Scotia. They would certainly have an interest in discussing infrastructure, for instance, with the Finance minister, who will soon be delivering an economic update.

Would you consider this an apparent conflict of interest?

[English]

Ms. Mary Dawson: Not quite.

[Translation]

It is not a conflict of interest. However, we are wondering about what is happening, and it is of course a concern.

In fact, it is not just a question of conflict of interest. The issue is broader than that. The idea is to find out what kinds of political activities are acceptable. That is why I'm saying that it would be useful to ask whether establishing a clear code for political activities would be appropriate.

Mr. Alexandre Boulerice: It would be specifically for ministers or parliamentary secretaries.

Ms. Mary Dawson: Possibly.

Mr. Alexandre Boulerice: There are some interesting rules in the government document entitled *Open and Accountable Government*. It deals with the appearance of conflict of interest and the fact that you cannot peddle access to a minister.

You said that the document exists, but you have no authority over it and it does not fall under your responsibility. It's actually a guide with empty promises. As far as you're concerned, there are no legal consequences unless we include relevant and interesting rules that would be in the Conflict of Interest Act.

Should a serious government include those rules in the act? The government is very proud of those rules and uses them to defend itself, but it does not include them in the act. Basically, it is beyond the scope of your responsibilities.

Should the government include those rules in the act? In that way, you could at least address them.

Ms. Mary Dawson: It is up to everyone to decide and make comments on that.

The implementation of the Prime Minister's guidelines is not part of my mandate. However, I have a lot of opportunities to comment in my investigation reports when the document is not successful, under the Conflict of Interest Act, and to indicate that there are other things to consider.

Mr. Alexandre Boulerice: For now, the Liberal government has not responded to your recommendations to change the act to more effectively monitor the strategies that allow people to pay for access to a minister.

Do you not find it a bit frustrating in the long run to see that the government never follows up on your annual recommendations and to have to reiterate them?

• (1235)

Ms. Mary Dawson: Yes, but I keep doing it every year.

Mr. Alexandre Boulerice: Thank you for your persistence. I would just like the government to be more receptive.

On October 20, following Mr. Morneau's fundraiser in Halifax, I wrote you a letter asking that there be an investigation into that event. You answered that section 16 of the current act does not allow for an investigation, particularly because of the wording according to which the minister must personally make a request to that effect. Right now, this is on the Liberal Party's website, which is often not accessible to the general public.

How should we change section 16 to avoid this trap whereby, when it is not the minister himself who makes that request, it is beyond your control?

Ms. Mary Dawson: We must not focus solely on section 16. Instead, we must ask which other provisions will be included in the Conflict of Interest Act.

Mr. Alexandre Boulerice: Right now, is section 16 appropriate or should it be amended with other parts of the act?

Ms. Mary Dawson: I don't know. I don't really understand your question.

Mr. Alexandre Boulerice: Are you satisfied with the way section 16 is written right now? It seems to me that it's extremely limiting. If it's not the minister himself making the request, it's beyond your control.

Ms. Mary Dawson: The section is very unique. It doesn't have a broad scope. That's what I was saying.

Mr. Alexandre Boulerice: In addition to section 16 whose scope we could extend, what other reforms of the act would be needed to be able to monitor the strategies that allow people to pay for access to a minister?

Ms. Mary Dawson: It's hard to say. This is a complex issue because it is part of an entire political system. It must be considered in the context of the rules of the political system.

I know a party has to do fundraising. It's not my job to create the rules for it. It's the politicians' job. It is difficult for a party to make changes unless it is in power. I have no idea what the other parties did in the past when they were in power. I don't know whether the same thing happened. However—

Mr. Alexandre Boulerice: We would have liked to know too.

Ms. Mary Dawson: Yes.

[English]

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

We will now go to our last questioner in the order, colleagues, in the seven-minute round.

Mr. Lightbound, go ahead please.

[Translation]

Mr. Joël Lightbound: Thank you, Mr. Chair.

First, I want to thank Ms. Dawson for being with us again today. Thank you for the work you have done over the past few years.

In 2014, the committee studied the Conflict of Interest Act. You then made 70 recommendations and two were adopted.

Ms. Mary Dawson: That's not true. None were adopted.

Mr. Joël Lightbound: Two recommendations were adopted by the committee, but the report was adopted on division.

In your opinion, among the recommendations that you made at the time, which ones should we give priority to? In your opinion, should we review the Conflict of Interest Act under the mandate of our committee?

Ms. Mary Dawson: I mentioned that list in my opening remarks.

It included rules on post-employment and on transparency in relation to gifts and other benefits.

I even recommended that there be fewer rules for the participation in outside activities and trusts. That causes problems with no good reason.

The most important aspect would probably be addressing the issue of fundraising. There are enough problems, perhaps six or eight. I have talked about them before.

• (1240)

Mr. Joël Lightbound: I would like to hear you talk about something else, sponsored trips. I think other authorities have banned the practice. I think it's no longer allowed in Quebec. There are MPs who take part in trips that are paid for by different organizations.

Ms. Mary Dawson: This is part of the code.

The issue came up five years ago in the media. I think it is just an exception to the rules on gifts. The right to sponsored travel should be amended, if not eliminated. I understand that the problem is that members do not have a travel budget, but they think that doing some travelling is a good thing.

Actually, at least a rule on conflicts of interest could be added, but it would be a big exception for the rules on gifts.

Mr. Joël Lightbound: Is there a trend within the various governments, whether in Canada or elsewhere in the world?

Ms. Mary Dawson: I have not checked, but I don't think this regulation exists in most governments. However, you said that the regulation is in Quebec.

Mr. Joël Lightbound: This is what I have heard, but I have not checked.

Ms. Mary Dawson: I have never heard of that regulation in other provinces.

Mr. Joël Lightbound: In your remarks, you said that the requests you receive have increased steadily.

Why do you think your opinion and that of your office is being sought out more and more?

Ms. Mary Dawson: I think it is because we are working hard to explain the act. People are more aware that we exist and that there are regulations. Increasingly, people want to understand and follow the rules.

Mr. Joël Lightbound: Do you think that you have the proper resources and funding to meet this increase in requests?

Ms. Mary Dawson: So far, I think so. We don't need to have an office with a lot of resources in order to provide consistent advice. We must find a balance. At the office, we must have the ability to know what is happening. I have not had any problems so far with the resources at my disposal.

Mr. Joël Lightbound: In your opening remarks, you mentioned the increase in penalties. I think you talked about increasing them. Have you observed a deterrent effect when the act has more bite and sharper teeth? Can that be observed in other jurisdictions?

Ms. Mary Dawson: I think the penalties are less important than the education and information. The report suggests that the errors and problems be made public. The most important sanction is disclosure.

I noticed that there is a big difference between the penalties under the Conflict of Interest Act and those under the legislation governing the Commissioner of Lobbying, which provides for significant penalties. I'm not trying to impose substantial penalties. I think the information, education along with the penalties and awareness are important.

• (1245)

Mr. Joël Lightbound: Thank you.

[English]

The Chair: Thank you very much Mr. Lightbound.

That takes us to the end of the seven-minute round. We'll now start with our five-minute rounds, keeping in mind colleagues that we have about 15 minutes left in the committee time.

Mr. Kelly.

Mr. Pat Kelly: Ms. Dawson, as our expert on conflict of interest, do you think that having the Privy Council Office in charge of enforcing a declaration on open and transparent government is in itself a conflict of interest?

Ms. Mary Dawson: These are the Prime Minister's guidelines. He didn't have to make the guidelines. I don't know the extent to which the Privy Council tries to enforce those. All I know is that it is the designated enforcement agency. I don't know anything about how it works.

I think there is some room for some rules that I don't enforce. It's nice to go above and beyond what you need to go to, but if you want it enforced, then you put it in my act.

Mr. Pat Kelly: That's just it, and one might question why he made the declaration, if there was not going to be a meaningful enforcement mechanism, or that it was not going to be taken seriously.

Ms. Mary Dawson: Bear in mind, these were pre-existing guidelines, too. They were there when this government came in, so they've been there for a while.

Mr. Pat Kelly: I'll maybe shift gears a little.

There have been ministers who have mentioned the existence of conflict of interest screens that have been put in place by your office, and they more or less invoked the existence of such a screen as the end of discussion on whether or not a conflict of interest exists, either with their own activities or within their offices. My understanding is that such screens require reporting of recusals. When a person for whom there is a screen in place has to recuse themselves from a discussion or a decision-making process because of the screen, then they have an obligation to report the recusal to you. Is that true?

Ms. Mary Dawson: No, there is some confusion around the recusals and the conflict of interest screens. Basically, the screens are put in place so that information doesn't get to the person who has the screen. In other words, a decision-making situation doesn't penetrate the screen. Someone is designated to enforce the screen. There is no recusal involved because no information has gone through. If something penetrates the screen by accident, then they would have to recuse.

I have an action taken against me in the Federal Court for misusing the act by making this system of conflict of interest screens, but the whole purpose of those screens is to prevent a conflict of interest happening. It doesn't negate the recusal system at all, if necessary. Sometimes it may be a surprise that something comes up. You wouldn't have foreseen it, and then you'd have a recusal.

Mr. Pat Kelly: That's just it, indeed. Is it possible or even realistic to think that such a screen could prevent any...?

Ms. Mary Dawson: It's not intended to do that. It's directed to a particular...say somebody had a wife who had some connection with some company. The screen would say that nothing relating to that company can come to you for a decision, but if something for some other company that nobody ever thought of that had some connection with you comes to you, then you'd recuse. Then I'd

look at it and say that you had better put a screen up, and so they'd put a screen up for that one, too.

The screens are directed toward particular problems. They're not something that avoids all recusals, if I can make myself clear. People seem to have trouble with this.

Mr. Pat Kelly: Yes, I can see why. It's tough to figure it out.

• (1250)

Ms. Mary Dawson: It's really quite simple. I'm just trying to prevent problems from arising in a selective way.

Mr. Pat Kelly: How do you enforce or police the workings of these screens? How do you know that the screens are effective?

Ms. Mary Dawson: We rely on the honesty of people and the person who's designated. Usually it's in a deputy minister's office, or a chief of staff, or somebody if it's the minister, or it's somebody who is in the office that's designated as the person to whom everything goes. That person does not let something or other through, if it's under a screen.

If we find out that it has gone through the screen, something has failed in the system, and something has been decided, then they may well have contravened the act. Then I would come in with an investigation and make a report.

Mr. Pat Kelly: The screens are an honour system, basically.

Ms. Mary Dawson: Yes, but then how do I find out about any infraction? I find out when I find out, and I do something about it.

Mr. Pat Kelly: Audit provisions and access to information.

Ms. Mary Dawson: Yes.

The Chair: We're out of time, Mr. Kelly. We have to move on.

Thank you very much, Madam Commissioner.

Mr. Saini, this is your time. Five minutes, please, sir.

Mr. Raj Saini: Ms. Dawson, thank you very much for coming. I know this is the second or third time that you've come before this committee. Thank you very much, and thank you very much for your service.

Ms. Mary Dawson: It's a pleasure.

Mr. Raj Saini: I have two specific questions. One is a personal question. Being a medical professional and entering politics, I'm still obligated to maintain my licence and to do some hours in my pharmacy. I'm wondering, and I don't know if there's anything in the act that allows—

Ms. Mary Dawson: Yes, there is.

Mr. Raj Saini: There is something in the act?

Ms. Mary Dawson: There is. There was a special amendment made about four years ago in relation to a doctor, as a matter of fact, to allow you to at least maintain your professional status, as long as you don't get paid for it.

Mr. Raj Saini: Okay.

Ms. Mary Dawson: You have no problem maintaining your professional status.

Mr. Raj Saini: If you volunteer or anything like that.

Ms. Mary Dawson: Yes.

Mr. Raj Saini: Thank you very much for that.

The second question I have is about something that you had noted in your recommendations, and it's something I don't understand clearly. You talked about language inconsistency between French and English.

Ms. Mary Dawson: Oh, yes.

Mr. Raj Saini: I was wondering if you could elaborate on that, because I don't understand why there would be an inconsistency.

Ms. Mary Dawson: It would be a drafting error in the original legislation. I can't remember exactly which ones they were now, but that goes way back. Occasionally, you'll get a provision, I mean you shouldn't ever, but occasionally we noticed in the process of enforcing the act or the code that the English and the French don't read quite the same.

In those cases, and there weren't very many of them, I've noted, "Why don't you fix the language up if you're going to make some other amendments?" That's all. It's quite technical.

Mr. Raj Saini: Okay. Now that you're at the end of your very successful tenure, what important piece of advice would you give to someone who is now succeeding you? Where do you think the challenges lie? What do you think is the single or most important piece of advice that you would suggest to them? Maybe you didn't have the opportunity to complete something in your own mandate that you would give to them and say, "This is something you think they should look at".

Ms. Mary Dawson: I would say, "Stay the course". I think we're doing a good job, I'm afraid.

Mr. Raj Saini: I don't mean to pre-empt you, but in the course of your work, you have probably had a lot of opportunity to discuss the work that you do with other regimes in other countries and in other jurisdictions domestically, but also internationally. Give us a sense of where you think we place.

Ms. Mary Dawson: I think we do very well. As I was saying before, we are consulted here in Canada frequently on our regime. That speaks for itself, I think.

Mr. Raj Saini: Okay. I'll end with that.

The Chair: Right. We go back now to Mr. Kelly.

Mr. Pat Kelly: I'll have some time then to carry on with some of these items that we've gone into before. We left off with the screens and the ability to police. If I can be clear, you're saying that an ethical screen that you put in place is not subject to audit or any type of....

Ms. Mary Dawson: We have annual reviews. Every year we have an annual review of what's up on the website and what your personal disclosures were. That's all covered in that, if there's any change or anything that's gone on. It's like everything else in the act and the code. We only become aware of what we become aware of. We don't know that you've disclosed everything you should have disclosed unless we find out somehow accidentally that you've not told us that you own some huge factory somewhere that's getting loans from you or getting grants from you. However, somebody will probably tell us, and that's how we get our information basically. There's been a suggestion that maybe we should audit. Audit works all very well if

you're auditing the mechanism of doing a business, but this involves your personal life. To have an audit of everything you do in your life is unreasonable and silly.

• (1255)

Mr. Pat Kelly: That isn't what I was suggesting with respect to audit—

Ms. Mary Dawson: No, I'm not suggesting that. Others have suggested that.

Mr. Pat Kelly: Okay. Well, I wouldn't perhaps go that far—

Ms. Mary Dawson: Yes.

Mr. Pat Kelly: —but auditing processes. This is where the confusion is around the reporting of recusal, where the screen is supposed to ensure there is no need to recuse. That a recusal—

Ms. Mary Dawson: Right.

Mr. Pat Kelly: —happens only with a failure of the screen and that you still must recuse yourself.

Ms. Mary Dawson: No, it doesn't only...it may also apply quite frequently if you haven't had a screen put up. The screen is a mechanism to avoid problems. We could go very well having no screens. It's better to have them because I think you avoid a problem. If we had no screens, all those things that would have been stopped, you'd have to recuse, and they'd all be reported. This is the concern of some people. They're not all getting reported. You still have to report your recusals. You could neglect to report your recusal.

Mr. Pat Kelly: Indeed.

Ms. Mary Dawson: Everything is under the same parameters.

Mr. Pat Kelly: This where we get into some of the specific cases that have been raised from time to time in the House. For example, there's the agricultural minister whose chief of staff has a substantial pecuniary interest in an agricultural business. In terms of avoidance of the appearance of conflict of interest, I think that many Canadians would think her whole job, as chief of staff to the agricultural minister, may constitute a conflict of interest. Has she, to your knowledge, recused herself from any decision-making in her office, or are you concerned that there's—

Ms. Mary Dawson: She has set up extensive screens, which are publicly available on our website.

Mr. Pat Kelly: One might think that such a screen would simply insulate her from being able to make any decisions if she's that involved.

Ms. Mary Dawson: That's a decision she and her boss make.

Mr. Pat Kelly: Okay, I'll...

The Chair: You're good?

Mr. Pat Kelly: I think so. You have about two minutes left.

The Chair: I don't think we have time, but if colleagues here would allow me, I just have one quick comment.

First of all, Ms. Dawson, you've comported yourself admirably in a relatively warm environment pertaining to the issues that you oversee.

I do want to ask you one quick question, though. I remember in the second meeting that we had, I believe, and I'm paraphrasing, your words were that you often provide public office holders with hard advice—

Ms. Mary Dawson: I have.

The Chair: —and soft advice. I believe, if I remember correctly, you said the hard advice would be pertaining to the rules and legislation that you have the authority over, and you would provide soft advice on roles outside of your jurisdiction to enforce.

Ms. Mary Dawson: Right.

The Chair: My question for you is whether you have provided any soft advice recently to any public office holders.

Ms. Mary Dawson: Lots. Lots.

The Chair: Okay. Thank you very much.

We want to thank you for coming here today and your continued extension as the Ethics Commissioner. I know you'll always be there to provide advice, either in your current capacity or in the future, with the vast experience that you have. Thank you for making time to come to the committee today.

Ms. Mary Dawson: Thank you very much.

The Chair: Thank you, colleagues.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>