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# Standing Committee on Access to Information, Privacy and Ethics

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Chair: Mr. David Sweet



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• (1200)

[English]

**The Chair (Mr. David Sweet (Flamborough—Glanbrook, CPC)):** I call the meeting to order.

Good morning, colleagues. Welcome to our second meeting on the study of Mr. Angus' motion regarding several elements.

Today we have Mr. Marc Tassé. He's an award-winning lecturer in the M.B.A. program at the Telfer School of Management and the common law section at the University of Ottawa's faculty of law. He is also an instructor at the United Nations Global Compact Network Canada anti-corruption certificate program. He is a recipient of the prestigious Trudeau Medal, which, by the way, is a medal from 1926. It is different from any Trudeau names that might come up during our meeting. He is a frequent media commentator and conference speaker. He has been published extensively in Canada and abroad and quoted in various publications, such as The Wall Street Journal. He also delivers presentations at the Harvard Institute for Learning in Retirement.

Mr. Tassé, it's great to have you with us today.

Please go ahead with your opening remarks for seven minutes. Then we'll go to our rounds of questions and answers.

**Mr. Marc Tassé (Chartered Professional Accountant - Chartered Accountant (Ontario - Quebec), University of Ottawa, As an Individual):** Thank you, Mr. Chairman and members of the committee.

In times of global crisis, the worst and best human behaviours are noticeable. As a result of the declaration of a state of health emergency, the abolition of certain internal control procedures for awarding contracts makes the federal government vulnerable to fraud, corruption, embezzlement, undue influence and, most of all, conflict of interest.

With the introduction of tens of billions of dollars in new federal aid programs, oversight and accountability are becoming unavoidable paradigms. Thus, alternative measures must be put in place to compensate for the revocation of certain internal compliance controls.

While rapid action is needed in times of crisis, maintaining an adequate level of due diligence at the supply chain level is essential to prevent corruption, fraud and other illegal and unethical practices. The reputation of the government and the credibility of the programs depend on it.

First, let's define a conflict of interest.

A conflict of interest may arise in all environments and sometimes irrespectively of the will of a public official. Every person has private interests. Civil servants, however, have a duty to serve the public interest and make decisions using criteria in an impartial manner. If not managed appropriately and left unresolved, a conflict of interest can lead to corruption. As seen from the definition above, in situations of conflict of interest, the private capacity interests of public officials may improperly influence the decision-making process.

There are three different types of conflict of interest. The first one is what we call the actual or, if you prefer, the real conflict of interest. It involves a situation in which an official's private capacity interest is already in conflict with his or her duty to perform in the public interest.

The second one is a potential or a future conflict of interest. It involves a situation in which an official's private capacity interest does not yet come into conflict with his or her duty to perform in the public interest but may do so in the future.

The third one is an apparent conflict of interest. It involves a situation in which an official's private capacity interest looks as though it is in conflict with his or her duty to perform in the public interest, although that is not the case.

There are three different types of conflict of interest, so how do we deal with them?

First of all, a duty is imposed on officials to disclose any conflicts of interest and, if directed to do so by their superior or the relevant public sector body, to apply a management strategy such as recusal, removal and even the resignation from duties to mitigate the risk of corruption or loss of trust.

I strongly believe that all laws need teeth to ensure compliance. Whether it is increasing awareness among public office holders of the law and its code or penalizing those who accept to be lobbied when they know they are dealing with a public service holder without authorization, it must be looked at in a way to encourage compliance and discourage any inadvertent or wilful disregard for the laws and codes of ethics.

As I said in my opening remarks, the degree of due diligence should be commensurate with the urgency in which decisions are made, because transparency must prevail and is fundamental in maintaining the public trust in our institutions. Yes, decisions can be made urgently, but we have the mechanisms to transparently review those decisions during or after the fact and hold decision-makers accountable for those decisions. Certainly mistakes may be made; the key is to have mechanisms that allow for urgent decisions to be made, but not at the long-term cost of the reduction of the public trust or good governance.

In public contracts, the most basic caution requires a comprehensive justification and documentation of the decision-making process recommending the award of a non-tender contract. When it comes to awarding a sole-source contract to an entity, it is crucial that some questions are specifically answered. I'm going to give you a list of 15 questions, and they're very important.

Does the entity have impeccable probity?

• (1205)

Does the entity have the technical skills?

Does the entity have the human resources to carry out the mandate properly?

Does the entity have a transparent legal structure?

Does the entity have a stable governance structure?

Does the entity have the financial stability to complete the contract?

Were audits of the entity's officers carried out prior to the awarding of the contract?

Was the contract awarded in an emergency or personal safety context?

Were apparent, potential and actual conflict of interest issues assessed prior to the awarding of the contract?

Is the contract guided by due diligence with respect to the department's interest?

Is the contract typical of the relationship between a department and an entity?

Does the contract include a clause relating to ongoing monitoring of the ethics and compliance program of the entity that is considered to be retained?

Does the contract include anti-corruption clauses?

Does the contract contain clauses for the recovery of embezzled funds?

Was there a legal validation of the contract prior to its being awarded?

In conclusion, I think there are a couple of questions that the committee has to ask itself.

Could the vulnerabilities known at all levels—but particularly in government contracts since the beginning of the pandemic—have been prevented with better pre-pandemic planning?

In other words, are the laws that serve as a framework for the proper management of public funds—to ensure value for money, the absence of conflicts of interest, appropriate lobbying, rules for offers to purchase and so on—suitable for the context of a pandemic or other type of emergency?

Another question the committee should ask is whether the administrators of these laws and the statutes themselves have sufficient resources and teeth to prevent, detect and punish violations of these laws, and in particular conflicts of interest in emergency conditions that require greater transparency and integrity to maintain Canadians' confidence in their institutions. The public has a right to transparency, because taxpayers' money is being spent. The appearance of a conflict of interest is as damaging to public trust as is the actual conflict, in my view.

Again, in my view, there's a direct relationship between the urgency of decision-making in these pandemic situations and a proportionate and high degree of transparency, oversight and consequences for violations of those laws. In this time of a global pandemic, when wrongdoing can lead to reputation-damaging administrative or judicial action, the government must set an example and strengthen its reputation for integrity. The government and senior officials need to be more vigilant and strengthen structures to reduce the risk of favouritism and "clientelism" in awarding contracts.

Although emergency exemptions may be permitted to award sole-source contracts, they must also be necessary and non-selective, as they provide possible bypass routes for deviant actors. Canada has an efficient rules-based procurement system. Therefore, the government and senior officials just have to use it properly and follow the rules.

One last word: Beyond the prevention of fraudulent behaviour through laws or norms that are added to an already existing arsenal, it would be wise to also think about ethics and support programs for individuals in positions of power in order to anchor a truly ethical work culture based on discernment and questioning before making decisions.

Thank you very much. I'm now available to answer any of your questions.

• (1210)

**The Chair:** Thank you very much, Mr. Tassé.

We'll move onto the first round of questions. We'll start with Mr. Barrett for six minutes.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Sir, thank you very much for joining us here today, for your testimony and for taking our questions.

I'm wondering if you could expand on your comment with respect to the effect on public confidence by real or perceived conflict of interest, particularly around the cabinet table.

What effect do those conflicts have on Canadians' confidence in their democratic institutions?

**Mr. Marc Tassé:** I think the major effect results from the fact that what people hear is from the media. Very often the media will report something in a way that will actually put it in a light that is favourable or otherwise. The problem is that people will make decisions based on what they see in the media. Sometimes the perception is worse than the actual act itself. People have a tendency to always expect the worst to happen. Especially in the time of a pandemic, people have what we call “performance anxiety” in relation to anything like that. For them, as soon as they hear something negative, they take it for granted and they expand on it. I think that's the biggest issue: that when there is a certain perception, you're not able to really set the facts straight. We see more and more now that some media are not really operating based on facts but instead mostly on perception.

**Mr. Michael Barrett:** Do you believe that during those times of heightened anxiety especially—for example, like the pandemic that we're currently living through—more caution or real or extra due diligence should be undertaken to prevent the damage that can come from those decisions?

**Mr. Marc Tassé:** I would say that the existing procurement system already has some very good internal controls in place and I wouldn't think that there would be extra work to be done, but the thing is that if, because of an emergency, we are bypassing some existing rules and controls that are already in place, at that time I'd agree to be extra cautious.

Sometimes we have no choice. In order to speed up the process, we might need to accelerate the process, but the thing is, be careful. If you're putting some internal controls away, you need to have extra enhanced due diligence in order to make sure that you have other controls to compensate for the ones that were not respected.

**Mr. Michael Barrett:** With respect to the 16 conditions you listed, in this case we've learned through media reports that there would be real questions about a number of those 16 items.

If there's only one option being presented to the decision-makers, and with respect to due diligence having been completed by public servants, if there are gaps in terms of the satisfaction or the quality with which the organization being considered meets one of those criteria, how effective is that list if there's not an option?

If it's simply a yes or a no, and if no, well, we're in a pandemic and therefore we're going to fail to deliver to a very large number of Canadians.... It was presented to us as a binary choice, but if those 16 criteria were checked, anyone looking at those conditions—as we've seen since in very public media reports—would have found a number of serious areas for concern.

• (1215)

**Mr. Marc Tassé:** Well, I think those 16 questions are really there to give you a guideline. The thing is, if there are some of them, and you say.... As you pointed out, when there's only one option on the table, you need to ask yourself why there is only one option on the table and what was actually put out to support it, to document it.

I think it always comes down to those questions. What were the answers? What was documented in order to support the fact that

you might have said that criteria do not apply because of X, Y and Z reasons?

I think you cannot push those questions away. On the other hand, you need to find alternative reasoning sometimes, such as that it's just logical, since there is only one supplier that can actually provide you that type of service. Before the pandemic, were there more? How come there's only one right now? Have some of them just gone out of business, or were they not interested? That could be a possibility, but you need to document and support whatever decision has been made.

**Mr. Michael Barrett:** We have a conflict of interest and ethics regime—the act and the code—and they're not new. In a historical context, in the history of our country, they are new, but they didn't come into force in 2015 with this government. They were in place during the previous government's tenure, but we've seen a number of very high-profile breaches and findings of breaches by the Ethics Commissioner.

Into our sixth year with this government, we seem to see the same behaviours repeated, and we're told that there's more for folks to learn. Would you not say that it's incumbent on the decision-makers, on public office holders, to have an intimate knowledge of the rules and to ensure that they're followed in order to protect Canadians' confidence in their public institutions?

**The Chair:** Answer as briefly as possible, please, Mr. Tassé.

**Mr. Marc Tassé:** Yes. I would think it is one of the responsibilities to know them, to make sure they understand them and to receive the training on them if they don't understand them correctly.

As you pointed out, I think the Conflict of Interest Code for Members of the House of Commons was put in place in 2004, if I recall correctly, and the Conflict of Interest Act in 2007.

The thing is that sometimes there was a difference between the code and act in terms of the requirements. This is something that sometimes might lead to confusion, up to a certain level.

**The Chair:** Thank you very much, colleagues.

Now we'll move on to Mr. Dong for six minutes.

**Mr. Han Dong (Don Valley North, Lib.):** Thank you very much, Chair.

Good morning, colleagues.

Monsieur Tassé, thank you very much for being here with us today.

I am sure you have had a chance to review a number of the government's emergency assistance programs, as you mentioned in your opening remarks. The government has been clear about the need to balance speed of deployment while building back-end safeguards.

On par, would you agree that the government has done well?

**Mr. Marc Tassé:** It's really hard for me to say so, first of all because I don't have access to all the information and the facts that would support it. Unfortunately, the only things I see right now are from the media, so I don't think it would be fair for me to speculate.

**Mr. Han Dong:** Fair enough.

With relation to our study here, we were looking at conflict of interest in lobbying in relation to the pandemic spending—for example, buying PPE for the front-line workers, ventilators for people suffering from the worst symptoms of COVID and even vaccines to inoculate Canadians for the future.

Would you say that this spending is bad, that it is suffering from pervasive ethical lapses?

**Mr. Marc Tassé:** Once again, it would be very hard to say.

I think the security of people has been put at stake and I think all the decisions that were made were probably for a good reason. The question is, was the process followed? It's all about the procurement process. Knowing whether it was followed or not is where the answer lies.

**Mr. Han Dong:** Okay.

What advice would you be willing to provide to the committee about the best kind of due diligence that can happen during emergency decision-making?

I think it's fair to say that COVID-19 is precisely that type of emergency in which the government is racing to protect Canadians against a deadly virus. I remember that back in March and February, the entire world, all governments, were looking for sanitation products, looking for anything that related to protecting their citizens. Even citizens were rushing out and getting all the supplies they needed.

In that context, what are some of the best practices when decision-making has to be that quick? Any thoughts you might have on this aspect would be much appreciated.

• (1220)

**Mr. Marc Tassé:** I would say it would be to discuss with senior policy officials to see what the procurement standards are, what the rules and regulations are, and whether we are following them. If there are some that we might not be following because of the emergency, what else can we have in place that could compensate for them and that we can check afterward?

The first thing is to talk with the people in procurement and then make sure that all officials are aware of potential conflict of interest and the appearance of conflict of interest. I would say that Mr. Dion's team is offering training or will actually provide you with guidelines on specific situations.

As I said, one of the items I was pointing out was to consider conflict of interest before awarding the contract. I think all this has to be done beforehand. It's not really rocket science, to be honest. It's just that there are rules that are already in place, and we want to make sure that we are actually following them. If we can't, for whatever good reason, then we have to support that choice with reasons, but what Canada has in place right now is excellent. Under the procurement system, it's excellent.

The conflict of interest code and the act are good also, but people don't understand them correctly. The danger is, I would say that you need to sit down and talk to everyone who is what I call a CLO, a "chief loophole officer", the person who would always respect the letter of the law but never the spirit of the law. That's what you really need to focus on, to say there is nothing great in finding loopholes. That's never good in the long term; it's always bad.

**Mr. Han Dong:** I appreciate that.

It's ongoing training for staff, and conversations with senior officials to make sure they know that it is a very important part of their job to remind and train everyone in the ministry.

Are there particular safeguards you can point to during a crisis, during an emergency, that you want to recommend, and maybe some examples you've seen in the past? I am asking this because obviously the point is that when we are moving very quickly, mistakes are much more likely to happen.

I appreciate the 15 points you listed in your opening remarks. Can you offer any due diligence measures during a specific time of the pandemic that will provide the safeguards, going forward?

**Mr. Marc Tassé:** I would apply the same rules that we had before the pandemic, and whichever do not apply, document the situation, discuss it, ask advice. It could be from external advisers or internal advisers. Ask advice. Ask, "If you were not to respect this guideline, would you be in breach of something?" Just inquire. Focus on the one that you cannot really not respect, instead of going through the 16 of them. Say that you are going to go with the regular process, but that if ever you need to speed it up, then you're going to try to see what the effect would be and what you could do to compensate for the fact that you might be bypassing existing internal controls.

**Mr. Han Dong:** Are the current codes and laws in place sufficient, and are they good as a prevention if everybody knows about them and practises them in their daily jobs?

**Mr. Marc Tassé:** They are, if people are respecting the spirit of the law and not just sticking to the letter of the law. The ones who find the loopholes are the dangerous ones. They are the threat to the organization or the government. You need to make sure to identify those people and to say, "I understand what you're saying, but you're going against us, and we're not there for loopholes."

• (1225)

[Translation]

**The Chair:** Ms. Gaudreau, you may go ahead. You have six minutes.

**Ms. Marie-Hélène Gaudreau (Laurentides—Labelle, BQ):** Good afternoon, Mr. Tassé.

I want you to know how much I appreciate your appearing before the committee a second time.

We realized just how helpful your expertise was and how much it could help us strengthen what was put in place in 2004 and 2007.

I have so many questions for you, some very broad and others, quite specific.

You said how important it was that the government establish a program to ensure integrity so that situations don't fall through the cracks and so that people don't breach the act.

That is always important, but even more so during a time of crisis.

Do you think the government could have introduced an integrity program to prevent ethical breaches and loopholes that could open the door to conflicts of interest in relation to the crisis?

**Mr. Marc Tassé:** Thank you for your kind words.

An integrity program is already in place, and it's quite effective. It simply needs some adjusting to address some of the emergency measures related to the current context. It's also important to share the information with people and to tell them where things stand during the pandemic.

Most people are not necessarily ill-intentioned. Sometimes they forget. They assume they aren't required to do X or Y, or they misinterpret a certain rule. That is where short videos and the like can play an important role, reminding people what they have to do in a given situation.

**Ms. Marie-Hélène Gaudreau:** I appreciate how absolutely crucial it is to educate people and give them the right tools. A little flashing light needs to go off when certain actions are taken.

Beyond that, even though people are well-intentioned, are the penalties or consequences serious enough when an order is issued?

**Mr. Marc Tassé:** You make a very good point. The act has to have teeth. When people violate the act, the penalty has to reflect the severity of the violation. Simply because it is a person's first violation, that does not mean the violation is not serious. The severity of the action is what matters, not the number of times the person acted that way. It is not enough to inform the person of the rules the first time and to tell them that, the second or third time, they will face such and such a consequence. Clarity is also needed around what constitutes a serious violation versus a minor violation. All violations can't be put in the same category.

At any rate, it's fine to show people some understanding, but serious questions still need to be asked. How could you have made such a mistake and showed such a lack of judgment? Don't you think you should have had someone validate your decision?

**Ms. Marie-Hélène Gaudreau:** The people in my riding are asking me how elected officials can apologize time and time again, whether for a mistake they didn't know they had made or for turning a blind eye to something. My take-away is that they should have been more diligent to avoid having to say "I'm sorry" in the first place.

**Mr. Marc Tassé:** First of all, when someone apologizes, it's a polite social behaviour that people quite appreciate. Second of all, saying "I'm sorry" is often about recognizing your mistake, and telling people what you learned and what you are going to do so it doesn't happen again.

**Ms. Marie-Hélène Gaudreau:** Thank you. I have two minutes left.

I have a question about the contract awarded to FTI Professional Grade involving Baylis Medical. No doubt, you heard all about the matter.

Like us, you follow the news, so you will recall the Prime Minister saying that he had to protect his sources.

Is that a valid reason when the Prime Minister has a duty to act with integrity and to disclose where taxpayer money is going? Ethically speaking, is it reasonable to refuse to reveal information in order to protect one's sources?

• (1230)

**Mr. Marc Tassé:** It's a matter of transparency. A person can protect their sources in a number of ways while still being transparent. I know that doesn't quite answer your question, but it's about transparency. A person can be transparent and disclose what they can while being respectful of their sources.

**Ms. Marie-Hélène Gaudreau:** What penalty would be significant enough to make everyone stop and think before they act?

**Mr. Marc Tassé:** Unfortunately, not having had access to the details of the case, I can't say what the right penalty would be in order to make an example of the situation, but I am certain that—

**Ms. Marie-Hélène Gaudreau:** Another option would be to say, "three strikes and you're out." In life, that is often how things work.

**Mr. Marc Tassé:** If you follow the ball, you will agree. Otherwise, I don't know.

**Ms. Marie-Hélène Gaudreau:** All right.

Am I out of time, Mr. Chair?

[English]

**The Chair:** Well, you have 10 seconds.

[Translation]

**Ms. Marie-Hélène Gaudreau:** Thank you very much, Mr. Tassé.

[English]

**The Chair:** Now we'll move to Mr. Angus for six minutes.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Sir, thank you. Your testimony has been very fascinating.

I think one thing that was really striking about this group WE is that we realized, when we began with the finance committee, that the government had little comprehension of how this organization worked. It knew of WE Charity, but basically it knew of Craig and Marc Kielburger because Craig and Marc Kielburger were so closely connected to so many key ministers. They invited Minister Qualtrough to one of their big events and fêted her. They had the Prime Minister's mother and brother at their events, and his wife was working with them. Minister Morneau was closely involved. Minister Chagger was involved. There was very little due diligence about the actual operation. I'm wondering about that.

I'm not blaming the civil service. However, because there was such a sense of closeness between the Kielburgers and all the key government officials, it seemed that this was a group that could actually deliver the services, but the questions of their capacity to actually do this were not asked. Do you think this was one of the problems that got the government into so much trouble with this scandal?

**Mr. Marc Tassé:** Well, the way you explain it, I would have to say yes, but what has really been documented might give us another light on this issue. I agree with you. We knew a lot about the founders, but we might not have known a lot about the organization itself. You're right. Due diligence has to be done, not only to know about the people who actually manage a corporation but also to know about the corporation itself. You want to know the financial structure of the corporation. You want to know the financial stability.

In this case, I'm quite sure that someone must have documented the decision-making and the due diligence process that was done. I would assume that it was documented. I don't know what came out of it and the recommendations that were made. If the due diligence was not done, then that would be very surprising. That would need to be documented.

**Mr. Charlie Angus:** Well, I think so. One would assume that these questions would be asked, but in the 5,000 pages of documents, those questions don't seem to have been asked.

For example, our committee found out that the board of directors was fired in the middle of the pandemic for asking for financial statements as the Kielburgers were firing hundreds of staff. My understanding of a charity is that the charity board is there to oversee financial propriety. However, Michelle Douglas told us that she had been fired, was told to go. The other board was removed. None of the questions about financial capacity was asked in any of the documents the government looked at. It just assumed that the WE group, under the Kielburgers, delivered.

Do you think that would be problematic?

**Mr. Marc Tassé:** That would be questionable for sure.

I do think that it's all about what information was accessible for them at the time of the decision. What was the information that they could have asked to obtain before making the decision? What was the information that was probably protected under non-disclosure agreements, such as when they were having issues with the board members? Now we know why they left, but at the time of the decision, was that information available?

Those are the questions that we would normally ask senior officials. We'd ask what they did as a part of their due diligence and how they satisfied themselves.

**Mr. Charlie Angus:** We don't see any of those numbers at all, so when the question of capacity comes up.... For example, to make this program work, they had to reach 20,000 students, which, in the case of a pandemic and in a short few months, was quite a number, yet the Kielburgers claimed they could take 10,000 students immediately. That really reassured the civil service.

Personally, I think it was questionable that one charity could take 10,000 students when they had fired all their staff. Can they really do this? Is this possible? When they were asked about it, they said they had an agreement with Imagine Canada. Imagine Canada turned around and said they did not have an agreement. They were very clear that they did not sign up. They thought there were serious problems, yet months after Imagine Canada made it clear that they weren't getting involved, the government was still using the claim that the Kielburgers were working with Imagine Canada and could take 10,000 students.

That due diligence isn't there. I'm not blaming the civil service. You talked about the bypass routes for certain actors. I'm asking if perhaps, because of the comfort with the Kielburger brothers and all the key ministers, the civil service just assumed that things would be okay because, hey, it's Marc and Craig Kielburger.

● (1235)

**Mr. Marc Tassé:** I agree with you. One thing they could have done—they might have done it, and maybe it's in the 5,000 pages that you mentioned—is ask for a letter from the other party answering the question, “Did you enter an agreement with the WE Charity that you would actually collaborate with them and deliver recruits?”

This is what would have been normal due diligence. Whenever someone is reporting to a checklist, you ask for supporting documents to validate it. That's the first part.

The second part is that sometimes with corporations we talk about the risk appetite. We do a risk assessment and consider what is an acceptable risk and what is not. In these situations, I would be very curious to see what the risk assessment of that special project was.

**Mr. Charlie Angus:** That's a really good question. We don't seem to have that.



When the agreement was signed, we were all surprised to find that the agreement was actually set up with a shell company, the WE Charity Foundation, which the documents said was set up to handle real estate. The Kielburgers had many of these numbered shell companies. The federal government was going to deliver over \$500 million to a shell company, and the board of directors of that shell company were employees of WE. To me, it's extraordinary. There don't seem to have been any questions.

Would you feel that this would be a questionable corporate structure if we were going to give so many federal dollars to basically a shell company that limits liability to the Kielburgers?

**The Chair:** Please be as brief as possible, Mr. Tassé.

**Mr. Marc Tassé:** I would say it be questionable. You would need to document it and you would really ask yourself why they needed to use those corporate structures.

**Mr. Charlie Angus:** Thank you.

**The Chair:** Thank you very much.

We'll go to our second round now.

[*Translation*]

Mr. Gourde, it is your turn for five minutes.

**Mr. Jacques Gourde (Lévis—Lotbinière, CPC):** Thank you, Mr. Chair.

Mr. Tassé, thank you for being here today. We are always glad to have you, and your remarks are always very insightful.

I would like to revisit something in connection with the WE Charity situation.

We heard the Prime Minister say that he had followed the recommendations of the country's top public servants with respect to introducing the Canada student service grant. When we questioned those top officials and the Clerk of the Privy Council this summer, however, they ended up telling us that they were under considerable political pressure to make sure the WE Charity got the contract. The clerk even said that the WE Charity had helped develop the program before it was launched.

Do you consider it a conflict of interest when the architect gets the contract to build the bridge they designed?

**Mr. Marc Tassé:** It's hard to say because it depends on how involved the architect was. That is an important consideration. Is their participation limited to providing some clarification or does it involve drafting the whole contract?

The first question is whether that person needed to be there when the contract was being drafted. Then, if people say they felt pressure, it's necessary to determine how much. Were they asked to provide quick responses or were they not allowed to ask certain questions?

You said you didn't get all the answers. It comes down to transparency. You were not given the answers, but that does not necessarily mean the documentation is non-existent. It may just mean you were not able to obtain it. Those are questions worth asking.

I am fairly certain that all the steps in the process were documented. Otherwise, I would be very surprised; that would be at odds with best practices. I find it hard to believe a senior official would not follow best practices deliberately. If there was any outside involvement, it was most likely documented in the file. At least I hope so.

• (1240)

**Mr. Jacques Gourde:** That's a satisfactory answer. Thank you.

We all know that programs to support Canadians were rolled out quickly. Some organizations and professional fraudsters were able to take advantage of the situation, and many Canadians had their personal information stolen. As a result, more than 100,000 Canadians are soon going to get a T4 that shows they collected the Canada emergency response benefit despite not even applying for it. They have no idea.

Could the government be proactive and warn Canadians who received the Canada emergency response benefit or other support measures even before T4s go out? Otherwise, it will be a huge mess in a few months when it's tax time.

**Mr. Marc Tassé:** That's a very good question. Being proactive would be one solution. If the names of the people the government sent out payments to are already in the database, the government could send each person a letter of intent stating that, according to government records, they received money. The letter could say something along these lines: "Please be advised that, within the next two months, you will be receiving an information slip indicating that the amount is taxable. If you disagree with the information, please contact us." That approach would be much more proactive than reactive.

Another important thing to remember is that, very often, the money is deposited into accounts the fraudsters open up in the individual's name. Victims who receive the letter will realize that they never collected the benefit and will alert the government.

**Mr. Jacques Gourde:** That's a great suggestion.

Lastly, I want to discuss the access to information regime. It's an excellent tool to bring certain issues to light. Do you use it often?

**Mr. Marc Tassé:** No, I do not.

**Mr. Jacques Gourde:** You can't say, then, whether the wait times are long or not. I was told that they were extremely long, that it takes more than 14 or 15 months to get information on certain matters—information that is needed right away. That is not very helpful.

In short, with everything that has happened over the past few months, do you think there are any lessons we can take away or measures we should put in place so that these kinds of things don't happen again?

**Mr. Marc Tassé:** The best lesson of all is to realize just how important ethics is. All of this publicity has really raised the profile of ethics; three years ago, no one really knew what ethics meant. Now, people can see how ethics rules apply to public servants, ministers and members of Parliament. It's important to give ethics the importance it deserves by underscoring its role.

As I said earlier, if there is a problem with the act, amend it; do not look for loopholes. That is what's dangerous. That is how credibility is undermined and how people lose the confidence they normally have in the system.

**Mr. Jacques Gourde:** Thank you, Mr. Tassé.

**The Chair:** Thank you, Mr. Gourde and Mr. Tassé.

[English]

Now we'll move on to Mr. Sorbara for five minutes.

**Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.):** Thank you, Mr. Chair; and good morning, everyone. It's good to be back here on the Hill.

Mr. Tassé, thank you for your testimony today. I often like to say and philosophically think about how, in any society in the world, we can ensure that we have a good system of government. What that means is that we have what's called equality of opportunity for all citizens, such that they can pursue their dreams and passions without having any systemic barriers in place, and secondly, that the government has the ability to efficiently deliver products and services to citizens, be it health care or programs that governments are called upon to deliver in extraordinary and unique periods of time, such as the one we're in. That, to me, is how governments are judged; that, to me, is how society is judged; and that, to me, is how society evolves.

In Canada, citizens every day rely upon government for many things in their lives, such as safety. We drop our kids off and want them to be in a safe classroom with good teachers, and we require standards. For me, that goes into a lot of what you do and you speak to in terms of governance, supply chains, credibility, and so forth, so I thank you for your area of expertise and I thank you for your testimony this morning.

I wish to focus my comments on due diligence, because due diligence goes a long way in government and in organizations. That's why we have audit committees in organizations and audit committees in governments, or similar things, and that's why financial statements are audited. It's to ensure integrity.

As to my first question, we heard that as a part of any contribution agreement, for any specific contribution the performance is usually measured at stages throughout the contract, and compensation is awarded and funding continues to flow only if key performance indicators are being met. I'm being very specific here. Obviously we're referring to what we have in front of us. Would you not agree that this is a prudent and responsible approach?

• (1245)

**Mr. Marc Tassé:** Yes, it is. I would agree.

**Mr. Francesco Sorbara:** Excellent. Thank you.

One thing I brought up during the finance discussions from the summertime when I was asking questions was due diligence in terms of asking second and third questions.

I'm a big believer in asking why we are doing something. I tend to ask my kids why they are doing that, and I tend to ask all individuals why they believe that. I ask second and third questions, be-

cause I really want to get at, on this level, whether a policy is the proper policy.

I just wanted to make sure. During the testimony, the Clerk of the Privy Council, Mr. Shugart, was asked whether the Prime Minister or his chief of staff asked for WE Charity's financial integrity and ability to administer the program to be scrutinized. The answer from the Clerk of the Privy Council was that the Prime Minister's chief of staff did make the point, which was accepted by everyone, that due diligence and care needed to be exercised with regard to that organization, given the scale of the program.

I think that goes into the due diligence and asking the questions, especially in specifically in this case, that we need to ask to exercise further due diligence.

Aren't those appropriate questions to ask during talks between government and an organization?

**Mr. Marc Tassé:** I do think you need to ask the right questions, and especially the ones that you know people will not want to answer.

There are normal questions that we always ask, and that's part of the due diligence. I think whenever we're in a time of crisis and we're awarding large contracts, especially sole-source contracts, we need to go with what we call "enhanced due diligence". You need to ask those questions.

You see it more in a macroeconomic way: "Are you going to be able to do the contract, and why are you the only one able to do the contract?" Very often, if only one person can do the contract, you need to ask yourself why there are not more competitors. Is it because no one wanted to actually do the contract? Is there something that we don't understand in the specifications we asked for, and no one wants to go for it because it's not going to be possible?

You need to ask questions and ask the person, "What's in it for you?" I know it's pretty stupid, but in business very often we say that. Ask a single question: "What's in it for you? Why are you the only one who is actually proposing for this project?"

**The Chair:** That's all the time we have, Mr. Sorbara.

**Mr. Francesco Sorbara:** I wish to say thank you for your testimony this morning.

**The Chair:** Now we'll move on to Madame Gaudreau.

This is fast, Madame Gaudreau. You have two and a half minutes.

[Translation]

**Ms. Marie-Hélène Gaudreau:** Thank you, Mr. Chair.

I know the report is expected to come out sometime in 2021, and we look forward to the findings. I would nevertheless like to know your take on something, Mr. Tassé.

It has to do with subsection 11(1) of the Conflict of Interest Act and accepting a gift or contract. The provision reads as follows:

11 (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

I asked the commissioner this, but I'd like to hear your views on what constitutes an advantage. Are a gift and an advantage two different things?

**Mr. Marc Tassé:** The interpretation can be quite broad. In my view, a gift tends to be something you receive immediately, whereas an advantage can be something you receive in the future. That's how I see it, anyways. You can receive a gift right away, for example, a bottle of wine or a painting. An advantage, however, can be a job offer when someone retires—after two years in the case of a minister or after one year in the case of other public office holders.

I like the expression

[English]

“undue advantage.”

[Translation]

The word “undue” is perfect.

An advantage can be gained from being a person's friend. For some people, being friends with a person constitutes an advantage. For others, the advantage could be career advancement.

**Ms. Marie-Hélène Gaudreau:** I understand why public office holders are asked to keep their distance for a period of five years. It's to avoid any possible conflict of interest.

My last question pertains to having reasonable knowledge. Subsection 6(1) of the act states that a public office holder “reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.”

What are your thoughts on that?

• (1250)

**Mr. Marc Tassé:** The word “reasonably” means that the public office holder made an effort to find out whether a given situation would put them in a conflict of interest. That may involve the public office holder asking Mr. Dion, the Conflict of Interest and Ethics Commissioner, whether taking part in a given discussion would put them in a conflict of interest.

It might also involve the public office holder seeking legal advice or asking their superior, depending on their level. Being reasonable means thinking to get the information. The person might tell the public office holder that they will get back to them in two weeks, but the public office holder may have no choice but to attend the meeting in an hour. That is what “reasonable” means, in my view. The person has to be quick-witted enough to ask the question.

**Ms. Marie-Hélène Gaudreau:** Therefore, when someone says they have a doubt, it is reasonable for them to report a conflict of interest. Is that right?

[English]

**The Chair:** Madame Gaudreau, that's all the time we have.

[Translation]

**Ms. Marie-Hélène Gaudreau:** Thank you.

[English]

**The Chair:** Thank you very much, Madame Gaudreau and Mr. Tassé.

Now we move on to Mr. Angus for two and a half minutes.

**Mr. Charlie Angus:** Thank you, Mr. Chair.

I'd like to follow up on my good friend, Mr. Sorbara, who told us that—

[Translation]

**Mr. Marc Tassé:** Mr. Angus, will you be speaking in English or in French?

**Mr. Charlie Angus:** In English.

**Mr. Marc Tassé:** Very good.

[English]

**Mr. Charlie Angus:** I want to follow up with my friend Mr. Sorbara, who told us that the Clerk of the Privy Council insisted that we question the financial capabilities of WE. I think that was really important. That was at the same time that the Prime Minister said he was concerned about the appearance of conflict of interest, so they held the WE project back.

Having read the 5,000 pages of documents, I don't see anywhere in those 5,000 pages that the questions that Mr. Shugart put about financial capability were ever asked, and no questions were asked about the potential conflict of interest that the Prime Minister found himself in.

Do you think that if they had taken those two weeks and done that work, maybe they would not have gotten themselves in the trouble they did?

**Mr. Marc Tassé:** It's cutting off on me. Could you just repeat the last 30 seconds of what you were saying?

**Mr. Charlie Angus:** Sure. I hope that doesn't come out of my time, Mr. Chair.

**The Chair:** Go ahead. I will replenish it because it's a technical problem.

**Mr. Charlie Angus:** Thank you.

Mr. Shugart apparently said that they were going to look into the financial viability of the group before signing off. The Prime Minister also held off signing off because he said he was aware of issues of conflict of interest, yet we don't see in the 5,000 pages of documents any evidence that those questions were asked.

Those were questions that had to be asked. We don't see that they were asked. Do you think that the Prime Minister may not have got himself into as much trouble if they had done this due diligence?

**Mr. Marc Tassé:** It's possible. It would definitely have helped; that's one thing for sure. I'm surprised that they would not have acquired the information, but there might be some explanation.

To a forensic accountant, it always comes down to whether there is an explanation. If there's no explanation, then we have an issue. If there is an explanation that explains why...

**Mr. Charlie Angus:** Thank you.

My final question is on your really important point about bypass routes for certain actors. We see in the documents that Craig Kielburger contacts Minister Ng directly and Minister Chagger directly. He contacts Minister Bill Morneau and talks about his family. Then those ministers contact their public servants.

However, Craig and Marc Kielburger were not registered to lobby. Their government relations director did not register to lobby. Mr. Kielburger says they didn't need to lobby because they were technically volunteers. They were volunteers who had the power to fire their own board of directors.

You say we have rules in place, and I agree, but how do we ensure that people like the Kielburgers can't use their friendships with key ministers to get these deals off the ground when there's no respect for the lobbying code?

[*Translation*]

**Ms. Marie-Hélène Gaudreau:** Mr. Chair, I missed the first 25 seconds of what was said.

**Mr. Charlie Angus:** Something's wrong.

• (1255)

[*English*]

**The Chair:** We're going to try to get Mr. Tassé back online here. Mr. Tassé, we can't hear you right now. There appears to be something wrong with your sound. Are you on English right now?

We have our ITs working on it right now, colleagues.

Mr. Tassé, they're going to give you a phone call and see if we can work this out. I've stopped the clock, and we'll wait for his answer, Mr. Angus.

• (1255)

(Pause)

• (1300)

**The Chair:** We will unsuspend.

Mr. Tassé, do you remember the question?

**Mr. Marc Tassé:** No, I don't, unfortunately. I'm sorry.

**The Chair:** It's a technical issue, Mr. Angus, so I'll allow you to pose the question again. This will be the final question and final answer for Mr. Angus.

**Mr. Charlie Angus:** I'm really interested in what you said about the issue of bypass routes that can be used by certain actors. We have a lobbying code, and it's very strong, and we also have the Conflict of Interest Act.

However, we noticed in the documents that Craig Kielburger reached out directly to Minister Ng. He reached out directly to Minister Chagger. He wrote personally to Bill Morneau. He bypassed the normal systems, but he wasn't registered to lobby, and because of his close relations with them, they were very comfortable.

That project and his ideas were then given to the civil service, yet he was not registered to lobby. He says technically he's just a volunteer. Do you think we need to have clearer rules about lobbying? With clearer rules, these things would have been recorded,

there would have been a better process and the civil servants, I think, would not have been compromised in the WE scandal.

**Mr. Marc Tassé:** I totally agree.

Let's say Mr. Kielburger might be telling the truth when he says he doesn't need to do so because of the fact that he's volunteering. Well, that means there is a loophole in the law. He found a loophole. We want to avoid that, so we need to amend the act and the lobbying code. We need to do something. That's probably what Mr. Dion will do, if that is the case.

If not, probably Mr. Kielburger is actually reading the law in his own way, and he's misreading it. It's one of the two.

If it's true, I would consider it a worst-case scenario. It means there was a loophole, and he found the loophole and he's using it. If that's the case and there is a flaw in the law, then you need to change it dramatically. You need to amend it in order to prevent that from happening.

**The Chair:** Thank you, Mr. Tassé.

**Mr. Charlie Angus:** Thank you so much.

**The Chair:** Colleagues, it's 1:02 at the moment. We're past the time of our scheduled meeting. Unless I see unanimous consent to continue with one more round, we'll adjourn the meeting. Is there consent to give two more questioners...? I don't see any dissent.

Mr. Warkentin, we'll continue with you for five minutes.

Oh, Mr. Tassé, do you have another 10 minutes?

**Mr. Marc Tassé:** Yes, I do.

**The Chair:** Mr. Warkentin, it will be you and Mr. Ferguson, and that will bring our meeting to a close.

You have five minutes, Mr. Warkentin.

**Mr. Chris Warkentin (Grande Prairie—Mackenzie, CPC):** The testimony has been very helpful thus far. I do want to go back to the issue of credibility. Obviously, in the issues we're reviewing, we have found it very difficult to corroborate different versions of the events that have happened thus far.

As has even been mentioned by Liberal members today, there are things that went wrong. There wasn't enough oversight or there weren't enough protections to ensure that wrongdoing, or at least the perception of wrongdoing, wasn't undertaken.

We had the former finance minister receiving tens of thousands of dollars in luxury vacations from the group to which he not only gave money but to which he was going to give significant amounts more. We know that this group was involved in partisan activity, supporting the minister at fundraisers as well as giving high-quality production assistance to the Prime Minister in terms of his own public perception through production of videos and different things. All of this was done by this group.

Then we had the chair of the group come and say that people who spoke at events weren't paid. We found out later that members of the Trudeau family had been paid to speak at these events, or to attend corporate elements of these events, which poses a whole other set of problems, if it was, in fact, that they were there to garner support from corporate interests in support of this charity.

We found out that money had flowed through to this organization, and not only to this organization but to an affiliate of this organization that had only recently been created, which was supposed to be there to undertake financial interests for real estate holdings.

There is a lot of confusion, and the credibility of all of the testimony now renders the public left to their own imagination. I believe that more than ever, the need for transparency and release of documentation that would corroborate this evidence is heightened.

I'm not sure if you can give any perspective on what you think should happen with regard to transparency and the release of documentation that would either corroborate or clarify what actually happened.

• (1305)

**Mr. Marc Tassé:** In terms of accountability, transparency is required. The information would be helpful because of the fact that people who actually gave statements were not credible. They changed their exposure a couple of times.

The only way to finally find out what's going on is to have access to information that is accessible within the limits of the law. That's the one thing that's sure, because we're not doing a forensic investigation, or it's not the Office of the Auditor General who is doing it. You want to make sure that the information that can be shared will be shared in a timely manner and that it would put light on the statements that were made, which might not be credible.

As you were pointing out, it's true that in order for people's trust in the system to be reinstated, they need to have access to accurate information.

**The Chair:** Mr. Fergus, please go ahead for five minutes.

[*Translation*]

**Mr. Greg Fergus (Hull—Aylmer, Lib.):** Mr. Tassé, thank you very much for your opening statement. It was extremely interesting. Given your considerable reputation and expertise in these matters, your contribution is very useful indeed.

The Clerk of the Privy Council appeared before the committee in the early days of the pandemic. The Government of Canada anticipated that errors would be made in relation to the emergency measures that were rolled out in response to the COVID-19 pandemic. That is why the government was proactive and took the initiative to reach out to the Auditor General of Canada. She informed the gov-

ernment that she certainly expected that audits would be performed and errors would be identified.

Let's be frank here. In a situation as unprecedented as a global pandemic, isn't that the most prudent thing the government could have done, in your expert opinion?

**Mr. Marc Tassé:** It was a very good move, but it's hard to say whether it was the most prudent move.

The important thing was to ask whether you were abiding by the processes already in place and, if not, which processes you thought that you couldn't abide by. The issue was whether there was any appearance of potential conflicts of interest. The other important thing was to seek the opinion of Mr. Dion or his team members. This was indeed a precautionary approach, but it was based on a risk assessment.

You said earlier that some issues were expected to arise. It always depends on our risk sensitivity. We generally determine what risks are tolerable, what risks we think are a little high, and what risks we don't want to take at all. When the government contacted the Auditor General, was it based on risks considered too high or on normal risks? That would be the question to ask. To answer your question properly, we would need to know the level of risk considered.

• (1310)

**Mr. Greg Fergus:** The government took proactive action because it was in a pandemic situation. At the start of your presentation, you said that it was important to acknowledge that the situation was unusual, but also that steps had to be taken to ensure that the situation was managed in a way that minimized risks. If I understood you correctly, one approach was to take proactive measures. Isn't that right?

**Mr. Marc Tassé:** Yes, that's right.

**Mr. Greg Fergus:** To what extent should political actors interfere in the awarding of a contract or the process managed by public servants? If there's interference, should it be discreet or blatant? Should there be no interference at all? Is there a general rule that you think should be followed?

**Mr. Marc Tassé:** To establish the broad outline, there must be some involvement.

Afterwards, in terms of the administrative process leading up to the awarding of the contract, there should be a reserve right to withdraw and decide to not get involved.

In the example that I provided on the principle of the letter of the law versus the spirit of the law, I suggested that the spirit of the law be defined and then that people be allowed to define the letter of the law. In this case, the spirit or purpose of the program should be determined. Senior public servants should then be allowed to go through the normal contracting process.

However, if there were exception rules, I'd suggest that the political actors shouldn't interfere in the administrative work. Instead, the administrative staff should return to see the politicians to validate certain decisions that they must make.

[*English*]

**The Chair:** That's all the time we have, Mr. Fergus.

we had and thank you for your testimony. It will be very valuable in moving forward.

[*Translation*]

**Mr. Greg Fergus:** That's too bad.

Thank you, Mr. Tassé.

Colleagues, that's all the time we have. We're actually over our time by about 12 minutes. We will see you on Friday.

[*English*]

**The Chair:** Mr. Tassé, on behalf of the entire committee, thank you for your patience in working through the technical difficulties

The meeting is adjourned.

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