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Chair

Mr. David Chatters

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• (1535)

[English]

The Chair (Mr. David Chatters (Battle River, CPC)): Seeing a quorum, I call the meeting to order.

Further to the motion adopted by the committee on Wednesday, December 1, 2004, concerning a study on the mandate and operations of the Office of the Ethics Commissioner, we have with us today the Ethics Commissioner of Canada, Dr. Bernard Shapiro. He will introduce his colleague.

We'll start the discussion, I would hope, dealing with the issue of the mandate of this committee and how it relates to the Ethics Commissioner. There may be other topics, but I would urge colleagues to primarily deal with the issue before us today, because we would really like to have the issue of the mandate of this committee settled before Christmas. If we're going to do that, I need your direction in reporting to the House of Commons and asking for the mandate to be approved.

We'll now go to a statement by the Ethics Commissioner, and then we'll open it up to questions from members.

Dr. Shapiro.

[Translation]

Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner): Thank you, Mr. Chairman.

First, I would like to thank the committee for giving me an opportunity to comment on your proposed mandate.

I would like first to introduce my colleagues: Mr. Robert Benson, Deputy ethics Commissioner and Ms. Micheline Rondeau, who is responsible for liaison between the Ethics Commissioner and the House of Commons.

My remarks will center around four themes: first, my mandate and how we deal with the House of Commons; secondly, the specifics of your committee's proposed mandate currently under consideration; third, other issues raised on Monday, in relation to my Office; and finally a brief overview of our Operations.

[English]

At the outset, I should acknowledge the excellent description provided of my mandate and my role by the Deputy Clerk of the House on Monday. I'll refer to the two appendices provided to you on Monday in further explaining the different ways that I and my office deal with the House of Commons. For clarification, I'll repeat

some points already made on Monday with respect to my legislative mandate.

This mandate stems from our enabling legislation, chapter 7 of the Statutes of Canada 2004, which was assented to on March 31 of this year. With respect to my role and mandate, the summary of the act itself states:

The Ethics Commissioner performs the duties and functions assigned by the House of Commons regarding the conduct of its members and administers any ethical principles, rules or obligations established by the Prime Minister for public office holders.

Therefore, my mandate is indeed twofold, as you were told, I'm sure, on Monday: to administer the conflict of interest codes for members of the House of Commons and to administer the conflict of interest and post-employment code for public office holders, commonly known as the Prime Minister's code.

For your convenience, we have provided you with copies of our enabling act, as assented to, and copies of the two codes. It is important to note with respect to both codes that my office is responsible for the administration of the codes, not their development. I'm certainly happy to work with this committee, the other committee, or any other group to talk about the development of the codes, but my office is not responsible for their development, just their administration. Indeed, the members code is very much your code, in a sense, as it was adopted by the House last spring.

As explained on Monday, the conflict of interest code for members of the House of Commons is part of the Standing Orders of the House. Any change in this arrangement would indeed require a change to not only the Standing Orders but also the code itself.

With respect to the public office holders code—this is the code that is often referred to as the Prime Minister's code—our enabling legislation specifies that for greater certainty, the administration of any ethical principles, rules, or obligations established by the Prime Minister for public office holders, and applicable to ministers of the Crown, ministers of state, or parliamentary secretaries is not within the jurisdiction of the committee established by the House to direct the Ethics Commissioner in relation to members of the House of Commons.

It also specifies that my mandate includes provision of confidential advice to public office holders, including the Prime Minister, and the conduct and examinations upon request from a member of the House of Commons or the Senate with respect to a minister of the Crown, a minister of state, or a parliamentary secretary.

With respect to the members code, I have the same power to provide confidential opinions to members and to conduct inquiries, as per section 27 of the members code.

With respect to reporting on inquiries or examinations, there is an obligation to make the report public. As outlined in appendix B provided on Monday, in relation to the MPs code, such reports are tabled in the House. There is no specific provision at the moment for a referral to a committee role in that regard, as the House, within this code, has already decided on specific procedures to deal with such reports. My duty in that regard is simply to table the inquiry reports to the House through the Speaker.

With respect to an examination related to public office holders, I have a duty to make these reports public as well. Although I have not yet focused on this issue—that is, decided how it is I might proceed in making these reports public—I could choose among several options that I have in mind. You may have other options that you would like to think about at some point as well.

For example, if Parliament is sitting at the time, we could table it in both Houses of Parliament in a manner similar to the annual report on activities related to public office holders. We could table it in the House of Parliament where the parliamentarian who made the request sits. Or if Parliament is not sitting, we could send it to the appropriate Speaker and release it to the public, either through a press conference or a press release, or just by sending it to all parliamentarians. It might be interesting, however, for consistency between the two codes, to release the examination reports on public office holders in the same manner as those dealing with inquiries on members of Parliament.

With particular reference to the proposed mandate for your committee, currently under consideration, I would like at the outset to state that I have no preference as to which committee my annual reports should be referred to. Again, my duty in this regard is to table the report on the members code activities to the House of Commons and report on the public office holders code to both Houses.

I think that's a point I want to repeat. I do not regard it as my obligation to sort of decide which committee is going to do what. That's up to you to decide. I'm happy to work with any committee that you happen to specify, for any particular reason. However, with respect to this issue, as the current Standing Orders and members code provides for the jurisdiction of the Standing Committee on Procedure and House Affairs, one possibility is that we could report on the members code and have that remain with the committee, as proposed in the draft mandate currently before you. Again, whatever you decide will certainly work for me.

• (1540)

I guess the advantage of what's currently in the code is that this committee has the particular expertise, or at least the experience, in dealing with this issue. Again, whatever decision is made I'm certainly quite happy to live with.

With respect to my annual report on activities related to public office holders, should the House agree to the proposed mandate currently before you, I'd certainly be happy to work with the committee in this respect.

With respect to the proposed referral of my office's expenditure plans, effectiveness, and operations, again, I would be pleased—this is, of course, my main message, which I keep repeating—to work with any committee the House will see fit to refer these to. It has been suggested to me at one time or another that the procedure and House affairs committee would be the more appropriate one, not for any substantive reason that I can think of, actually, but simply because the other parliamentary entities, of which we are one within the House...and the parliamentary library also reports to that committee. Again, that's a matter for you to decide on and to proceed in any way you think would be helpful.

There were also questions raised last Monday on both the sanctions available to the Ethics Commissioner, within inquiries, and the content of my annual report. With respect to recommended sanctions under the members code, the code only mentions that the Ethics Commissioner may recommend a sanction. There is therefore no mandatory requirement to do so, as the imposition of any sanction would of course be left to the House itself.

Although I have not yet fully focused on this issue in the first months in office, should I decide to recommend a sanction, depending on the circumstances and the nature of the breach of the appropriate code, one could be guided, at least, or one could take a look at, the sanctions provided in a number of similar cases in the provincial legislatures. These range all over the place. They're not ones I've thought through or am particularly recommending. This is just to provide some information for you.

Some of the legislation provides for financial fines; a reprimand; a suspension of the member's right to sit and vote, with or without indemnity, for a specific period of time; or disqualification as a member, and his or her seat being declared vacant. These are the kinds of sanctions that appear in other legislatures in Canada. I'm not recommending them at the moment—I've not thought this through—but those are the kinds of things you can think about, if you would like.

With respect to public office holders and the Prime Minister's code, the legislation provides only for a report on the Ethics Commissioner's analysis and conclusion in relation to the request to reflect the Prime Minister's role with respect to his code. There is no requirement in this case for the Ethics Commissioner to recommend any sanction, although I suppose it's always possible that I could do so.

With respect to the content of annual reports, which was an issue also raised on Monday, as I understand it, under section 72.13 of the enabling legislation, the key elements would deal with the activities in my office in relation to both codes. I also intend to and want to include, as I go toward that report, which I expect will be out in May of next year, some of the challenges we've encountered in the administration of the codes: what issues have risen, what we might do about some of them, and how might we respond to others; issues on which we would like to see clarification from the House; recommendations for changes in the members code as well, after some initial feedback from a survey of members I intend to conduct in the spring, in terms of their experience with my office in this first year; and activities related to inquiries and examinations, as I've already mentioned.

[Translation]

Finally, with respect to my Office's operations, since my appointment which came into effect on May 17, 2004, we have been working on the transition from an Office previously under the purview of the Executive Branch of the government and within the Public Service towards a parliamentary entity, not only reporting directly to Parliament, but under the jurisdiction of Parliament and within its infrastructure.

For instance, I have just recently made offers to my employees, under the jurisdiction of the Parliamentary Employment Staff Relations Act to bring them into the Parliamentary fold. I have also submitted our first budget under Supplementary Estimates which were referred to the Standing committee on Procedure and House Affairs.

I thank you very much for your attention and I would be pleased to answer any of your questions.

[English]

The Chair: Thank you, Dr. Shapiro.

I just want to make a comment before we go to questions. I'm sure we will ask you to come in many more times in this Parliament for discussions. We would really appreciate it, if it would be at all possible, if you could bring a written form of your submission when you come to the committee for the members so that they can have reference afterwards to the discussion.

• (1545)

Mr. Bernard Shapiro: I have a written form and I'd be glad to make it available, and I'll always have a written form if I have sufficient advance notice, such as a couple of days, to get it ready.

The Chair: Sure. We appreciate that.

Before we go to questions, we have a revised draft of appendix B. I don't know if you have that release yet, so we'll give you a copy of that. It may help you as we go to questions.

Yes, Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): You raised the issue about Mr. Shapiro's remarks. Can we get them?

The Chair: We have them, but they're only in one language. We'll be able to translate them and distribute them.

Mr. Russ Powers: Thank you.

The Chair: All right, questions.

Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you, Mr. Chairman.

Dr. Shapiro, I think the members of the committee were just handed this new appendix B as well, and I gather the main change is with respect to the main and supplementary estimates. Having looked at that, how do you see how your office is funded?

Mr. Bernard Shapiro: How I see my office is funded, without talking about the exact process, because I'm just looking at this for the first time, is we would prepare appropriate estimates, as most departments do, and these would then pass through the process that

you decide in order to decide whether those are appropriate and helpful for the future.

I don't have a view about which of the standing committees, or both, it appears in front of. I think that's entirely up to you.

Mr. David Tilson: You said that; you said you had no preference in your opening remarks. I'm not too sure what that means. Does that mean you're prepared to go to both committees or one committee?

Mr. Bernard Shapiro: There is both an advantage and a disadvantage to that, from my point of view. The advantage in going to both committees is, of course, that you expand the number of contacts you have with the members of the House in the first place, and that's always an advantage. The disadvantage is it takes more time. The committees themselves may disagree, so it's not efficient in that sense of the word, and in that sense it's a disadvantage.

I think if I had to choose between those, since I have many ways of contacting members of the House, I would choose one rather than two. But I would do whatever the group decides is helpful.

Mr. David Tilson: I'm going to anticipate, Dr. Shapiro, that you'll be providing us with the estimates. You'll be providing this committee with a copy of your estimates.

Mr. Bernard Shapiro: I would think so. It depends on the process that people decide is appropriate.

Mr. David Tilson: Absolutely. Assuming the process goes the way I'm suggesting, and who knows whether it will or not, but assuming that, ultimately you would.

Mr. Bernard Shapiro: Sure.

Mr. David Tilson: And if that takes place, when you do that, and I realize there's an "if" here because we don't know quite yet until it's reported to the House... it's just that it will save me asking these questions again.

Mr. Bernard Shapiro: That's okay.

Mr. David Tilson: I've asked these questions to the other two commissioners who have appeared before us and I'll ask you the same questions. Would you be prepared to undertake to provide us with an organizational chart showing the staff positions at the commission and the salary ranges?

Mr. Bernard Shapiro: Yes.

Mr. David Tilson: And could you also provide a line-by-line itemization of your budget?

Mr. Bernard Shapiro: I'm not exactly sure what line by line means, but certainly any budget materials we prepare for ourselves we'll be glad to share with the committee.

Mr. David Tilson: It's just that sometimes the estimates aren't clear and we'd like to—

Mr. Bernard Shapiro: We'll certainly try to be clear.

Mr. David Tilson: I'm sure you will.

Some of the members on all sides have raised this question of the disclosure of members' statements. I'd like you to talk a little bit about that and how you propose to disclose them.

Mr. Bernard Shapiro: Are you talking about what goes on the public registry?

• (1550)

Mr. David Tilson: Yes.

Mr. Bernard Shapiro: I think we have a form prepared for that, and in fact we are going to be discussing this with some subcommittee tomorrow, I think the procedure and House affairs committee, because we raised the question directly to Mr. Boudria about how this is to be made available publicly.

The legislation provides that they be available during working hours, etc., at the office of the commission. We've raised the question about whether or not we might not find other ways of making these available as well. We have some ideas on the matter and we're going to discuss that with the committee tomorrow. We'd be glad to discuss it with you today as well—

Mr. David Tilson: Maybe you could discuss it with this committee.

Mr. Bernard Shapiro: Sure.

Our view is that in the context of the desire for as much transparency as possible, those things that are disclosed public, which is a very small subset of the actual information provided, should be made available in a variety of different ways so you don't have to be in Ottawa in order to access them.

There are a number of options that are possible. We could send it out by fax, we could put it on the web—there are lots of different things we could do, and we haven't decided on one because we wanted to discuss that with the committee before we did anything. So at the moment, as we go ahead in the immediate future, we'll just have them available here in Ottawa.

Mr. David Tilson: So these, sir, are your ideas, or the commission's ideas, and no one else has advised you as to that's the way it should be.

Mr. Bernard Shapiro: That's correct.

Mr. David Tilson: All right.

If you make investigations with respect to members or ministers, there don't appear to be sanctions spelled out anywhere. Could you comment on that?

Mr. Bernard Shapiro: I've not thought through the matter, as I said in my remarks, very carefully yet. I'm just having my first investigation, so I'm learning, in a sense, by experience. My sense is that it would not be appropriate for me to, at a maximum, do more than recommend a sanction. It certainly would not be my place to actually impose a sanction of any sort.

But I do think it would not be a bad idea to indicate what sorts of sanctions might be considered so people would know in advance.

Mr. David Tilson: What sorts of sanctions would you think of?

Mr. Bernard Shapiro: The ones I've mentioned are the ones I've thought about so far, and I've just been looking around at what other jurisdictions do to try to get some idea of what seems to work for them. The ones I mentioned, as you may recall, vary from reprimand to fine to suspension of privileges, or to a very extreme sanction, which is not easy to imagine, and that is to declare a seat vacant, which is an enormous step to take, of course.

Mr. David Tilson: I can only say, and it may be more appropriate to debate this somewhere else, that I always thought each individual member had one boss, and that's the person who elects him or her. It would not only be inappropriate for a commissioner or a committee of this body, or this House, to do that, but they would not have the jurisdiction to do it. It's just a personal comment from me that the only person... I suppose a person can be asked to leave a particular caucus and that's about it.

I will go onto other things because it may not be the right time to get into that—

The Chair: Actually, your time is up.

Mr. David Tilson: My time is up.

Mr. Bernard Shapiro: Call any time.

The Chair: Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

For a better understanding, I'll use an example. The steps were as follows: the minister of Citizenship and Immigration submitted her case to you and, I understand that you are going to make an investigation and to produce a report which you are going to submit to the Prime Minister. Is that correct?

[English]

Mr. Bernard Shapiro: That's correct, but it must be made public. The legislation requires that it be made public, not just be sent to the

[Translation]

Prime Minister. This is the situation.

Mr. Mario Laframboise: We are told that you will then submit a copy of the report to the person in question and that you will make it public.

M. Bernard Shapiro: Yes.

Mr. Mario Laframboise: Will you make the full report public or just the parts you will consider as being of interest? Will the report you will make public be the same as the one you will submit to the Prime Minister?

Mr. Bernard Shapiro: It will be the same report.

Mr. Mario Laframboise: And it is this matter you are analyzing to know whether you will recommend sanctions.

Mr. Bernard Shapiro: Yes.

Mr. Mario Laframboise: You are not yet sure.

Mr. Bernard Shapiro: Not at all.

Mr. Mario Laframboise: Afterwards, we will not see your report, which means that no committee will study it.

[English]

Mr. Bernard Shapiro: It's always possible that once I make the report public the House will refer it to some committee of some sort. It might be this one. I don't really know. The legislation doesn't have that in mind in the sense of one way or the other. It's silent on that issue.

•(1555)

[Translation]

Mr. Mario Laframboise: On the other hand, the legislation specifies that you have to prepare an annual report. Now, in this annual report, you will probably mention this case and other cases.

Do you already have an idea of what your annual report will look like? Will it be similar to those of other commissioners?

Mr. Bernard Shapiro: I'm not sure, at this time. I will probably mention those investigations in my annual report, but I am not sure.

Mr. Mario Laframboise: You told us earlier that you would prefer to make a single report for the members code and for the Prime Minister's code?

[English]

Mr. Bernard Shapiro: No, that isn't what I meant. I think that's a possibility I've yet to work out. There are two different codes, and my first idea is to have a single report,

[Translation]

as you mentioned,

[English]

a single report that would include both, but I may actually write separate reports, depending on how the content of the report shapes up and whether they make sense relative to each other. So that's a decision I've yet to make.

[Translation]

Mr. Mario Laframboise: If it is a single report, I understand that you would probably wish to put it before only one committee without being forced to debate the same report before two committees.

[English]

Mr. Bernard Shapiro: I think that's right, but if one goes to the procedure and House affairs committee and there's a desire on the part of the House for the other to be dealt with at another committee—this one, for example—then I would obviously prepare two reports in order to be helpful to the committees in question.

[Translation]

Mr. Mario Laframboise: When you report to the Speaker of the House on the members code, it will be the same as for the Prime minister's code: you will probably suggest certain sanctions.

Is that what you are considering to do?

[English]

Mr. Bernard Shapiro: There are two possibilities. There's a code in one case. In the other case it says I might recommend sanctions. I have yet to decide whether or not I will, either in this case or in general. And depending on that choice, my annual report will reflect that kind of reality.

I may, for example, to take an argument we had just a few minutes ago, decide that this is a bad idea, and say that in my annual report, and therefore not to do that. I may on the other hand decide it would be helpful and therefore bring recommendations forward.

[Translation]

Mr. Mario Laframboise: Do you think that it will be on a case-by-case basis or is it a direction that you have not yet chosen and that you are assessing?

Mr. Bernard Shapiro: It is certainly a direction that I have not yet chosen. It is not appropriate, in my opinion, to simply do it on a case-by-case basis. It is necessary to have an appropriate general policy.

Mr. Mario Laframboise: Are you presently subject to pressures or are you totally free to decide?

Mr. Bernard Shapiro: I am not subject to pressures at this time.

Mr. Mario Laframboise: Thank you, Mr. Chairman.

[English]

The Chair: Thank you.

Mr. Powers.

Mr. Russ Powers: Thank you for coming, Dr. Shapiro.

I'm going to go through a number of housekeeping questions, if you want to call them that, and then lead in to some other particular things.

Could you help me with the staffing component of your office?

Mr. Bernard Shapiro: Like everything else, it partly depends on how you count. It seems to be, the last time I looked, between 20 and 25 people. It might be slightly higher by the time we're fully operational, somewhere around 25 to 30 or something of that sort.

Mr. Russ Powers: Could you give me a bit of a vision of the individuals' responsibilities? Are they in legal analysis or legal counsel?

Mr. Bernard Shapiro: No, I think at the moment, although I can't give you exact numbers, certainly the greatest part of the staff time is devoted to the review of the confidential disclosure statements. That's what takes up a huge amount of staff time. I hesitate to give numbers because I don't actually know, but I would say about two-thirds anyway.

Mr. Russ Powers: And obviously they're busiest now, because I'm sure the vast majority of them only came in within the last ten days. I was one of those within the last ten days.

Mr. Bernard Shapiro: I could add, since you've raised that issue, that I'm pleasantly surprised at the number of responses we've had within the actual deadline, given that this is a new experience for everyone, an intrusive experience for everyone, so I really appreciate that.

Mr. Russ Powers: Thank you.

Even though we're not dealing with supplementary estimates, could you tell me about your budget? I don't have my estimates book in front of me.

•(1600)

Mr. Bernard Shapiro: The budget submitted—I don't remember the exact numbers—is between \$3.5 million and \$4 million.

Mr. Russ Powers: All right.

Going further on jurisdiction, does your jurisdiction go beyond just... I know there are two pieces of legislation over which you have defined jurisdiction, but do they go outside of members of Parliament and the public office holders? Do you have any jurisdiction at all within crown corporations or arm's-length relationships?

Mr. Bernard Shapiro: Only to the extent that those people are in fact public office holders. Some of them would be; some of them wouldn't. For example, the president of the CBC would be such a person who comes within the jurisdiction of the office, but otherwise not.

Mr. Russ Powers: Okay. I'm going to take this a little further. If there were indeed some elements of review required for a crown corporation, how would that be done? Would it involve you and your staff at all? Would it be exclusively internal and then you may get involved if sanctioned or allowed to do so?

Mr. Bernard Shapiro: The only time that I or my office would be involved relative to crown corporations would be if we were talking about the compliance of an individual person—for example, the president of CBC—with the Prime Minister's code. Otherwise, anything else that would have to be done relative to it, that might need to be done, or that needs to be reviewed in that corporation would not be part of my jurisdiction.

Mr. Russ Powers: Okay. As I prefaced earlier, there were basically two pieces of legislation that you indicated you have jurisdiction over. Are there any other areas? Do you feel it's encompassing enough?

I should ask this question of Mr. Zed. He's the one who drafted the legislation, so I'm sure he can quote it by paragraph.

Are there any other areas? Certainly, as you are evolving in the position, along with your staff, are there other areas that warrant consideration for extended involvement?

Mr. Bernard Shapiro: At the moment I would say no, simply because the staff is fully involved in trying to make what we have work effectively and proceed appropriately. In my annual report, such ideas might in fact be considered if I had some ideas about how it might be expanded.

I'm not anxious at the beginning to be imperialistic in the relationship to this office. I think we've taken a big bite with the new addition of the members code. We ought to be able to absorb that, learn how to do it properly and effectively, and then possibly ask the other questions.

Mr. Russ Powers: Okay. The issue of Ms. Sgro has been referred to. I'm not asking for specifics, and you will certainly not give them to me. Whether it's you or someone else, what's the logical way the investigation would play out?

Mr. Bernard Shapiro: Well, the only thing I'm prepared to say is that in the office we don't have the expertise required to conduct all the facets of such an investigation. What we are doing, and what we have done, is enter into a contract with a legal firm to conduct the fact-finding part of this investigation. We will then take the material, consider it, do whatever it is that we need to in order to write a report, and then make it public in the way provided by the legislation.

Whether we will follow the same process in the future will partly depend on how many investigations are requested. If they are few, then I think the process of outsourcing this particular part of it, the fact-finding, so that we have the appropriate expertise available, probably makes sense. If there are a great many, then the question of whether or not we should develop the expertise inside the office would arise. I don't have an advance view on what the response would be.

Mr. Russ Powers: Supplemental to that, obviously, it's one of the processes and one of the jobs mandated under your direction. Do you feel that having the ability to acquire outside assistance or expertise is within the realm of possibility for doing the job appropriately?

Mr. Bernard Shapiro: I think so. I will learn from experience. One shouldn't try to imagine too much in advance because it will depend on what the experience turns out to be like. I think we're proceeding in a helpful and appropriate way. Experience will tell us whether we're right. If we're not, we'll change.

Mr. Russ Powers: How am I doing, Mr. Chair?

The Chair: You have one minute left.

Mr. Russ Powers: I have a final question on the disclosure document. Needless to say, when I was going through it, a number of times it was questions like this: Why are they asking this, and things like that?

Could you outline whether there is a review going forth, when there will be a review, or whether there should be a review?

● (1605)

Mr. Bernard Shapiro: There should always be a review. That's an easy question. You should always be looking at whether what you're doing continues to make sense. I think our first attempt at looking at it systematically will be next spring, when we survey the members and ask for responses to try to put that together with our experience and bring forward ideas that might be considered for the future.

I certainly don't feel committed to this or any other particular form in principle. We tried to derive the questions from the legislation itself. We thought we had, and I think we have, which isn't to say it can't be vastly improved. It remains to be seen.

Mr. Russ Powers: Thank you.

Thank you, Mr. Chatters.

The Chair: Thank you.

Mr. Broadbent.

Hon. Ed Broadbent (Ottawa Centre, NDP): Thank you.

Dr. Shapiro, on the question of the MP disclosure statements—I managed to get you mine on the last day—when you say your staff is currently reviewing the MP disclosure statements, I'm curious to know what precisely they would review. I'm not being facetious, but I—

Mr. Bernard Shapiro: I'll answer the question.

First, it's important to be clear this is not an audit. We don't audit the statements; we accept what members say as the nature of events and we don't go further than that. We try to see whether there's anything in the statement that would lead the member, in any fashion, to be in conflict of interest, whether there's any way in which his private interests might interfere with his public responsibilities, and if so, what can be done about it, and we try to work that out. That's the nature of the review. We then review it on an annual basis to see if there have been any changes.

Hon. Ed Broadbent: Secondly, you're also looking at what is going to be disclosed about MPs, because there is a requirement to disclose something. Could you tell me what's going into that consideration as well?

Mr. Bernard Shapiro: We have a form developed. I don't remember the details of it, to be quite frank. I'll ask Mr. Benson if he can be helpful in that regard. If not, we will certainly send it to you, because we have it and we're beginning to use it.

Mr. Robert F. Benson (Deputy Ethics Commissioner, Office of the Ethics Commissioner): There is a summary disclosure statement that is prepared. It is provided to each member of Parliament, who reviews it. It doesn't become public until that member signs it. The information is only as to something that came up at caucus meetings and before the procedure and House affairs committee in relation to that.

There was great concern that there was going to be value of items of assets disclosed. The code does require disclosure of assets over \$10,000, but the value is not mentioned. If somebody has a discloseable asset, such as a portfolio with some firm, then the disclosure would say portfolio with whatever firm is out there. It doesn't get into the amount; it's only the disclosure of an asset. The conclusion will be that the asset is about \$10,000. The same thing will occur with liabilities. If there's a liability, which is coming through a fair amount, mortgage on residences, the disclosure will simply say mortgage with Bank of Montreal, mortgage with CIBC, mortgage with whoever. So it's very much nature and source.

Hon. Ed Broadbent: In relation to that as well, you said you're still looking at the form of disclosure. This is a two-part question. Currently your website is under Industry Canada. As an independent agency reporting to Parliament, I'm curious as to why it would be listed under Industry Canada. When you answer that, maybe you'll answer the other question.

Mr. Bernard Shapiro: I don't know whether you want the long answer or the short answer. I'll try the short one, and if it doesn't satisfy I'll try the longer one.

We are desperate to have the website removed from Industry Canada, which is where the Office of the Ethics Counsellor used to be located, onto the parliamentary site. Negotiating that with Parliament has not been straightforward or easy. We believe we've finally got agreement on doing it, and we hope it will be done in the relatively near future. We agree it's quite inappropriate where it is, for two reasons: we're not part of Industry Canada any more; and the other is we are not subject to the access to information.

As long as the website is on Industry Canada, anything Industry Canada has is subject to the access to information. So we're very

anxious to get out of that system, and we're trying very hard to reach agreement on this.

Hon. Ed Broadbent: I wish you luck, and I hope it's done speedily.

I would have thought for MP disclosures this listing on the website would be a rather obvious way of doing it.

Without at all getting into the personal details again of Judy Sgro's particular case, is it possible for you to tell us what precise question you're looking at there?

Mr. Bernard Shapiro: I don't remember it precisely, so I'm not going to try a general answer. We do have a precise request from an MP and we're following that particular request. We're not investigating anything not contained in that request from the MP in question.

Hon. Ed Broadbent: Would you consider it to be appropriate to reveal what the question was?

• (1610)

Mr. Bernard Shapiro: I think we've disclosed that already. I certainly can make it available.

Hon. Ed Broadbent: Did you say the question that was referred to has been disclosed already?

Mr. Bernard Shapiro: That's right.

Hon. Ed Broadbent: On the question, if I understood you, earlier in today's hearing you did say you were looking at questions of sanctions. Would that include sanctions in the case of a cabinet minister?

Mr. Bernard Shapiro: There are two different situations. In the case of the members of the House, the legislation specifically provides that they may recommend a sanction. I've not yet decided whether that's appropriate either in this case or in general.

I think the legislation is silent, or the code is silent, relative to the public office holder. It certainly doesn't say I may, it doesn't say I may not, so presumably it remains an open matter. I'm treating it as if it's an open matter. I'm going to have to consider that matter very, very carefully over the coming weeks, because as I was mentioning earlier in a response to Mr. Laframboise, I don't really want to have ad hoc policy. I want to try to have a policy that's general and not simply a case-by-case policy.

Hon. Ed Broadbent: On the question of sanctions, again, can you tell us the kind of issue you're looking at? If, for example, in terms of the question you were considering, the answer you reach is a negative one, that is, you come down against a particular minister of the Crown—and let's set aside Ms. Sgro's particular circumstance here—I'm tempted to say that unless there is a sort of criminal violation of some sort that you come across in your inquiry, in which case it would be dealt with by other processes and you wouldn't have to recommend a course of action... I find it hard to understand in our political system what circumstances could lead you to recommend sanctions. Would it not simply be left out there in the public domain for the Prime Minister in a given case to take action on, or the House of Commons to take action on? You simply find the facts and reach a decision—

Mr. Bernard Shapiro: I understand. I think that may in fact be the policy I adopt. Remember, I started all this by saying I hadn't thought this through, which I haven't, and I'm not going to think it through standing on one foot, so to speak, and try to come up with an instant answer. I think there is something to be said for that point of view. I think there's a lot that could be said for it, that this is something that belongs to somebody else and that I oughtn't to consider in most circumstances. I simply don't want to provide a definitive response without having thought it through carefully, and I haven't done that yet.

The Chair: Mr. Broadbent, your time is up.

Mr. Bains.

Mr. Navdeep Bains (Mississauga—Brampton South, Lib.): Thank you very much.

Thank you very much, Mr. Shapiro, for coming here today.

My question is actually more a follow-up to what my colleague was asking with respect to the disclosure statements we submitted as members of Parliament. I personally found in my experience that some of the questions were fairly repetitive in nature. Can you comment on that?

Second, you indicated that the information that was asked was intended to highlight any potential conflict of interest that might arise. My question is with respect to bank balance and credit card amounts and how that would help determine any potential conflict.

Mr. Bernard Shapiro: First of all, I obviously didn't intend for the questions to be repetitive. If they are, we're glad to have the feedback and we'll try to adjust the form so they aren't. Obviously, there's no reason to be repetitive in principle.

On the question of bank balances and credit cards, there were two issues that came up, and you've probably heard of them both. One was, why are you interested, in general? The other was, can't you differentiate between a kind of current balance, which a lot of people will have—they don't really represent a debt; they pay it off on a monthly or every-second-month basis or something of that sort. What we said in response was that we agreed with that last point, that we had phrased the question inappropriately and that we should only ask for balances that are outstanding after x months, let's say six months or something of that sort, because it would then represent a real debt.

We need to know that because legislation requires that we list assets and liabilities of \$10,000 or more. Now, we can't know that without asking people whether that is in fact the case.

In terms of the other question, which has to do with why it could possibly lead to a conflict of interest, it's certainly our experience that heavy indebtedness leaves one open to all kinds of potential pressures. So it's something that, from our point of view, made sense to ask.

• (1615)

Mr. Navdeep Bains: So an individual member's personal financial situation inherently can be interpreted as a possible cause of how they might act or conduct themselves. Is that what you are saying?

Mr. Bernard Shapiro: It's certainly possible to imagine, without a lot of difficulty; it's not to say it happens. I don't want to suggest that.

Mr. Navdeep Bains: Okay.

As a newly elected member of Parliament, I've been made aware that there are two codes that basically assist me when I receive a gift. There's the Prime Minister's code, which indicates that any gift that exceeds the \$200 threshold I have to disclose. Then we have the conflict-of-interest code for members that indicates \$500 as the threshold. Anything that exceeds that amount we have to disclose.

My question is this. Suppose I receive a gift of a value of \$300. Do I have to disclose it or not, and which code applies?

Mr. Bernard Shapiro: Our practice is to apply the more stringent code when a person is subject to both.

Mr. Navdeep Bains: So in this particular instance it would be the Prime Minister's code.

Mr. Bernard Shapiro: Right.

Mr. Navdeep Bains: Does the Prime Minister's code apply to all members or to parliamentary secretaries and ministers?

Mr. Bernard Shapiro: I'm sorry, I didn't quite hear the question.

Mr. Navdeep Bains: It's about the Prime Minister's code.

Mr. Bernard Shapiro: Yes, you're talking about which code—the Prime Minister's code?

Mr. Navdeep Bains: The Prime Minister's code. Does disclosure of the gifts and the amount of the gift and the type of gift being disclosed apply to all members of Parliament, or does it only apply to—

Mr. Bernard Shapiro: No, the Prime Minister's code only applies to the public office holders, so the only time the more stringent limit applies is when you are a public office holder as well as a member of Parliament.

For example, all the ministers and all the parliamentary secretaries would be members of the House of Commons—or at least almost all—and they would also be public office holders. In those cases, we apply the more stringent limit.

Mr. Navdeep Bains: So, for example, for a member of Parliament who like me isn't in the cabinet, it would be the \$500 threshold.

Mr. Bernard Shapiro: That's correct.

The Chair: Time is up.

Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

Thank you, Mr. Shapiro, for being here.

I have a number of questions, and brevity in your answers would be appreciated. They're pretty straightforward.

The first question would be this. You mentioned a moment ago that an MP had asked for an investigation. Which MP was that?

Mr. Bernard Shapiro: It was the one from Calgary—Nose Hill. Diane Ablonczy, I guess, is the name.

Mr. Russ Hiebert: Was she the only MP who asked for an investigation?

Mr. Bernard Shapiro: Yes, thus far.

Mr. Russ Hiebert: Which legal firm have you outsourced the research to?

Mr. Bernard Shapiro: It's Borden Ladner Gervais, I guess it is called.

Mr. Russ Hiebert: What date would you expect to file your report on the minister?

Mr. Bernard Shapiro: I have no date on which I expect to file the report. It depends on when the fact-finding phase is over and how complex the issues are once it is over. The facts never really speak for themselves entirely, so we'll just have to wait that out and do it as soon as possible. But I have no forecast date.

Mr. Russ Hiebert: You stated that only the member from Calgary—Nose Hill has asked for an investigation. What did the minister ask for?

Mr. Bernard Shapiro: The minister, under another section altogether, asked for some confidential advice on a number of matters, and we will deal with that on a confidential basis.

Mr. Russ Hiebert: Could you give us the scope of that request?

Mr. Bernard Shapiro: No. It's a confidential matter between the minister and our office.

Mr. Russ Hiebert: In your view, does an investigation by your office tie the hands of the Prime Minister? That is, are the hands of the Prime Minister tied from firing the minister under investigation? Further, is there anything preventing the minister from submitting a resignation or quitting while under investigation?

Mr. Bernard Shapiro: Not that I know of.

Mr. Russ Hiebert: Is it your view that this investigation precludes the government from answering detailed questions in Parliament on the matter under investigation?

Mr. Bernard Shapiro: Not from the point of view of the legislation I'm administering. There may be other issues the government might wish to consider or needs to consider. I really can't say.

Mr. Russ Hiebert: Is there anything preventing the minister from commenting on these issues while under investigation by your office?

Mr. Bernard Shapiro: I would have to think about that. There's nothing in the legislation that prevents it. Whether it's a wise thing to do or not is another matter altogether.

● (1620)

Mr. Russ Hiebert: But you're not there to give her wisdom; you're there to give her ethical advice. So as far as you know, there's nothing preventing her from...

Mr. Bernard Shapiro: Right.

Mr. Russ Hiebert: Okay.

How many investigations are currently under way?

Mr. Bernard Shapiro: One.

Mr. Russ Hiebert: And is it the one we're talking about?

Mr. Bernard Shapiro: Yes.

Mr. Russ Hiebert: And again—I'm sorry—what was the date when the submission, you would guess, would be available?

Mr. Bernard Shapiro: I didn't give a date.

Mr. Russ Hiebert: You didn't give a date.

With respect to the disclosure statements of MPs, the last time I heard you speak on this issue you assured those members present that the summary statements would only be available for viewing in your office during business hours and that no copies would be allowed. I also believe you went so far as to imply that no taking of notes would be allowed. They could view the documents but not take notes, and they could walk out to do with their memory as they wished.

I think a lot of members present at that meeting have taken steps to follow through with the request from your office to fulfil these disclosure requirements under the impression that this was the context in which they were disclosing this information. Now, you've mentioned to the committee that another committee, tomorrow, is looking at further access to this document. Is that not a bit of a conflict for those who have relied on your earlier suggestion as far as release is concerned?

Mr. Bernard Shapiro: I would say two things. I doubt whether the people filling out the form would have changed the form depending on the answer to the question, because that would be lying, and I don't think anyone would. That's the first thing.

The second thing is, the other matter is one I myself raised with the committee without trying to resolve it. I've found it not helpful to the notion of transparency in government to make access so restrictive that it really makes it impossible for many Canadians to have access to something that's on the public registry. So I didn't make a decision about it; I raised with the committee the matter of what might be done or what might be appropriate. We'll discuss it with them and then proceed after that.

Mr. Russ Hiebert: Is it not possible—

The Chair: You're out of time.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Shapiro, you have an office here in Ottawa.

Mr. Bernard Shapiro: Yes.

Mr. Derek Lee: Do you reside in Ottawa?

Mr. Bernard Shapiro: No.

Mr. Derek Lee: Where do you reside?

Mr. Bernard Shapiro: In Montreal.

Mr. Derek Lee: Do you commute?

Mr. Bernard Shapiro: Yes.

Mr. Derek Lee: Is it once a week, once a day, once a month?

Mr. Bernard Shapiro: Generally, it's once a week. During my wife's recent illness, I commuted once a day, more or less, but it's usually once a week.

Mr. Derek Lee: In relation to the one investigation you have ongoing, you say you've retained a law firm to do the forensic—

Mr. Bernard Shapiro: The fact-finding.

Mr. Derek Lee: I'm sorry, the fact-finding portion of the investigation.

Have you fixed a budget for that?

Mr. Bernard Shapiro: I don't know the details of the contract with the law firm, although a contract has been developed.

Mr. Derek Lee: We all know that lawyers run meters, so their meter is running.

Mr. Bernard Shapiro: Right.

Mr. Derek Lee: Have you or has your office put a cap on the meter?

Mr. Bernard Shapiro: We've put a cap on the time, but that's a different... We'll see what happens.

Mr. Derek Lee: Okay.

You've gone to a law firm to gather facts. Most of the lawyers I know don't put on the gumshoes and go out; they usually retain a private investigator. Is it likely this law firm itself is going to subcontract further the investigation and that there will be a private investigator?

• (1625)

Mr. Bernard Shapiro: That is not within the contract.

Mr. Derek Lee: They will not be subcontracting? It will be an employee of the law firm?

Mr. Bernard Shapiro: Exactly.

Mr. Derek Lee: And that employee is probably a private investigator?

Mr. Bernard Shapiro: No.

Mr. Derek Lee: Do you know who is doing the investigating?

Mr. Bernard Shapiro: I do know who; I don't remember the name at the moment. I've met both people who are involved.

Mr. Derek Lee: Is the person a lawyer?

Mr. Bernard Shapiro: Yes.

Mr. Derek Lee: So it's not a gumshoe out investigating one of our colleagues then.

Mr. Bernard Shapiro: Correct. It's not.

Mr. Derek Lee: It's a lawyer out investigating one of our colleagues.

Hon. Ed Broadbent: I don't know which is worse.

Some hon. members: Oh, oh!

Mr. Derek Lee: Anyway, this person will be out probing and going to do whatever site inspections and interviews he or she would deem appropriate, so as to provide a résumé of the facts. And you're not too sure how much that's going to cost.

Mr. Bernard Shapiro: I don't remember what the contract provides. I'll be glad to get the information for you if you'd like.

Mr. Derek Lee: No, I'm just interested. Over the last few years around here we've noted the propensity to build empires at taxpayers' expense, and we have this proliferation in officers of Parliament. I'm not faulting you in the slightest—

Mr. Bernard Shapiro: That's all right.

Mr. Derek Lee: — because you've been asked to do a job and you've come forward—

Hon. Ed Broadbent: We'll have to ask the parliamentary secretary.

Mr. Derek Lee: — and you're clearly not volunteering to do the job.

Mr. Bernard Shapiro: Right.

Mr. Derek Lee: Thank you for providing us with your experience in your capacity as Ethics Commissioner. I was just trying to get a handle on the costs, and we're not too sure.

Mr. Bernard Shapiro: No, I think we're going to have to learn a lot from experience. There's no choice about whether to do the investigation or not, but we can try to do it in the most efficient way we can. I feel it is inappropriate to do it within the office if we don't have the expertise to proceed in a way that would protect everybody concerned, procedurally speaking.

In our submission to the estimates we provided a budget within those estimates for the kinds of investigations that might come up in the next year, but we did say it might or might not be an appropriate estimate, depending on the number of investigations we're required to make.

Mr. Derek Lee: Anyway, this is an inquiry from Ms. Ablonczy, our colleague. I also thought the minister had submitted the matter for—

Mr. Bernard Shapiro: The minister asked for confidential advice —

Mr. Derek Lee: It's definitely going to cost us a few bucks here. It's going to cost us \$200,000, \$300,000, \$400,000 by the time we're done. Would that be a good estimate?

Mr. Bernard Shapiro: We will see.

Mr. Derek Lee: We will see.

Anyway, the meter is running. Mine is not.

Thank you, Mr. Chairman.

The Chair: Mr. Hanger.

Mr. Art Hanger (Calgary Northeast, CPC): Thank you, Mr. Chairman.

With all the information on the disclosure statement, Dr. Shapiro... It outlines any moneys owed; it talks about mortgages an individual may have, whether specifically himself or even tied to a business venture; and of course it reflects debt. If you're in any kind of an investment arrangement, you're going to have debt, you're going to have certain liabilities, and you're going to have certain appraisals on property.

What kind of information will be revealed, if such is the case for a member, to anyone wanting to access a disclosure statement?

Mr. Bernard Shapiro: I'm going to refer to Mr. Benson in a minute, but remember, people can't access a disclosure statement itself. You can access only the public summary, which is a very brief capsule of the disclosure statement. The disclosure statement itself is not available to anyone.

Mr. Benson, perhaps you can describe in a little more detail the public summary.

Mr. Robert Benson: The public summary, as indicated earlier, is a document that will be submitted to each member of Parliament for their review and signature. It's a matter where before going public it will be seen by you.

We have seen, as we have been working, a great deal of anxiety as these things have been put together, but when the actual document is submitted to the particular members of Parliament, they see that it's basically the source and nature of an asset or a liability that's over \$10,000, which the code says must be disclosed—unless it's one that's exempt—and the amount of information there, as I indicated earlier, goes down to a sort of general form. It's a mortgage with a particular institution or it's a portfolio of holdings with a particular investment firm, and that's the extent of the information that's being disclosed.

Mr. Art Hanger: I guess I'll wait until I see the summary. I'm kind of curious about that particular point, and I know that many other members are.

I'm going to go back to the outsourcing of investigations on complaints that are issued. I'm curious about how... I gather you would call it an investigation. I know that in relation to the Sgro affair, the member asked for an inquiry. I would assume that you took that to mean an investigation, and you will follow through on it in that...

When it's outsourced to a legal firm, what are you telling that legal firm they must do?

Mr. Bernard Shapiro: We're telling the firm they must try to establish to the best of their ability what actually happened relative to the matter referred to us—what was the nature of the case; who did what to whom, so to speak—to try to put the facts in an orderly context.

Relative to the issue of cost, which has come up a number of times, the current contract is at a cost of \$30,000—which isn't to say that'll be the last cost; I don't want to make that mistake. But that will give you some idea of what our preliminary estimate was.

Mr. Art Hanger: So they will go out and gather the facts and report back to you. Will you be editing that report at all?

Mr. Bernard Shapiro: I don't intend to edit that report or to make it available. I will write a report with that as background.

• (1630)

Mr. Art Hanger: And present it to...

Mr. Bernard Shapiro: To the Speaker.

Mr. Art Hanger: The minister has also asked for some advice that is confidential. You will supply her with that information?

Mr. Bernard Shapiro: That's correct.

The Chair: Actually, I think you will be presenting it to the Prime Minister.

Mr. Bernard Shapiro: In this case that's correct, I'm sorry. It's a public office holder.

Mr. Art Hanger: So it will go directly to the Prime Minister and then to the minister.

The Chair: Then it's made public.

Mr. Bernard Shapiro: It goes at the same time. Three people get it at the same time: the Prime Minister; the minister, in this case; and the person who made the request, which has, of course, to be made public.

The Chair: Mr. Zed.

Mr. Paul Zed (Saint John, Lib.): Thank you, Dr. Shapiro.

At the risk of starting to give evidence myself, having been involved with this process in 1994, I think it's important that as a committee we highlight the understanding that you're an ethics commissioner and not an ethics counsellor, or auditor, or any other word.

I wanted to say that at the beginning, because I think there is a perception that... I guess what I'm a little bit surprised at is that you've outsourced already some responsibilities that I would have thought you would have conducted yourself. You've disclosed today that it's because you don't have the expertise in the office, or you don't have the resources.

Mr. Bernard Shapiro: I think it's a matter of expertise in the office at the moment. It's not so much a matter of resources, as we're paying to have this done.

It's a question of wanting to make sure, especially at the beginning, that we do this absolutely correctly, that people's rights over procedure are well preserved, and that we do it in a professional way. If investigations become frequent, then developing those resources in the office becomes a real option. If they don't, then it probably doesn't.

Mr. Paul Zed: The thing I'm a little anxious about is the fact that we've moved along the continuum from this counsellor role, which is to give people advice, to a commissioner role, which is to actually deliberate about someone. You, I think, candidly brought up the fact that you've looked at other jurisdictions where there are retired judges or in fact sitting judges who look at a situation, deliberate, and give an opinion. In our hearings, which we had in the 1990s, Mitchell Sharp, I think, summarized it best by saying it's very difficult to legislate integrity.

Mr. Bernard Shapiro: If not impossible.

Mr. Paul Zed: It's impossible. Transparency and disclosure went a long way toward doing that.

I'm making a statement but also asking you this question. As you deliberate about different kinds of sanctions, would you not agree, given the fact that an investigation is being conducted and a report is being filed, that the sanction is a little self-evident by virtue of the fact that if something inappropriate has happened within a parliamentary system, there is confidence lost by Parliament, by the electorate, or in fact by the Prime Minister in a member because of his or her activities?

Mr. Bernard Shapiro: This question has come up a number of times today already and I have the same response: this is an issue I haven't yet thought through. I think the point you raise is an interesting point and it may be the most appropriate way to proceed. That remains to be seen.

The legislation, however, does raise the issue itself; it says he or she may do this. That's what makes me think I have to think it through, at least. It wasn't ruled out in advance by whoever put the legislation together, because they put this provision in.

Mr. Paul Zed: The previous ethics counsellor had the ability to actually give rulings—I think they were called “interpretation bulletins”.

Have you given some thought to this as well?

Mr. Bernard Shapiro: I have, and we are doing them. The whole ethics regime at the federal level—and I think it's true of most provincial levels—is a kind of common law procedure. You have a set of principles, and then a set of practices are developed under those principles over time. I have it as one of the obligations of the office to make clear what those developing practices are so that people know in advance.

•(1635)

Mr. Paul Zed: This is my last question. Do you have a website?

Mr. Bernard Shapiro: We have one, yes.

Mr. Paul Zed: Can you access it directly, or is it through the Department of Industry?

Mr. Bernard Shapiro: It can be accessed only through Industry Canada until we can make the appropriate arrangements with Parliament.

Mr. Paul Zed: Mr. Chairman, I know I may be over my time.

I would urge you in the interest of being a commissioner and an officer of Parliament that you disengage from—

Hon. Ed Broadbent: We had that discussion.

Mr. Paul Zed: You already did? Sorry.

Mr. Bernard Shapiro: You don't have to urge me, but there are other people you might have to urge.

Mr. Paul Zed: I apologize.

The Chair: We'll give you a list of who you should urge.

Mr. Tilson.

Mr. David Tilson: I'd like you to clarify again this Minister of Immigration issue that has become quite controversial. She has said

to questions in the House that we should wait for the Ethics Commissioner. You're telling us that what she has asked for is advice.

Will that advice go to her, to the Prime Minister, or to both?

Mr. Bernard Shapiro: It goes to her. She's asked for some confidential advice.

Mr. David Tilson: So anything to do with that is confidential. If she wishes to release it she can. If she doesn't want to release it—

Mr. Bernard Shapiro: It's up to her.

Mr. David Tilson: That's entirely up to her.

What do you base that on?

Mr. Bernard Shapiro: What do I base what on?

Mr. David Tilson: The favourite word since I've come to this place seems to be “transparency”. What's your authority to say that?

Mr. Bernard Shapiro: My authority is in the code itself, which provides for that possibility—for members in the members code and for the public office holders in the public office holders code. They're entitled to ask for confidential advice from the Ethics Commissioner. And she has in this case.

Mr. David Tilson: Returning to Ms. Ablonczy's request for an inquiry or an investigation, I must say I'm rather surprised about the issue of outsourcing it to a law firm.

Mr. Bernard Shapiro: I think we have to be careful how we say this. I'm not outsourcing the investigation; I'm outsourcing a certain facet of it to assist me before I write the report and make the choices I need to make. It's not asking someone else to—

Mr. David Tilson: But, sir, you're the commissioner.

Mr. Bernard Shapiro: Right, and I'm entitled to get advice and to get help where I think it would be most helpful to the work of the commission.

Mr. David Tilson: Okay.

Those are all the questions I have.

The Chair: Thank you.

We'll go to Mr. Broadbent next.

Hon. Ed Broadbent: If I can, I'll come back to the question that's been released publicly and that Ms. Ablonczy's asked. You probably don't have the precise wording with you, but surely you can tell me the general nature of the question.

Mr. Bernard Shapiro: I'm not going to respond to that simply because I don't want to make a mistake. I don't have the question in front of me, and there's enough stuff out there in the media about this without me trying to add to it—and inappropriately so.

I don't like to be evasive, so I'm sorry and I apologize. I should have brought it with me. I hadn't thought that's what we would be discussing today; I thought we'd be discussing the mandate of the committee.

Hon. Ed Broadbent: As a member of the House, it hasn't focused, to put it euphemistically, entirely on this case. Of course, it has been before the House for some time in question period.

I just remembered asking of myself—not others—why it's taking so long to get an answer. I'm genuinely surprised at this. It seems to me that the facts or alleged facts brought forward in a serious way in the House shouldn't take the time they seem to be taking to get an answer. There are other matters of concern to the public of Canada than this case, and it seems to be taking an inordinate amount of time to get your report.

This is not a personal criticism, I want to be clear, but it is a direct and serious question. I'm a bit mystified why it's taking so long to get an answer to the one question, I guess, that's been put to you.

Mr. Bernard Shapiro: I would say there's a difference between the facts and the alleged facts. Trying to find that out is the necessary basis for me to proceed, and that takes longer than it would appear to take. There aren't easy answers, since different people have different answers to the same question. And we've got to try to establish what the actual facts are to the best of our ability, and that is what is taking the time.

Hon. Ed Broadbent: You have said, though, in this hearing that you put a time limit on that in your request for information. Could you tell us what that time limit is?

• (1640)

Mr. Bernard Shapiro: It was three weeks.

Hon. Ed Broadbent: It was three weeks, and when did the clock start ticking?

Mr. Bernard Shapiro: About ten days ago, or something like that. I don't remember exactly.

Hon. Ed Broadbent: So you wanted an answer within three weeks.

Mr. Bernard Shapiro: Right, but whether I get it remains to be seen.

Hon. Ed Broadbent: The letter was sent on November 20. So three weeks after November 20, then, is...

Mr. Bernard Shapiro: Which letter are we talking about?

Hon. Ed Broadbent: Ms. Ablonczy's.

Mr. Bernard Shapiro: No, it's not three weeks from that date. It would be three weeks from the date on which I contacted the people who are doing the work for us. I don't remember what that date was.

Hon. Ed Broadbent: Do you remember roughly, like a week ago or two weeks ago?

Mr. Bernard Shapiro: I would say it's about a week or ten days, but I don't know and I don't want to mislead you.

I do want to repeat that I intend to be careful. So it doesn't mean that when I get the report from the fact-finding group, my report will come out immediately after that, because it depends on how complex those facts are, how well I can understand them, and what I think the

issues are. It's easy to say the facts speak for themselves and therefore that it would be obvious. That may turn out to be the case, but it may not.

Hon. Ed Broadbent: So if you get the report back within three weeks for a question you put a week or ten days ago, you will have the information while Parliament is in recess. My question pertinent to that is, while Parliament is in recess... will you publish or release publicly in some way your answer to that question whether or not Parliament is in session?

Mr. Bernard Shapiro: I haven't decided, but my instinct would be to issue it as soon as possible, because I think that's the appropriate way to proceed.

Hon. Ed Broadbent: I have no other questions.

The Chair: Time is up then.

Just on that issue, I think the commissioner was correct in the position he took on the request for the investigation, because that was Ms. Ablonczy's request. But on the other hand, I'm sure if any member around the table were interested, they could contact Ms. Ablonczy's office and she could make the decision whether or not to share that.

Mr. Bernard Shapiro: The question itself is published. That's available. It's been published. It's only that I don't have it with me that I'm hesitating.

The Chair: Okay.

Mr. Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you.

You gave a mandate to a law firm. Is it an extraordinary measure or had you already thought of using lawyers?

Mr. Bernard Shapiro: I had already thought of doing that because I don't have the appropriate experience to do all these things.

[English]

So I decided that at least in the beginning, rather than develop the out-resources in the office, which is one option, I would outsource it and begin to get experience, and then decide whether generally I would rather keep it inside the office in the future and develop the resources to be able to do that.

[Translation]

Mr. Mario Laframboise: Did you hire outside expertise through invitation to tender or are those people that you know?

[English]

Mr. Bernard Shapiro: In this case it's a firm we've worked with before, and we were anxious to get the process going as quickly as possible, for the reasons everybody has been talking about around the table. What we hope to do in the future is to organize a set of firms, for example, that we would use—not always the same one, but get some pre-qualified firms on the list that we could then turn to when we needed to for specific cases. This is our first instance, but probably not the last.

[Translation]

Mr. Mario Laframboise: Is this firm one that the former commissioner...

[English]

Mr. Bernard Shapiro: I'm not sure of that. I don't know whether that's the case or not, so I don't want to say. I just know that it's a firm that was known to some of the people in my office, and it seemed a reputable firm and we decided to use it.

[Translation]

Mr. Mario Laframboise: You are saying that those people were familiar with the area of investigations on the actions of ministers or on things like that.

[English]

Mr. Bernard Shapiro: Yes, and the firm we've had has had a lot of experience in this kind of work, not relative to this specific issue about ministers, of course, but relative to this kind of work.

[Translation]

Mr. Mario Laframboise: So it is a process that you seem to want to establish, which means that you are not always going to make the investigations yourself and that you reserve the right to use law firms.

[English]

Mr. Bernard Shapiro: Yes, at least until I have more experience, because it may turn out, depending on the volume of such business, so to speak, that another alternative would be better and more efficient for us to use. In some sort of ideal sense it would be much better to have the resources inside the office, because then it would be far easier to command them, far easier to get them going, far easier to get it done in a more limited amount of time. On the other hand, that's a very expensive approach to this, unless you have a lot of requests for such investigations, and that's what we'll have to see.

• (1645)

[Translation]

Mr. Mario Laframboise: Okay.

You told me earlier that it would not be case-by-case. Therefore, you will adopt a process which you will follow.

Will it be the same for the members as for public office holders?

[English]

Mr. Bernard Shapiro: We would hope to use the same process for any investigation. It's better that people know what the process is and understand it than redevelop it each time.

[Translation]

Mr. Mario Laframboise: Including when the time will come to say if you consider taking or recommending sanctions. At that time you will decide about conformity, whether under the members code or the Prime Minister's code.

[English]

Mr. Bernard Shapiro: I would reach for that possibility. I don't want to promise, because we'll have to see how my own thinking develops.

The Chair: Thank you.

Last question for Mr. Hiebert, because we have some other things we have to get to.

Mr. Russ Hiebert: Minister Sgro has said that a variety of issues were referred to your office. She's also said that on November 17 she referred this issue to you as the commissioner. However, since that date, since November 17, new allegations have come to light. Has the minister updated her request for advice from your office since November 17?

Mr. Bernard Shapiro: Not to my knowledge.

Mr. Russ Hiebert: Okay.

Will you give the public notice in advance of when you plan to release the report? Let's say on such and such a date you'll give two weeks' notice before that date that you plan to release that.

Mr. Bernard Shapiro: I hadn't thought of that, but now that you've raised the issue I'll certainly give it some thought.

Mr. Russ Hiebert: I think that would be an appropriate way to proceed, to give people proper notice.

Do you have any lawyers on staff?

Mr. Bernard Shapiro: We have people with legal background on staff, who've had legal experience, but not practising lawyers where that's their job from day to day.

Mr. Russ Hiebert: So that's the reason why you've outsourced to Borden Ladner Gervais.

I'm learning that you have 20 to 25 people on your staff, a budget of \$3.5 million to \$4 million. You have one investigation under way and yet you choose to outsource, presumably because you don't have the experience. What else is your office doing to justify that size of staffing and that budget?

Mr. Bernard Shapiro: The major thing we're doing, as I said previously, is trying to deal with the 1,800 people and their spouses and dependants who come under one of the two codes, at least one of the two codes. That takes up a huge amount of resources for us.

Mr. Russ Hiebert: There are two codes, as you mentioned. There's the House code and there's the Prime Minister's code. Ministers presumably fall under both of those codes as members and as ministers.

Mr. Bernard Shapiro: That's correct.

Mr. Russ Hiebert: The House code requires a certain amount of disclosure. For example, it requires public disclosure of spouses and other family members' interests, but the Prime Minister's code does not require this information to be made public. How do you resolve this apparent conflict between the two codes?

Mr. Bernard Shapiro: First of all, there can be conflicts between the two codes since they have different authors. That may just emerge. We will certainly try over time to encourage both the House and the Prime Minister to make these codes as consistent as possible because that makes for a better time. They don't have to be the same as long as they are relatively consistent, so one could, for example, argue that the standards for public office holders ought to be higher, let's say, than the standards for the members of the House of Commons—one could argue that—and still have consistency with the code. But since they did have different authors, there are some inconsistencies at the moment, and we deal with them on an ad hoc basis as we move along, trying to encourage the changes that might be appropriate in the future.

Mr. Russ Hiebert: Besides these two codes, have any other rules, principles, or obligations applying to public office holders been referred to your office for consideration?

Mr. Bernard Shapiro: No.

• (1650)

Mr. Russ Hiebert: Then it's just those two codes that are currently under your jurisdiction or consideration.

Mr. Bernard Shapiro: Right.

Mr. Russ Hiebert: You mentioned a moment ago that you had worked with this law firm in the past. When did you work with this law firm?

Mr. Bernard Shapiro: No, I didn't say I had worked with this law firm in the past. I said there had been some experience in the office with this law firm in the past, but I've just come a few months ago, so it's not my experience.

Mr. Russ Hiebert: Do you know when it was and what the nature of the investigation was?

Mr. Bernard Shapiro: No. I don't think it was an investigation in the sense we're now using, because it's a different process that was developed, but there have been issues that have arisen before where the advice of the then counsel was asked for and where law firms might have been employed to try to help in achieving the appropriate results.

Mr. Russ Hiebert: It wasn't to do with an investigation like you're currently experiencing.

Mr. Bernard Shapiro: This is the first of that kind.

Mr. Russ Hiebert: Thank you.

The Chair: A quick question, Mr. Broadbent.

Hon. Ed Broadbent: Could you tell us the date that Judy Sgro made her request to you for the confidential advice?

Mr. Bernard Shapiro: I don't know the date, but I think it was around mid-November.

Hon. Ed Broadbent: Around mid-November—

Mr. Bernard Shapiro: I don't know the date, so I don't want to...

Hon. Ed Broadbent: She only made the request once.

Mr. Bernard Shapiro: Right. It was November 15, my staff tell me, so I wasn't far off.

Hon. Ed Broadbent: You haven't responded to that yet. Again, it may be hard to answer the question, but it seems to me there's an obvious factual distinction to be made between the inquiry you've

launched via this law firm on the one hand and her request for confidential advice. Would it be accurate to say that before you can give her confidential advice you have to have the report of this law firm?

Mr. Bernard Shapiro: I think that's correct, because it does depend on what the facts are, and this will help us find out.

Hon. Ed Broadbent: While the House is down you'll be in a position both to give the confidential advice to the minister and to the Prime Minister, who gets that too.

Mr. Bernard Shapiro: Yes, if the report is ready, and I hope it will be, but I can't promise.

Hon. Ed Broadbent: All right.

The Chair: Thank you.

That's all the time we have for questions because we have this other business to deal with.

I did have a request from the committee, Mr. Shapiro, if you would be able to supply a draft or a format of the public disclosure statement for the committee. Could you do that?

Mr. Bernard Shapiro: Sure.

The Chair: Good. Thank you.

Thank you very much for coming, and thank you for answering all those questions.

Mr. Bernard Shapiro: Thank you for the time.

The Chair: Colleagues, I'm at your pleasure. Traditionally when we're dealing with a report or a draft report, the committee would go in camera, but I don't see a great need for that. It's up to you people to do that. We haven't got the report. I'm prepared to distribute it, but I want to know if you would prefer to be in camera or if we will just carry on.

Go ahead.

Mr. Derek Lee: Mr. Chairman, my own view is that one of the good reasons for going in camera is to avoid the need to have a public record of the back-and-forth discussion that happens on a very pedantic, administrative basis on these reports—you know, "There's a comma missing here", or "You could rephrase the sentence". There's really not much of need to burden the public record with that kind of discussion, and that's one of the reasons why I usually like to go in camera. It has nothing to do with non-transparency and everything to do with just effectively knocking off a written document without having to—

The Chair: You're saying let's deal with it?

Mr. Derek Lee: I'm saying let's go in camera and deal with it, unless it's a two-paragraph report.

The Chair: No, it's a little more complicated than that.

Mr. Derek Lee: Unless my colleagues differ, my suggestion would be that we go in camera to clear it up.

The Chair: Does everybody agree with that?

Some hon. members: Agreed.

[Proceedings continue in camera]

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