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Chair

Mr. David Chatters

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Thursday, June 9, 2005

• (0905)

[English]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen. We'll call the meeting to order.

This is the Standing Committee on Access to Information, Privacy and Ethics. The orders of the day are pursuant to Standing Order 108 (3)(h), a study on the letter of the Ethics Commissioner, tabled in the House of Commons by Judy Sgro on May 10, 2005.

We have before us the Ethics Commissioner, Mr. Shapiro.

Good morning, Commissioner.

Mr. Bernard Shapiro (Ethics Commissioner, Office of the Ethics Commissioner): Good morning.

The Acting Chair (Mr. David Tilson): We've met the person who is with you before, but perhaps you could introduce her, for the record.

Mr. Bernard Shapiro: Thank you.

Thank you again for the opportunity to be here, and in particular for accommodating my schedule earlier this week, when I was unable to be here on Tuesday, as you originally requested.

I have a relatively brief opening statement to make.

The Acting Chair (Mr. David Tilson): Who is the person with you?

Mr. Bernard Shapiro: I'm sorry. Micheline Rondeau-Parent is in charge at the commission for both communications and parliamentary liaison.

The Acting Chair (Mr. David Tilson): Thank you, sir.

You have an opening statement, and you could proceed.

Thank you.

Mr. Bernard Shapiro: My opening statement is going to cover three different issues. One has to do with the immediate agenda item, which are letters to Ms. Sgro. The second has to do with the French translation of those letters, and a third has to do with a legal issue that arose at the last meeting, which I want to comment on very briefly.

The initial letter issued to Ms. Sgro was in response to her request for confidential advice on one specific issue, pursuant to paragraph 72.07(c) of the Parliament of Canada Act. When I issued the first letter, I was aware that Ms. Sgro might make the document public. However, by the time Ms. Sgro confirmed that she would table my

letter, I had received advice that mentioning particular names in the letter would be inadvisable, without the individuals in question having the opportunity to review for factual errors.

Given this uncertainty, I therefore requested that Ms. Sgro not table the original letter, and I provided her with one in which the names of the individuals who had previously been staff members were removed. There is no other difference between the two letters. Everything else remains unchanged, including the substance of the section about her responsibility, which can be found on page two of the letter, tabled by Ms. Sgro on May 10.

I would conclude on this matter by noting that, as Ethics Commissioner, I have never disclosed either the contents of the confidential advice requested by Ms. Sgro nor my response to her. Public disclosure of confidential advice was, however, Ms. Sgro's prerogative.

Finally, as members know, my full report is still not yet released. It is, and it always has been, my intention to provide all the necessary names, facts, and the relevant information in the report itself.

[Translation]

With respect to the letter tabled by Ms. Sgro on May 10, I also wish to inform members that the French translation was undertaken by Ms. Sgro's office. However, as compared to the English version, there are two lines missing. I have therefore taken the liberty of asking my office to correct this omission and I am providing a complete French version to members today.

[English]

With respect to section 72.09 of the Parliament of Canada Act, on that particular issue, I'd only refer to my letter sent to the committee on Monday.

I stand by my interpretation, as discussed with the law clerk and parliamentary counsel, Mr. Rob Walsh, of section 72.09 of the act, with respect to the requirement that Ms. Sgro be provided with a reasonable opportunity to present her views. I have done so in the manner described in my letter to you. Should she have any comment, it must be provided to me by tomorrow. My report will then follow as soon as possible.

Thank you.

The Acting Chair (Mr. David Tilson): Thank you, Commissioner.

We'll now commence the first round of questioning from the members of the committee, with seven minutes for questions and answers.

Mr. Hiebert.

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

I appreciate your opening statement, Mr. Shapiro, trying to shed some light on the issue of the letter that was released to Parliament, although it was not completely released at the time.

In your opening comments you stated that you received advice in which mentioning particular names without them having the opportunity to review for factual errors would be unwise and not advisable. This is a topic that we discussed the last time you were before this committee, a week ago. My first question to you is who provided you with that advice?

• (0910)

Mr. Bernard Shapiro: Advice is provided by two different legal firms—David Scott's firm, which we've discussed before, and Stikeman Elliott.

Mr. Russ Hiebert: Was it Mr. Scott who provided that advice?

Mr. Bernard Shapiro: Mr. Scott and Mr. Smith, who I believe is a lawyer from Stikeman Elliott.

Mr. Russ Hiebert: Mr. David Scott, the same David Scott you initially commissioned?

Mr. Bernard Shapiro: That's correct.

Mr. Russ Hiebert: He told you that releasing the letter in its entirety would be a conflict, and that you should block out the portions of the letter you felt were inappropriate.

Mr. Bernard Shapiro: I don't know if "conflict" is the right word. He felt it was inadvisable to issue such a letter without the opportunity for the people it mentioned to have made comment relative to factual error.

Mr. Russ Hiebert: Before you received the advice, what was your own thinking on releasing this document in its entirety? Had you put some thought into it yourself?

Mr. Bernard Shapiro: I had thought about it, but I didn't find the same difficulty that Mr. Scott and eventually Mr. Smith found. I looked at the act itself. It suggested, at least to me, that if I was acting in good faith I was immune from suit over these kinds of issues. That's what I took from it, and that's why I composed the letter the way I did in the first place.

Mr. Russ Hiebert: So initially you thought it would be fine to draft this letter and to release it to Ms. Sgro as it was, but you received advice from David Scott and Mr. Smith that doing so would not be advisable. So you altered the letter at their advice.

But then what happened was quite interesting. The document was released to the public and Parliament, and the public, through the media, drew some strong conclusions based on this document, which was released without all the information.

At that point, did you think there was any ethical conflict in remaining silent and not correcting the misperception or clarifying the information released to the public at that time?

Mr. Bernard Shapiro: No, I didn't, because I didn't think the information that was not contained was relevant to the overall issue.

Mr. Russ Hiebert: But would you agree, Mr. Shapiro, that the content that was missing became a primary element to the issue, to the stories being released?

Mr. Bernard Shapiro: I hadn't thought so, but you may think so.

Mr. Russ Hiebert: This is directly tied to some questions we had last week on providing portions of your report to people named in it in advance of the report's being released to the public.

My first question is, on what legal advice did you decide to release "portions"—I think that's what you called them last week—of the document to those named in the document? Do you recall who gave you that advice?

Mr. Bernard Shapiro: The same two people I've already mentioned, Mr. Smith and Mr. Scott.

Mr. Russ Hiebert: They told you that you should release portions of the report in advance to those named so they could comment on—

Mr. Bernard Shapiro: Yes. Incidentally, it's not "portions of the report". It's comments critical of particular individuals that are excerpted from the report.

Mr. Russ Hiebert: Okay, so the comments naming those individuals were to be released to them in advance. And did they indicate why this was required?

Mr. Bernard Shapiro: I don't remember the details of the opinions, and I don't want to mislead you. But as I recall, they felt it was a question of both natural justice and of how these matters were usually handled in specific inquiries. I can't comment further than that. I don't have it in front of me.

Mr. Russ Hiebert: A related question I have is why were your initial interviews with these individuals not complete enough to elicit this kind of information?

Mr. Bernard Shapiro: I didn't understand the first part of the question.

Mr. Russ Hiebert: You released portions of the report to them so they could comment on the way you were naming them and the allegations with respect to which they were named. My question is, why was the information you originally gathered not sufficient to deal with this sort of issue? When you originally got the information, did you not have confidence in your ability to name the issues specifically and address them appropriately?

• (0915)

Mr. Bernard Shapiro: I thought so, actually. I was quite satisfied with the interviews and the comments I made about them. On the other hand, no one is perfect, and it doesn't seem to me to hurt to just check.

Mr. Russ Hiebert: So you had second thoughts about your own ability to accurately describe the situation, and based on the advice you were given by David Scott?

Mr. Bernard Shapiro: I have no question about my own ability, but I know everyone's ability is somewhat limited. We're not God, but just people, and one has to act accordingly.

Mr. Russ Hiebert: You mentioned last week that these individuals were given a seven-day period in which to comment. I think you suggested last week that this period was almost up. Can you confirm that the seven-day period is now complete?

Mr. Bernard Shapiro: It is up for all of the individuals except for one, for whom it will be up tomorrow.

Mr. Russ Hiebert: Okay. Do we know how many people you're referring to here?

Mr. Bernard Shapiro: It's either four or five—four, I believe.

Mr. Russ Hiebert: Four.

Are any of these individuals members of the government?

Mr. Bernard Shapiro: Well, I don't think it's appropriate for me to say who they are. I don't want to enter into a guessing game or speculation game. I know exactly who they are, and we will see what we will see.

Mr. Russ Hiebert: Now, based on the feedback you've had from the three of the four, have you used any of their information to change your report?

Mr. Bernard Shapiro: Thus far, I've used it in the sense that I've thought about it, but I've not changed anything.

Mr. Russ Hiebert: Do you think that you might change your report based on what you've heard so far?

Mr. Bernard Shapiro: Not on what I've heard so far.

Mr. Russ Hiebert: Okay.

The Acting Chair (Mr. David Tilson): We're out of time, sir. I'm very sorry.

Monsieur Laframboise.

[*Translation*]

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

Good morning, Mr. Shapiro. I want to be sure I understand. You say you sent a letter to Ms. Sgro in which certain names were mentioned. But you knew at the time you sent her the letter that she might release it. At that point, you had second thoughts and phoned her. You said: "it has been brought to my attention that..." That means that someone was aware of the letter and told you that names should not be mentioned. You then decided to ask for legal advice because when you say "it has been brought to my attention", that means that someone was aware of the letter and made that comment to you. I would like further clarification in that regard. Who pointed that out to you?

[*English*]

Mr. Bernard Shapiro: I did not in fact share the letter with anyone else, including the lawyers. The only people who knew about the letter, or at least knew the exact letter, were the people in my own office. We didn't ask for any advice about the letter itself. We had submitted the report to the lawyers, just to see whether there were any issues they saw in there that I had neglected to see. It was in response to seeing the whole report that I got that advice; I didn't get any specific advice about the letter, because I had not submitted the letter to anybody else. So the advice I got was just about how to handle the naming of names, so to speak. In that context, I rethought the letter. It wasn't that someone else saw the letter and asked me to rethink it.

[*Translation*]

Mr. Mario Laframboise: We keep coming back to your report. You asked for legal opinions. My problem is that you did not instinctively think to ask the Law Clerk of the House of Commons for a legal opinion; you went directly to private sources. That is what I understood you to say.

[*English*]

Mr. Bernard Shapiro: I think that's right or the correct version of what I did.

I did have a conversation with the law clerk last Thursday, or a week ago today, to ask him whether or not I might approach his office for advice on how to proceed if had problems of this sort in the future. He said that I could, and perhaps in the future that's what I will do, but I did not do that this time.

[*Translation*]

Mr. Mario Laframboise: I, personally, believe that it was a mistake not to request his advice. When Mr. Walsh appeared before us, he seemed perfectly comfortable. In any case, he did mention that under Section 72.12 of the Parliament of Canada Act, you have complete immunity. What you write in your report doesn't seem to cause him a problem, because you have immunity.

My problem is your fear of being afraid. That concerns me. That may mean that the truth will not come out because of this fear of being afraid, when your role is in fact to ensure the truth can come out, whatever happens. Come what may, you have immunity. That concerns me somewhat, Mr. Shapiro. You asked afterwards, once the opinion... When the minister received your letter, she had a choice as to whether or not to make it public. You provided her with an additional opinion. You phoned her and told her that she should not mention names in the letter. Yet you are telling us that the letter was not changed. We have your word on that. We did not get the first letter, which you are not making public. We have received the corrected letter.

Mr. Shapiro, I am concerned about your fear of being afraid. After this first experience, do you think you will succeed?

● (0920)

[*English*]

Mr. Bernard Shapiro: There are many respects in which I would do things differently another time, because I'm learning as I go along as to what makes sense, what doesn't make sense, what's helpful, what isn't helpful. The list of those things I'd do differently, unfortunately, gets quite long. However, one expects that over time that will take care of itself. I do accept the comment you make.

Incidentally, I would be glad to make available the original letter so people could make a comparison. That would not be a problem for me.

[*Translation*]

Mr. Mario Laframboise: I would just like to conclude by asking, as my colleague did earlier, whether you intend to change your report.

Your report is already written. Now that we all know that, do you intend to make other corrections to the document you have already prepared?

Mr. Bernard Shapiro: Thus far, there has been no changes to be made. The report is the report, and I have heard nothing that would convince me that changes are needed. So, for the time being, the answer is no.

Mr. Mario Laframboise: We will never know whether you changed your report.

Who does know? Only the staff in your office? Had you already sent it to legal counsel or to someone else? Are you and the people who work with you the only ones who are aware of its content?

Mr. Bernard Shapiro: Yes, that's correct.

[*English*]

The Acting Chair (Mr. David Tilson): So the answer to that is no.

Mr. Bernard Shapiro: Right. I haven't made any changes thus far, and I'm not planning to share anything with anybody else outside my office.

The Acting Chair (Mr. David Tilson): I just didn't hear you. The question was whether you showed it to your lawyers, and the answer was no.

Mr. Bernard Shapiro: Right.

The Acting Chair (Mr. David Tilson): Thank you.

Just on that, I seem to recall that when we first met on this whole issue, you indicated that you were having a law firm do the bulk of the investigatory work but that ultimately the report would be prepared by you. The investigation and the research were being done by the law firm, and they were even helping you draft it. Is that a figment of my imagination, or did you say that?

Mr. Bernard Shapiro: That's almost but not quite correct. It is true that the fact-finding was done by the lawyers we hired to do that, but I sought no assistance in drafting the report and didn't get any.

The Acting Chair (Mr. David Tilson): Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Mr. Shapiro, through the chair, I'd like to apologize for my tardy arrival, which meant that I missed your actual presentation, although I have taken cognizance of the document that you've prepared for the committee.

I have a couple of questions. I'm trying to understand. In your presentation, on the last page, you state your interpretation of section 72.09 of the act with respect to the requirement that Ms. Sgro be provided with a reasonable opportunity to present her views and that you have done so in the manner described in your letter, but your actual report has not been tabled and has not been provided to the complainant, nor to Ms. Sgro, nor to the House as yet.

If you cast your mind back to last week when you were before us and we were trying to determine your process for providing a report, I had asked you about the actual structure of that report. When I read the letter that you addressed to Ms. Sgro on May 2, I find that letter has conclusions in it. Therefore, ultimately it's the report. It's not just finding of facts, it's the conclusions based on that finding of facts.

I'm really concerned about that, because I understand that the legislation requires that you give the parliamentarian whose conduct

is the object of a complaint the opportunity to express his or her views. I would have thought that would mean that individual would have an opportunity to sit down with you or with your representative, take cognizance of the actual complaint, and then provide his or her version of the facts. If, in the course of the investigation, versions of other individuals who may have had knowledge of all or some of the incident that's the object of the complaint provided information that was completely contradictory, you or your representative would go back to the individual whose conduct is the object of the complaint and confront him or her, without necessarily providing the name of the individual, that you have received a sworn version, or whatever, on this particular issue that directly contradicts, and allow that individual to respond to that, not that they would actually receive in writing what ultimately is your report, the facts as you have determined them and the conclusion that you then drew from your finding of facts.

To me, this letter is actually a report. It may not provide every single detail, but it is a report. It's the finding of facts that "I believe on the basis of my own investigation that you had never met Ms. Balaican, that you did not know that Ms. Balaican was a volunteer in your campaign office when you decided to issue the TRP and work permit...and that the grounds upon which you made this decision were entirely consistent with the criteria". Those are findings of facts.

But then, when I come to the very last paragraph, where it says "your staff...did, in fact, place you in a conflict of interest", that is a conclusion. You found a conflict of interest.

● (0925)

I'm trying to understand your interpretation of 72.09, which requires that you provide the individual, the parliamentarian whose conduct is the object of the complaint, with a reasonable opportunity to present his or her views, whereas you have actually provided a document that ultimately is not just the finding of facts, but also the conclusion.

Mr. Bernard Shapiro: Let me say a couple of things. First of all, there are two different processes going on. One is the report being written to respond to Ms. Ablonczy's allegations relative to the former minister. That is process one.

Process two, although pre-dated in time, is a response to Ms. Sgro's request for confidential advice. That was a much more limited request, very much more limited in terms of the range of things to be dealt with. So what I was doing in that letter was responding to process two, which I had to keep separate from process one, which is the inquiry that's going on. That's one thing.

Secondly, my interpretation of 72.09 has gone through a major shift since the last meeting, and that is I had taken it to mean—and I was corrected last time by the law clerk—that I was required, I thought, to present the actual report to Ms. Sgro for comment. Since I've learned that's not either appropriate or required, I've not done so. So what I'm providing to her, as to the other people named in the report—and that's the inquiry process—are simply critical issues that are raised in the report, critical in the sense negative relative to them, asking for comments as to errors in fact. They're not getting the report, or anything like the conclusions, or anything like that. That's not part of what they've received and are asked to comment on if they wish to do so.

I had originally planned it in a slightly different way. I tried to make Ms. Sgro the last of the witnesses we actually heard so that she would have a chance to interact with us over issues that she may not have been aware of and would have a chance to respond to. And she was in fact virtually the last witness who we did transcribe sworn testimony from. However, it is the case that later in the investigation, when we subpoenaed a whole series of e-mails from the department, new issues came to light, so there was something additional to check with her this time around.

• (0930)

Hon. Marlene Jennings: Do I still have some time, Chair?

The Acting Chair (Mr. David Tilson): You do not.

Hon. Marlene Jennings: Than I would like to be on the list for the next round.

The Acting Chair (Mr. David Tilson): You will be on the list for the next round.

Mr. Broadbent.

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

Mr. Shapiro, I'd like you to elaborate, if you would, on the last sentence in the letter, which says, "In this case, it appears that you have acted appropriately but that your staff did not." What do you mean in this case when you say that Ms. Sgro acted appropriately?

Mr. Bernard Shapiro: It seemed to be a number of things that she.... It was both what she did and what she didn't know that became appropriate. The criteria she used for the granting of the temporary residence permit were criteria that she had consistently used a number of times in her time as Minister of Immigration. So she acted in an appropriate way in light of the facts in front of her, but her staff did not. I could not get anyone to indicate to me that they had told her this person was a volunteer in her campaign, which clearly would have placed her in a conflict of interest, as she herself admits. So that's what I meant. They should have told her and didn't, or at least didn't remember that—

Hon. Ed Broadbent: The individual in question, I'm sure you would agree, whether it was a rather senior person politically in the minister's staff, very close to the minister.... It wasn't just a clerk somewhere. And I don't mean that to be pejorative about the clerk, but—

Mr. Bernard Shapiro: It wasn't a clerk; I don't know about senior—

The Acting Chair (Mr. David Tilson): Please let him finish the question.

Hon. Ed Broadbent: I just mean close politically, a senior adviser who subsequently became her chief of staff. It wasn't just....

Mr. Bernard Shapiro: That is not in fact the person I'm referring to.

Hon. Ed Broadbent: That's not the person? Can you tell us who the person is?

Mr. Bernard Shapiro: I'm not going to do that now, but I can tell you what the function of the person was, which was to present the case to the minister. Each of these cases was presented to the minister by whomever it was appropriate to do so. The person who presented the case to the minister in this instance was not the person you're referring to.

Hon. Ed Broadbent: On the same question, if it's someone who's going to be presenting a case to the minister, the way we would normally understand the positions around here, political positions, it would be a senior person, would it not?

Mr. Bernard Shapiro: I don't know.

The Acting Chair (Mr. David Tilson): The problem we have—I'm going to take a bit of time away—is you can't say "I don't know", because we're trying to deal with an issue that, in this case, is very crucial. The minister stood up in the House and said—

Mr. Paul Zed (Saint John, Lib.): Point of order, Mr. Chairman. With the greatest respect, if the witness answers that he doesn't know, it's not your place to tell the witness that he has to answer. If he doesn't know, he doesn't know—with the greatest respect to the chair.

The Acting Chair (Mr. David Tilson): Thank you very much, sir. I believe he should know, and I believe that the issue, with respect to this staff person, is most important.

Mr. Paul Zed: That's another issue.

The Acting Chair (Mr. David Tilson): I just ask that you reconsider your answer.

Mr. Bernard Shapiro: I really don't know. I know who the person is, but I really don't know whether they're senior or not in the context in which they're operating.

Hon. Ed Broadbent: If I could get back to my time, Mr. Chair, I would add that I think you have every right to say you don't know something. There are a lot of things I don't know, and I'll say so.

Do you have a job description of this person, or a title?

Mr. Bernard Shapiro: No. It is in my files, but I don't know what it is.

Hon. Ed Broadbent: The point at hand, it seems to me, is pretty crucial to the whole notion of accountability of a minister. There is the very serious problem of deniability, for example. If a minister, or any person who has power and authority and responsibility, but in this case, political accountability and responsibility, has people working for them that are making decisions.... Presumably the case being made to the minister, from your point of view, did not include the fact that this person was working in her political campaign. Is that right?

• (0935)

Mr. Bernard Shapiro: Right.

Hon. Ed Broadbent: Did the person know that she was working in the minister's political campaign?

Mr. Bernard Shapiro: Yes, but I'm not going to go further than that. The report will outline these things—

Hon. Ed Broadbent: It is pretty fundamental, it seems to me, that if you have a person who is making a case to the minister to use her legal authority to grant a work permit, that person knows that the person in question is actually working politically for the minister. If the person making the case does not point that out, that person should be fired, in my view. It's a very serious mistake. And as you say, it's putting the minister, at a minimum, in a conflict of interest position. One of the key issues involved here is that if a minister, whether it's Ms. Sgro or any minister, has people giving advice, and the minister wants to be in a position to deny knowing certain things, then they can set up an arrangement like this with any of their senior staff, give them authority to make decisions, and tell them to make them however they will, but not to tell you. And because you're not told, therefore you're not accountable. Right?

Mr. Bernard Shapiro: Yes.

Hon. Ed Broadbent: Do you see that as possible?

Mr. Bernard Shapiro: I'm not sure whether I would say you weren't accountable because you weren't told; that's a different—

Hon. Ed Broadbent: That's what I'm getting at. Would you say that Ms. Sgro is accountable then?

Mr. Bernard Shapiro: I'm going to say what I had to say in the report itself.

Hon. Ed Broadbent: All right. Well, I would say she's accountable, as I would be accountable for a senior person in my office doing such a thing.

So you're going to make a judgment on this, at that time. But you made a preliminary judgment, it seems to me, in this letter, by saying here that she at least.... I want to be clear so I understand your argument. You're saying that she acted appropriately, but the staff did not. You just said that maybe she should be held to accountability criteria in this situation. Now, if she is, then she presumably did not act appropriately.

Mr. Bernard Shapiro: I guess what I meant by "appropriately" was in the context of the initial decision she made. She used reasonable criteria in order to grant the permit, and she did not know that the person was a volunteer. It's a different issue entirely as to whether she ought to be accountable, in any case.

Hon. Ed Broadbent: Okay. I accept that distinction.

In your view, then, of accountability—forget about in this case, I'm asking the general question—should a minister be accountable for decisions that are made not by...? Let me give you an example.

The Minister of Transport has some official in Winnipeg and the Department of Transport makes a seriously bad judgment. My view of the accountability in this case, just so it's clear here, is I don't blame the minister in Ottawa for somebody in his department making a bad decision. I would blame the minister for not taking appropriate action once that was done, or for not having the best

procedures in place that would have presumably avoided maybe that decision—that kind of accountability.

On the actions of senior staff of a minister, not the person working in Winnipeg, but a person working right with her in her office, or with him in his office, do you think the minister in these circumstances, in terms of parliamentary accountability, should be held accountable for decisions made by such people?

• (0940)

Mr. Bernard Shapiro: There is a guide, in this regard, that the ministers all have. It's issued by the Prime Minister's Office. According to that guide, at least, the ministers are responsible for what happens, irrespective of whether they knew or they didn't, and that's what responsibility means.

Now, what that actually means in practice, in each case, is that this varies enormously if you just look around. It always means being able to explain and being able to put in place procedures that might avoid something happening in the future. It presumably always means at least that. Whether it means more depends enormously on the circumstances. Some groups ask for the resignation of a minister under any possible arrangement; other groups tend to say, well, it's not serious enough. So that varies a lot, depending on the nature of the context. I'm not going to say more about it. I will handle this issue in the report.

The Acting Chair (Mr. David Tilson): Mr. Zed.

Mr. Paul Zed: Thank you, Mr. Chairman.

Mr. Shapiro, would you agree that when you outsourced to law firms, you did that because, as you candidly acknowledged to this committee at one point previously, you were just setting up? You were setting up your business, you were setting up your office. You didn't have the resources. Is that the reason you did this?

Mr. Bernard Shapiro: I didn't have the personnel resources to do that in-house.

Mr. Paul Zed: Okay.

On this two-page letter that we're talking about, would you also agree that there is still a great deal of confidentiality surrounding this matter until in fact you release your report?

Mr. Bernard Shapiro: The two-page letter to Ms. Sgro?

Mr. Paul Zed: Yes. Other than this two-page letter, would it be fair to say that we as a committee shouldn't even be discussing anything beyond that until in fact you release your report?

Mr. Bernard Shapiro: I think it would be helpful. Obviously you are in charge of your own procedures and your own agenda.

Mr. Paul Zed: Would you also agree, Mr. Shapiro, that you're an officer of Parliament and that we as members of Parliament are trying to deal with issues of transparency and issues of openness? You've disclosed that perhaps there was a name or two that shouldn't have been included, because of the rules of natural justice, which all of us as members of Parliament would want to uphold, so that every Canadian was given an opportunity to ensure that they weren't adversely prejudiced by a point of view. And if their name was included, inadvertently or inappropriately, as you have acknowledged, you in fact just wanted to correct that, and there was no document, other than a two-page letter, and there is no alteration other than the name being withdrawn.

One of my colleagues suggested that there was somehow some conspiracy. I just want to get the record clear on that.

Mr. Bernard Shapiro: I hadn't picked up on the notion of conspiracy myself, but you are correct, the only change made was in the names themselves.

Mr. Paul Zed: Would you also agree, Mr. Shapiro, that legal opinions that are provided to you are part of the information that's within your office, and that you're going to rely on those opinions? How appropriate is it for you to share that with a parliamentary committee?

Mr. Bernard Shapiro: That is a matter I am taking under advisement at the moment. I am trying to work it out so that I do the right thing the first time around.

Mr. Paul Zed: So in fact, Mr. Shapiro, would you say what you are in fact doing is creating a series of your own precedents, which you can start to rely on to give all members of Parliament an opportunity to rely and depend on your opinion?

Mr. Bernard Shapiro: I would hope so.

Mr. Paul Zed: Thank you. Those are my questions.

The Acting Chair (Mr. David Tilson): We're now, as you know, in the three-minute rounds.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, Mr. Chair, and thank you, Dr. Shapiro.

I have a number of questions here; I know we only have three minutes, so I'll try to be brief, and I would appreciate brevity in your answers as well.

It appears from your testimony of last week that there is some conflict here, at least from what I'm hearing today, and I want to go over a couple of points, Dr. Shapiro.

I'm reading from testimony from last week; this is with reference to the report. First you stated, "I've not given anyone except Mrs. Sgro a copy of the actual report", and then later in your testimony you said you had not given Mrs. Sgro a copy. Which is true, sir? Why did you say you had given her a copy?

Mr. Bernard Shapiro: I thought I had said, and I may be wrong—

• (0945)

Mr. Tom Lukiwski: I'm just reading from your verbatim—

Mr. Bernard Shapiro: I understand; I'm not doubting what you're reading. I thought I had said I would be giving Mrs. Sgro a copy, because I had not done so thus far. It was because of Mr. Walsh's testimony that I decided not to do it.

Mr. Tom Lukiwski: So you misspoke.

Mr. Bernard Shapiro: If that's the correct transcription, yes.

Mr. Tom Lukiwski: The second apparent conflict, sir, is this. It was in a response about giving some witnesses excerpts of the final report for their comments before you had released the final report. Please correct me if I am wrong, sir. I believe I heard you say you did that, that you made that decision to give excerpts of the report, just based on the facts pertaining to individual witnesses. You did that; you made that decision based on advice you'd received from outside legal counsel. Is that correct?

Mr. Bernard Shapiro: Right.

Mr. Tom Lukiwski: Again, then, there seems to be a conflict with your testimony from last week because of your response to a question from Mr. Powers, where he says:

You've indicated that you have provided to two or three individuals the opportunity for them to—I'll use the terminology—react to the statements that you made. Was there a clear delineation in the process that you could do this or was there an instance that prompted you to feel that this needed....

Your answer to that was:

There was no clear delineation in advance. I had not in fact thought about this issue in advance; it just occurred to me as I was reviewing the report and looking at what I was saying that this might be an issue. I was making critical comments about a few people, and I wondered whether they should have some opportunity to react to that before I go to publication. It seems to me a reasonable and fair thing to do, so I've done it.

Now, sir, you're saying in testimony you made the decision yourself, yet you stated here that you based your decision on outside legal advice. Which is it, sir?

Mr. Bernard Shapiro: It's both, actually. That is, the reason I submitted the report to the lawyers in the first place was because I began to be uncomfortable about naming people without giving them an opportunity to see what we were saying about them. I sent the report to the lawyers and asked them for a comment; then they commented. On the basis of both those things, I did what I did.

Mr. Tom Lukiwski: I think you can see, sir, why I'm having a little difficulty here. It seems you're saying one thing to us at committee, yet the next time you appear before the committee you are giving a different reason for your actions. It seems to me a little confusing, to say the least.

Mr. Bernard Shapiro: I'm sorry if I've confused you. I certainly hadn't intended to.

Mr. Tom Lukiwski: Do you believe that for someone in your position, sir, you as the commissioner should have some degree of political acumen, some knowledge of the political process—with both capital and small *p*?

Mr. Bernard Shapiro: Acumen of any kind is always an advantage.

The Acting Chair (Mr. David Tilson): The time has expired, sir.

Monsieur Laframboise.

[*Translation*]

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

I want to come back to the letter. Mr. Shapiro, you told me earlier that you were prepared to table the original letter. I would like that to be noted. You are going to table the original that contains the names, and which, based on what you've said, are the only difference between the two versions. That means that you decided to include the names in your report. At least that is what I am assuming, based on what Mr. Walsh has told us.

This is important because in the letter, you mention the name of staff members. You said earlier, if memory serves me, that you couldn't say what those individuals' specific duties were; but I presume that your report will mention names, titles and duties for each of these individuals. That will give us an opportunity to cross-check the information. It's not that we don't trust you, but we have to ensure that the results of the investigation are consistent with what we have understood. Do you have a deadline for producing that report? Have you already set the date when you will be making it public?

Mr. Bernard Shapiro: I hope to be able to distribute the report before June 23. I'm not sure, but that is my hope.

Mr. Mario Laframboise: If I understood you correctly, you have already sent certain parts of the report to the concerned individuals and they have provided you with their feedback. Has that been done? Have you given them a deadline?

Mr. Bernard Shapiro: Tomorrow will be the last day.

Mr. Mario Laframboise: So, they must provide you with their feedback no later than tomorrow.

You know that Mr. Walsh said it wasn't necessary for you to do that. Have you thought of what you will do in the future, or do you intend to continue to act along the same lines?

Mr. Bernard Shapiro: I am not sure yet. I have to see. I may, but I am not certain.

Mr. Mario Laframboise: You're not certain. That complicates matters for us somewhat, as Members of Parliament who have to monitor your activity, Mr. Shapiro. Finally, Canadians want to hear the truth and nothing but the truth. Then people can draw their own conclusions.

I want you to understand just how important your task is. I know that you are aware of that, but I would repeat that you have to stop being afraid. There is nothing worse than the fear of being afraid, particularly for an Ethics Commissioner. I know that these are your first reports, but it is important for us that you be the one to lay out the true facts. After that, you obviously have recommendations to make, and we will do what politicians do. You know, it's a little game that people like to play.

Of course, you have already told Ms. Sgro that you do not consider her to be responsible. Her staff is, but Ms. Sgro herself is not. That means we will never know whether the person told her it was one of her employees. That means that you already know the results of the investigation in that regard. She should never have been informed. Is that what you are telling us?

● (0950)

Mr. Bernard Shapiro: She has certain responsibilities, because she is responsible for her entire team.

Mr. Mario Laframboise: I see.

Thank you, Mr. Chairman.

[*English*]

The Acting Chair (Mr. David Tilson): I have just a word of caution about saying whether the commissioner is afraid or not afraid. It's almost a derogatory expression. I would rather the word "caution" be used, as opposed to "afraid".

I have an obligation as chair to protect the witnesses, and I just caution you on the use of that word.

Ms. Jennings.

Hon. Marlene Jennings: Mr. Shapiro, I'd like to know the exact date of the complaint that was filed against Ms. Sgro on the matter.

Mr. Bernard Shapiro: There were two. Perhaps we can just check.

Hon. Marlene Jennings: Then both dates—and while you're looking for them I'll explain my interest. Do you have them?

Mr. Bernard Shapiro: They were November 20 and December 14.

Hon. Marlene Jennings: Okay.

You receive a request for confidential advice on a specific matter. You begin to look into that in order to provide advice to the public office holder. Shortly thereafter you receive complaints that deal with the exact same matter. So obviously the investigation or review you're doing in order to be able to provide the confidential advice to the public office holder also intersects with the investigation on the complaint.

Because the public office holder asked for confidential advice prior to the actual complaints being laid, you are in a position, once you complete your investigation of both—because they're pretty much parallel, same investigation—to provide a confidential response to the public office holder, who then under the legislation has all rights to waive confidentiality and make public the confidential advice you've provided. That then pre-empts, to a certain degree—I won't say to which degree—your report on the complaints, your findings, and your conclusion.

I've become aware—because I don't think anyone thought about that when the legislation was actually drafted—that this could in fact happen. That then means that parliamentarians and this committee, through this committee initially, will have to rethink that piece and possibly bring amendments to the legislation so such an event doesn't happen again.

The Acting Chair (Mr. David Tilson): You have 15 seconds.

Hon. Marlene Jennings: I'll only speak for myself, but when I was involved in the review and debate of the draft legislation, in contemplating seeking advice, it was for something that had not yet occurred in order to guide my conduct; it was not seeking advice on past conduct.

You may wish to comment on that.

Mr. Bernard Shapiro: I'd like to make two comments. I may have misled you. November 20 and December 14 were the two dates on which Mrs. Ablonczy wrote to me. On the first date she specified certain allegations, and on the second date she specified additional ones. Those are the two that together launched the inquiry. The date of Mrs. Sgro's initial letter was November 15, so it was a little bit earlier.

But as I raised in this committee, either the last time or the time before, there is a problem in the legislation. There's a conflict between my role in providing confidential advice and my role in doing the inquiry, when those two things come together. Your clarification of what you had intended would, of course, eliminate such a conflict. But I did feel there was a conflict in my role in providing confidential advice on the very same issue I was engaged in with a public inquiry. I think that is a problem to consider for the future.

• (0955)

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

Mr. Shapiro, have you had any discussions with anyone outside of your office, anyone in government, or anyone who works for the government, other than those people in your office, related to the timing of the release of this report?

Mr. Bernard Shapiro: No.

Mr. Russ Hiebert: So you haven't spoken with anyone else, other than those advisers in your office, about when to release the report.

Has it ever been or is it your intention to delay your report until after Parliament rises for the summer recess?

Mr. Bernard Shapiro: No.

Mr. Russ Hiebert: Are you aware that such a delay would prevent the opposition from questioning the government on the issues raised in the report for at least several weeks after it has been released? I find that the timing of the release is very suspicious and very convenient for the Prime Minister.

Mr. Bernard Shapiro: That's not a matter I've considered in any way. Whether it's convenient or inconvenient is just a matter...of whether it's convenient or inconvenient. I understand what you're saying, but it has not entered into my calculations or actions.

Mr. Russ Hiebert: So when you state the report may be released around June 23 but you're not sure, it's a complete coincidence that happens to be the very last scheduled sitting day of the House of Commons.

Mr. Bernard Shapiro: It is a coincidence. I used that date simply because I've been encouraged by this committee over and over again to get it out as soon as I can. I'm trying to get it out as soon as I can. The date is entirely unrelated to these other issues.

Mr. Russ Hiebert: In earlier questioning from Mr. Laframboise, you stated that the actions of the chief of staff were not relevant.

Do you understand the concept of ministerial accountability? How can you provide exoneration to a minister when her own senior staff's actions have placed her in a conflict of interest?

Mr. Bernard Shapiro: You're making several judgments that I think are inappropriate. I have not provided exoneration for the minister, from my point of view.

Mr. Russ Hiebert: That is the conclusion many have drawn from the letter that was released to the public several weeks ago.

Mr. Bernard Shapiro: That's a problem for the people who have drawn a conclusion, and not a problem for me.

Mr. Russ Hiebert: You felt no obligation to try to correct that confusion?

Mr. Bernard Shapiro: When I issue the report you'll read the report and make your own conclusions.

Mr. Russ Hiebert: So what is your concept of ministerial accountability?

Mr. Bernard Shapiro: First of all, I think it's important to say I have struggled a lot with the issue of ministerial responsibility, because I've tried to connect the theory and the actual practice. This will be discussed in the report itself. But in theory, of course, ministers are accountable for everything that happens inside their departments. The question is, what does accountability actually mean, in practice?

You could say, to take one extreme, that when something goes wrong the minister should resign, irrespective of what went wrong and who actually caused the thing to go wrong. One could say that, and people often do. The practice, however, has nothing to do with that. In practice, things go wrong a lot of times. In some cases ministers resign, and in other cases they don't. This depends on a whole variety of political issues—you talked about political acumen a few minutes ago—that are unrelated to the idea of ministerial accountability.

Presumably, as I said to Mr. Broadbent a little earlier, accountability means, at the very least, explaining what has happened, and taking steps to make sure, if it's inappropriate, it doesn't happen again. What it means beyond that is not at all clear, if I look at the actual practice at either the federal or provincial level, in either this country or others.

Mr. Russ Hiebert: So are you suggesting that if a minister—

The Acting Chair (Mr. David Tilson): I'm sorry, you'll have to wait for another round. Your time has expired.

Mr. Broadbent.

Hon. Ed Broadbent: Thank you, Mr. Chairman.

I'd like to get back to the June 23 question. You said the last person who is having a look at the text has to get the response back to you by tomorrow. So that would give you almost two weeks until June 23. Could you explain why it might take more than this time to get a—

• (1000)

Mr. Bernard Shapiro: The only reason I can think of, quite frankly, is if I get some comment about factual error that really drives me crazy and really changes the framework in which I've cast this whole operation. I don't think that's likely, but you never can tell until you receive it.

Hon. Ed Broadbent: As I recall from your earlier comments today, so far you haven't got comments that have led you to need to make any changes. You have one more person responding. So unless this person comes up with a major factual error or contends there's a factual error that you end up agreeing with that might influence your subsequent judgment and you'd have to recast the report in some way—which, as you say, would seem quite unlikely—then we could reasonably expect the report would be finished by June 23.

Mr. Bernard Shapiro: That's correct.

Hon. Ed Broadbent: Okay.

To go back to the person who made the decision about the work permit, do you know if that person, after the incident became publicized, remained in his or her position?

Mr. Bernard Shapiro: I don't know.

Hon. Ed Broadbent: Well, by the time your inquiry got around to determining who this person was, that was some time, obviously, after the decision and also some time after the issue broke out publicly.

I'm looking at the time period between when it broke out and when you interviewed this person, presumably. Had that person remained on the job?

Mr. Bernard Shapiro: That person had not remained in that job. That person was working elsewhere in government.

Hon. Ed Broadbent: By the time you interviewed that person?

Mr. Bernard Shapiro: That's correct.

Hon. Ed Broadbent: So it's reasonable to infer that this person had been moved out of the—

Mr. Bernard Shapiro: Whether she'd been moved or she decided to move herself, or how that worked out, I don't really know.

Hon. Ed Broadbent: So we know it's a "she". So she, by the time you interviewed her, no longer had that job, and she was working elsewhere in government. Can you tell me at what level in government?

Mr. Bernard Shapiro: No.

Hon. Ed Broadbent: You can't tell me that. I'm not going to ask you if it was a senior position, I can tell you that.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Mr. Chairman, on a point of order, I know there is a little bit of Sherlock Holmes in all of us here—

Hon. Ed Broadbent: Speak for yourself.

Mr. Derek Lee: —but my point of order is this—

The Acting Chair (Mr. David Tilson): We now know it's a woman, it appears.

Mr. Derek Lee: My point of order is this—

Hon. Ed Broadbent: Are you going to challenge that fact, Derek?

Mr. Derek Lee: The matters lying behind Minister Sgro's personal request for advice remain confidential except to the extent that she has made a disclosure in making Mr. Shapiro's letter public. The matters related to the complaint made by one of our colleagues are currently the subject of an investigation or review by the Ethics Commissioner, and those matters are not to be talked about publicly until he makes his report.

I find that Mr. Broadbent is moving towards inquiring into the subject matter of Mr. Shapiro's review of these matters, and under the legislation, we should not go there. I realize there is not an absolute prohibition, but we seem to be nibbling around the edge. I'm just raising that as a point of order, because if it does pierce this confidentiality and wide berth that we've given to our commissioner for these purposes, then I don't think we should do that.

Hon. Ed Broadbent: Mr. Chairman, will you take Dr. Watson's time and allow extra time?

The Acting Chair (Mr. David Tilson): Well, I'll tell you, Mr. Broadbent, your three minutes were over, and just for the future, I think Mr.—

Hon. Ed Broadbent: Did he make it over?

The Acting Chair (Mr. David Tilson): No, you did it all by yourself, sir.

I will admit, it's piquing my interest, but I think the member is correct, that you are going a bit beyond into an area you shouldn't, perhaps.

Mr. Lukiwski.

• (1005)

Mr. Tom Lukiwski: Thank you, Mr. Chair.

I just want to go back to my earlier line of questioning. My last question to you, sir, was whether you think it would be important to possess, in your position, some level of political acumen, and I think you responded that any skill set would be valuable.

In your own opinion, sir, do you think you possess some political acumen? In other words, do you understand the political process?

Mr. Bernard Shapiro: I'll leave that to somebody else to judge, not me.

Mr. Tom Lukiwski: So you don't think it's relevant that you have the knowledge—

Mr. Bernard Shapiro: I didn't say it wasn't relevant. I said that's for someone else to judge. You don't judge yourself on those grounds.

Mr. Tom Lukiwski: I'm just asking for your opinion, sir.

Mr. Bernard Shapiro: I don't ask myself those kinds of questions.

Mr. Tom Lukiwski: I'm asking the question, sir.

Mr. Bernard Shapiro: I know you're asking the question. I've given you my response. That is for someone else to judge my capacity.

Mr. Tom Lukiwski: All right, let me phrase it this way, sir. Do you acknowledge there is a distinction between senior and junior staff? You understand the difference between junior and senior in a minister's office?

Mr. Bernard Shapiro: Yes.

Mr. Tom Lukiwski: You understand that senior staff, particularly chiefs of staff, are the most trusted advisers, the ones who usually have the closest relationship with the minister?

Mr. Bernard Shapiro: Yes.

Mr. Tom Lukiwski: You mentioned before, in reference to Mr. Laframboise's line of questioning, that the actions of the chief of staff were not relevant in the case of Ms. Sgro, but let me ask you this. My understanding is that your position does not allow you to investigate the actions of a staff member, only that of a minister. Is that correct, sir?

Mr. Bernard Shapiro: That is correct in the sense that I'm able to accept only an inquiry that's limited in terms of the specific objects, in the sense of whether it's a minister or a parliamentary secretary or a member of the House of Commons. In the context of the actual inquiry itself, of course, other people are going to be involved because it's necessary in order to establish the facts and understand the situation. So for example, in any report that I might issue, in the Sgro case or any other, there obviously are going to be...not obviously, there will be names of people who are not themselves objects of the inquiry, but whose actions appear to be crucial to understanding the nature of the event and what one should do about it.

Mr. Tom Lukiwski: I guess what I'm getting at here is that we talked a lot about ministerial accountability and the relationship between particularly a chief of staff and a minister. As we all know, particularly those who have chiefs of staff, that relationship is quite close, and the minister should be accountable, in almost all cases, for the actions of his or her chief of staff. If there are actions by a chief of staff—and we may have examples, sir, or your office may have examples in the near future—that are under question, if you are unable to investigate the actions of the chief of staff, would it be appropriate then, sir, to extend that to the actions of the minister himself or herself?

Mr. Bernard Shapiro: That certainly is a possibility, but the complaint would have to be laid against the minister responsible. In either case, the actions of the chief of staff or other related people would emerge in the process of the inquiry, for sure.

Now, I did not say in response to Mr. Broadbent that what a chief of staff did or didn't do was irrelevant in the Sgro case. I don't believe that's the case. But in any one particular aspect, which is what I was talking about, it may be that wasn't the person involved.

Mr. Tom Lukiwski: Then again, I just want to see if I can nail this down, sir, because—

The Acting Chair (Mr. David Tilson): You're pretty well out of time.

Mr. Tom Lukiwski: Do you believe that the minister is responsible for the actions of his or her chief of staff?

Mr. Bernard Shapiro: I believe the minister is responsible for everything that goes on in—

Mr. Tom Lukiwski: And accountable?

Mr. Bernard Shapiro: Yes.

The Acting Chair (Mr. David Tilson): Ms. Jennings.

Hon. Marlene Jennings: I'd like to ask your advice. And if you'd like to reflect on it and perhaps seek advice elsewhere before coming back with an answer, that's fine; you can do it in writing, through the chair.

As I mentioned before, speaking only for myself, on the section that dealt with parliamentarians or public office holders seeking

advice from the Ethics Commissioner, I contemplated that for a potential future action or conduct, not for a past one. But I realize it's possible that someone could do something and then say, "Oh, maybe that wasn't quite right", and seek advice retroactively.

Once the complaint part comes into it, would you be in agreement that, potentially, if you received a request for advice, confidential advice, on a matter that already took place, and you subsequently received a complaint on that same matter, which already took place, the legislation might in that case wish to stipulate that your response, your confidential advice, would not be released to the person who sought it until your report had been tabled and made public—because it's the same matter—and in so doing would allow for your findings and your conclusion on the matter, or the subject of the complaint, to remain confidential until you had entirely disposed of it?

• (1010)

Mr. Bernard Shapiro: I'll certainly have to think about it further, but there are two things here. One, that's something I could do in future irrespective of the legislation; you could always do that. But the advantage of having some sort of legislative or regulated arrangement is that you wouldn't be seen to be constantly postponing for no reason at all. There is some desire to have timely responses, not just responses. So I think that might be useful.

When we're thinking about that—and we are going to be thinking about amendments to the legislation, if you recall from the end of the meeting a week ago today—we would want to be thinking about the more general issue of the conflict that might arise between providing confidential advice and doing the inquiries. I think it probably could be fairly easily accomplished.

The Acting Chair (Mr. David Tilson): Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you, Mr. Chairman. I promise not to make any further reference to « the fear of being afraid ».

I'd say you felt a need to be reassured, if I can use that term. That's why you asked for legal opinions. Have you been reassured? If not, I would like you to write to us telling us what should be changed. Otherwise, things will become intolerable. We won't be able to keep on asking for legal opinions and all of that. You have to feel reassured. If there is something to be done, you have to tell us or write to us about it. Mr. Walsh has said that it may be necessary to make legislative changes, but that has to come from you. If Mr. Walsh asks us to change the legislation and you don't agree, then I have a problem. It is absolutely imperative that you see us as allies. You report to our Committee and we want to help you. We want you to be reassured. Are there other things we can do to improve the process in the future, or are you ready to make recommendations to us?

Mr. Bernard Shapiro: I will be making recommendations in my annual report in the course of the summer. For now, I am reassured. I have no specific problem. We are doing everything we have to do, and I hope that we will be able to work together with Mr. Walsh to make recommendations; not one after the other, but together, because it's important that we work that way.

Mr. Mario Laframboise: That means we can expect the report on Ms. Sgro to be complete. You feel reassured in terms of what you will be tabling.

Mr. Bernard Shapiro: Yes.

Mr. Mario Laframboise: Great. Thank you very much.

[*English*]

The Acting Chair (Mr. David Tilson): Mr. Epp, go ahead, please.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): Thank you very much, Dr. Shapiro.

I have some questions with respect to the whole process here. Just to make sure that my facts are right, it was in late November that you received complaints that required investigation. It was just after you received a letter of request from Ms. Sgro for confidential advice. I understand the letter that she chose to table in Parliament was the one that you wrote to her in response to her request for confidential advice.

In March you were reported to have said that the report you are to give on the second of the requests would be tabled soon. And now it's another three months later—a total of seven months, since those requests have come in—and we still don't have the report. So I wonder whether you would be willing to give this committee a pretty firm date as to when that report will be issued and will be made available to the minister, to the person making the complaint, and to the public.

• (1015)

Mr. Bernard Shapiro: I'm not going to give you a precise date because I don't know on which date it's going to be produced. I've been quite careful to avoid that because I can't control it easily in advance. I think my response to Mr. Broadbent a few minutes ago is about as far as I'm willing to go, and that was that unless something unforeseen happens in receiving the last comments from various people, I expect it will be before the 23rd of June. That's all I'm prepared to say.

Mr. Ken Epp: Can you share with this committee your opinion about why it is taking so long? Where's the bottleneck?

Mr. Bernard Shapiro: I think it's taken a long time for several reasons, and I'm not going to list them in order of importance; that's again for someone else to say.

I think, first of all, it was the first one, and I probably took a lot more care and was a lot more deliberate about it than I'll have to be in the future, since I'll learn from experience.

I think, secondly, there were 13 allegations involved—not one—so there was a lot more material to cover.

Thirdly, there was enormous disagreement about the facts. So to try to check and re-check and go back and forth and try to establish what the facts actually were took a lot longer than I suspected it would, and I've tried to review the investigations done by other people like myself in the provinces. That seems to be the thing that most determines the length of an investigation: how much disagreement there is about what actually happened.

I think, fourthly, we came quite late to a particular source of evidence that turned out to be absolutely crucial, so quite late in the game there was this enormous amount of material to review and to cover in order to make sure that we had established the facts to the best of our ability.

So those are the things that come together. The usual kinds of issues about translation, printing, etc. are not delaying issues because those were well foreseen and are not problems.

The Acting Chair (Mr. David Tilson): Mr. Broadbent, go ahead, please.

Hon. Ed Broadbent: Your primary role as Ethics Commissioner as laid out—and I want to quote that—is “to administer any ethical principles, rules, or obligations established by the Prime Minister for public office holders”. That's in the Parliament of Canada Act.

Then when it comes to the definition of public office holders, it is defined as “a person, other than a public servant, who works on behalf of a minister of the Crown or a minister of stat”.

Can you tell us about the person who was involved in giving this advice to the minister? Under this definition of public office holder, does she fit in that category?

Mr. Bernard Shapiro: Perhaps I'll use the word “he”.

Hon. Ed Broadbent: He does. He or she?

Mr. Bernard Shapiro: Right.

Hon. Ed Broadbent: I don't want to be facetious on the point. A minute ago you did indicate “she”.

Mr. Bernard Shapiro: No, I understand. I get it.

Hon. Ed Broadbent: All right. So she does fit into that category?

Mr. Bernard Shapiro: Yes, he or she does.

Hon. Ed Broadbent: He or she does fit in the category.

That was a public office holder. Then it is appropriate for you to make judgment on the ethical behaviour of that person?

Mr. Bernard Shapiro: If I have judgments to make, yes.

Hon. Ed Broadbent: If you have judgments to make?

Mr. Bernard Shapiro: I don't really want to go into talking about what's going to be in the report. It really isn't helpful to either the committee or to the report itself. I don't like to be difficult, because I like to—

Hon. Ed Broadbent: No, and I don't want to be difficult, but I do want to find out how you see your mandate and how it would apply to a person if he or she were in this circumstance, and therefore I think it is a reasonable question to ask.

In your report, do you pass judgment on the ethical behaviour of the person in question? I'm not asking what you concluded; I'm just asking if you look at the behaviour of this person from the point of view of ethical requirements laid out in the act.

• (1020)

Mr. Bernard Shapiro: Yes.

Hon. Ed Broadbent: You do. So you do consider that.

I think I've gone about as far as we can go on this issue today. I look forward to reading your report.

The Acting Chair (Mr. David Tilson): I have one more question. I just want to be clear on this issue of people who work for ministers. I think what the committee is interested in, in this whole issue, is the process the legislation puts forward and the process you're trying to establish. Just so I'm clear, when you're asked to investigate a minister, at the same time are you able to investigate that minister's staff?

Mr. Bernard Shapiro: I'm not sure how to answer the question. I can tell you what I've done, and perhaps that will be an answer to the question. I want to think carefully. In this case—just to use this as an example—the allegation was against Ms. Sgro. In the process I developed, I looked at the behaviour and the actions of a lot of people other than Ms. Sgro—40 or 50 people gave testimony under oath—and I certainly think the behaviour of those people became, in a sense, a part of the investigation.

I don't know whether that's really an answer to your question.

The Acting Chair (Mr. David Tilson): The reason I ask the question is that in your letter of May 2 to Ms. Sgro, which was questioned by Mr. Broadbent initially, you say, "In this case it appears that you have acted appropriately, but that your staff did not." Looking at what you said in that letter, what you said in testimony at different times, and looking at section 72.06 paragraph (b) of the Parliament of Canada Act, which says that for the purposes of sections so and so, "public office holder' means...a person, other than a public servant, who works on behalf of a minister of the Crown, or a minister of state"....

The reason I'm asking that question is... When you're investigating a particular minister—and I'm generalizing at this point, because it may happen in the future—at the same time you will look at that minister's staff?

Mr. Bernard Shapiro: That's correct.

The Acting Chair (Mr. David Tilson): Mr. Hiebert.

Mr. Russ Hiebert: To follow this line of questioning, you agree and have stated, actually, that a minister is responsible and can be held accountable for the actions of their staff or for what goes in their office. Is that correct?

Mr. Bernard Shapiro: Correct.

Mr. Russ Hiebert: We've just had the chair comment on the broader definition of who's responsible under the rules of Parliament.

My question to you again relates to process. Would you agree that if a minister were not held responsible for the actions of their staff—perhaps if they were deliberately not informed about actions of their staff—it would be very easy for a staff person to keep a minister in the dark and go ahead with actions the minister might or might not want to happen; but if they were to be found out to be happening and the minister wasn't held responsible for the actions of that staff, then all kinds of things could happen and nobody would be held responsible?

Mr. Bernard Shapiro: I would agree.

Mr. Russ Hiebert: So it's imperative, in fact, that senior staff in a minister's office be acknowledged as having a close relationship with that minister, and that their actions be considered part and parcel of the responsibility of the minister in question.

Mr. Bernard Shapiro: The difference between senior and junior is not relevant to the conceptual point, but nevertheless I think the general point is correct.

Mr. Russ Hiebert: Okay. It's been widely reported in the media that the chief of staff to a particular minister has tremendous pull or influence within your office. In fact, we're talking about the chief of staff to the Prime Minister. This person has asserted that if he was to request a report, an interim report, a special request from his office to your office.... What is your response to these sorts of allegations or suggestions?

• (1025)

Mr. Bernard Shapiro: I would say that he hasn't tried, and I think he's glad he hasn't. I would not respond to that at all. I have no interest in what his views are about these kinds of things.

Mr. Russ Hiebert: So you would suggest that this hasn't happened, and that the perception placed in front of the Canadian public by the media that the Prime Minister's Office has tremendous influence throughout the arms of government, including your office, is not the case.

Mr. Bernard Shapiro: No, it's not the case.

Mr. Russ Hiebert: Were you affronted or surprised at those assertions?

Mr. Bernard Shapiro: I was affronted. Nothing surprises me any longer.

Mr. Russ Hiebert: Okay, I take that in consideration.

I wonder if I could ask you to elaborate. I know there is a bit of a conflict. If the Prime Minister were to ask you for confidential advice, you would have an obligation to provide it to him. What is your relationship with the Prime Minister's Office?

Mr. Bernard Shapiro: I don't really think I have one. That is, we did have discussions with the Prime Minister's Office early last summer when he was contemplating changes in the code and wanted to know what my response would be to them, but that seems to be the last time—

Mr. Russ Hiebert: That's the last time you spoke with the Prime Minister?

Mr. Bernard Shapiro: I'm trying to think if I spoke to him at that time. I don't remember. But I certainly haven't spoken to him since.

Mr. Russ Hiebert: And you've had no other contact with his office, since last summer?

Mr. Bernard Shapiro: Right. I've sent a couple of letters.

Mr. Russ Hiebert: And has he replied?

Mr. Bernard Shapiro: He has replied through the Clerk of the Privy Council, not directly.

Mr. Russ Hiebert: But the chief of staff, other senior staff, or other members of his office have not had contact with you?

Mr. Bernard Shapiro: No, not at all.

The Acting Chair (Mr. David Tilson): Mr. Lee.

Mr. Derek Lee: I have a question dealing with a point of order. After Mr. Shapiro makes his report on his current review in relation to Minister Sgro, I'm assuming that report would be referred to the Standing Committee on Procedure and House Affairs, and that this committee would not have any jurisdiction to deal with it. Is that correct? Right now we're talking about the thing in concept, and we're not actually looking at a report at all. But after it's reported, my understanding is that we don't have any mandate to look at the report. Is that correct, Mr. Chairman?

The Acting Chair (Mr. David Tilson): My understanding is that no one has a mandate to look at the report. I suppose it's free for a committee to ask Mr. Shapiro if he wants to comment on it. But my belief is that no one has a mandate.

Mr. Derek Lee: I believe the Standing Committee on Procedure and House Affairs has a mandate, but I may be wrong. Could I ask the clerk about that?

The Acting Chair (Mr. David Tilson): Sure.

Mr. Clerk.

Bernard Fournier (The Clerk of the Committee): When we discussed the mandate of this committee in relation to the Ethics Commissioner, we had a chart, which I don't have with me. That chart indicated that reports from the Ethics Commissioner concerning public office holders are not tabled in the House; therefore, they are not referred to any committee.

Mr. Derek Lee: Thank you, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Did you have a comment, Commissioner?

Mr. Bernard Shapiro: I was going to make exactly the same comment. There is a difference here between the public office holders code and the code for members of the House. If there's an allegation against a member of the House, I think the reports get tabled in the House, and might show up in this committee.

The Acting Chair (Mr. David Tilson): As I understand it, the distinction is that the act talks about the report going to the public, as opposed to the House. So that answers your question.

Hon. Ed Broadbent: Can I speak on the same point of order, for clarification?

Any committee can take on what it wants to do, can't it? If we decided, for example, to look at or consider Mr. Shapiro's report, it's my understanding of the rules that we can do so, if we wish. We could follow up on that and ask Mr. Shapiro to come to discuss his report.

The Acting Chair (Mr. David Tilson): I believe so.

Mr. Lee's comment, of course, was what our mandate was, and that was the answer. What's going on today isn't part of our mandate. We're talking about a letter. That's not part of our mandate either.

•(1030)

Hon. Ed Broadbent: Is that a yes answer to my question?

The Acting Chair (Mr. David Tilson): My belief is the answer to that is yes.

Hon. Ed Broadbent: Thank you.

The Acting Chair (Mr. David Tilson): Ms. Jennings.

Hon. Marlene Jennings: Just to provide a little clarification, subsection 72.13(1) says:

Within three months after the end of each fiscal year, the Ethics Commissioner...
(b) shall submit a report on his or her activities under sections 72.07 and 72.08 for that year to the Speaker of the Senate and the Speaker of the House of Commons, who shall each table the report in the House over which he or she presides.

Section 72.07 describes the mandate of the Ethics Commissioner in relation to public office holders, including:

(c) to provide confidential advice to a public office holder with respect to the application to him or her of those ethical principles, rules or obligations.

So in fact, in a general sense, without revealing the confidential advice you provided to a public officer holder, or to several, the annual report that you have to make has to describe your activities undertaken within your mandate under section 72.07, in which case we would deal with it here. Our mandate and the Ethics Commissioner's mandate would not permit us to divulge confidential information, but you would be able to describe in a general sense your activities under section 72.07.

The Acting Chair (Mr. David Tilson): Your conclusion, Mr. Lukiwski, please.

Mr. Tom Lukiwski: Thank you.

Dr. Shapiro, you said in your earlier testimony today with respect to giving excerpts of your final report to key witnesses for their examination and comment, if any, that there is one witness—if I can call that person such—who is yet to report, and that the seventh day of the seven-day period is tomorrow. I believe that when you put out your news release of May 11, you said that your final report was ready. I would assume that if there is no conflict with the response of the fourth witness, you would be willing or able to file that final report by as early as Monday, since that report, according to your own press release, is ready.

Mr. Bernard Shapiro: No. It will have to be printed. The report itself is ready and has been translated, but it would have to be printed, which might be quite soon.

Mr. Tom Lukiwski: Again, I know this is a question that you're probably getting sick of, but do you anticipate how long the printing will take? Is the report ready in both official languages right now?

Mr. Bernard Shapiro: Yes.

Mr. Tom Lukiwski: So it's just a matter of printing?

Mr. Bernard Shapiro: Yes. There may be some formatting along with the printing, or maybe some little things, but they can't be much.

Mr. Tom Lukiwski: I'm not sure how lengthy your report is, but having gone through this process on a number of occasions, my assumption is that it does not take that long to do. So if there are no changes to your final report as a result of the testimony of the last witness, I would anticipate release of that final report by at least the middle to the latter part of next week.

Mr. Bernard Shapiro: We will see.

Mr. Tom Lukiwski: Who is your printer, sir?

Mr. Bernard Shapiro: I don't know.

Mr. Tom Lukiwski: I'm quite serious.

Mr. Bernard Shapiro: I understand the question, and I don't regard it as unreasonable. I just don't answer questions like that when I can't be certain, because at the next meeting, we'll then hear, you said...and why didn't you...? I don't want to get into that kind of thing.

Mr. Tom Lukiwski: Can I at least ask if you're putting an express request to the printer?

Mr. Bernard Shapiro: We'll certainly do it as quickly as we can. I don't like having to explain why it's not out.

Mr. Tom Lukiwski: But is it fair to say, then, that if there's no alteration to your final report, it's going to the printer no later than Monday?

Mr. Bernard Shapiro: I have no comment to make on the matter; I will do it as soon as possible.

Mr. Tom Lukiwski: Again, I don't want to belabour this point, but I'm going to.

Some hon. members: Oh, oh!

Mr. Tom Lukiwski: I'm just trying to get a sense. If there are no changes to your report and the report is ready, one would think you would be able to deliver it to the printer by Monday. Is that reasonable?

• (1035)

The Acting Chair (Mr. David Tilson): I think he's answered the question.

Mr. Epp.

Mr. Ken Epp: Thank you very much.

I would just like to follow up a little bit on the process you go through when you gather data. You've now indicated that you have given some information to the witnesses and that you want them to respond. For my clarification, is that just for their responses on matters of fact?

Mr. Bernard Shapiro: That is correct.

Mr. Ken Epp: Is it because you think that perhaps when they gave you information and testified, you may have misrecorded it, or are you giving them a chance to change their testimony?

Mr. Bernard Shapiro: No, I'm not going to do that.

There are a number of cases, let's say, where facts come to light after they've given testimony, and we want to make sure they're correct.

Mr. Ken Epp: Okay, so in essence, you're giving them a chance to add to their testimony, if there's new information.

Mr. Bernard Shapiro: To correct any misinformation that I may have.

Mr. Ken Epp: Okay.

If that's the case, are you assuring us that you are in no way communicating with Ms. Sgro to see whether she has anything to say about the final wording—or is she one of them?

Mr. Bernard Shapiro: She is one of them. Like the others, she has not received the final report, but she is one of the people about whom critical comments are made, and therefore she had the same opportunity as the other two or three.

Mr. Ken Epp: Has she responded already that everything is okay?

Mr. Bernard Shapiro: I'm not going to make any comment on that.

Mr. Ken Epp: If she were to come back and say that such and such is not okay, would you then change your report?

Mr. Bernard Shapiro: Not unless she had a fact I was convinced was right, as opposed to one I had, then I might. But I'd have to see.

Mr. Ken Epp: Part of your mandate is to provide confidential information to the Prime Minister. Now, I presume the Prime Minister has not requested information on this case. However, the investigation is under way and it has to do with a minister of the crown.

Have you given any information directly to the Prime Minister confidentially? I can't ask you what it is, otherwise the word "confidentially" wouldn't be meaningful, but have you given information to the Prime Minister regarding this particular investigation or case, or its presumed outcome?

Mr. Bernard Shapiro: No.

Mr. Ken Epp: You haven't?

Mr. Bernard Shapiro: No.

Mr. Ken Epp: Is that a breach of your responsibility to provide that information to the Prime Minister, or do you do that only on request?

Mr. Bernard Shapiro: The Prime Minister hasn't asked for any confidential information, and I haven't given him any.

Mr. Ken Epp: Okay.

Thank you, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: I have just one question that is also addressed to my colleagues. If you were asked to appear before the Committee within seven working days of having tabled your report, even it were in the summer, would you agree to do that? Would that ruin your summer?

Mr. Bernard Shapiro: No. I imagine we're talking about my annual report.

Mr. Mario Laframboise: No, I'm talking about the report on Ms. Sgro.

Mr. Bernard Shapiro: As soon as possible.

Mr. Mario Laframboise: I want to know whether it would be possible for you to appear before the Committee within seven days of your having released your report.

Mr. Bernard Shapiro: Yes, it is.

[English]

The Acting Chair (Mr. David Tilson): Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

Mr. Shapiro, we've had a lengthy discussion relating to the process with which you make decisions. I get the impression from your testimony that sometimes you go with your gut; sometimes you rely on or defer to legal counsel, who may or may not have a connection to the Liberal Party; and sometimes you're just not sure what to do, so you do what you think is best at the moment and then, as we've seen in this committee, revise it later on, because of additional information or additional counsel.

Would that be a fair description of your actions so far?

Mr. Bernard Shapiro: I think so.

• (1040)

Mr. Russ Hiebert: Okay.

One of the issues that came up at this committee—several months ago, I suspect, at this point—is the process you used in making some other decisions. I want to stay on that topic, on the process of decision-making. I'm now referring to the decision you made to excuse two former cabinet ministers from complying with a law requiring a cooling-off period before they were allowed to engage in lobbying activities.

At the time, you did not recall the reasons for this—

The Acting Chair (Mr. David Tilson): Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): On a point of order, what does this have to do with...? We're discussing the tabled report with regard to Ms. Sgro. Could my honourable colleague perhaps make some tie-in with that?

Mr. Russ Hiebert: Absolutely, Mr. Powers. As I prefaced in my opening remarks, I'm talking about process, and about how he makes decisions. If you'd let me finish my questions, perhaps you could see the relevance.

Mr. Russ Powers: Probably not.

Mr. Russ Hiebert: I was asking you, Mr. Shapiro, about the decision you made to excuse two former cabinet ministers from a law requiring a cooling-off period before engaging in lobbying activities. At the time you were before this committee, you stated that you could not recall the reasons for this decision. Again, we have another example of a process in place where sometimes you know why and sometimes you're not sure what to go with.

I'm asking you at this point if you've learned anything from that experience, and if you could now tell us your explanations for allowing this exemption.

Mr. Bernard Shapiro: I guess the first thing I would say is that you learn something from every experience. In that particular case—I don't have the material with me right now, but I'd be glad to provide it at another meeting of the committee—I do have documented exactly... You know, having made a choice, you do document how it is you made it, what it is you decided, and why, and stuff like that, just so that you can refer to it later on.

So I have that information relative to those cases, and I'd be glad to share it with the committee.

Mr. Russ Hiebert: Do you recall at this point what your decision was, and why?

Mr. Bernard Shapiro: No. I recall it in general terms, but I don't want to get into something where I'm not clear about it or I can't provide the details.

Mr. Russ Hiebert: Okay.

In a similar matter, you made a decision to not investigate—again, I think a hunch—a member of the Transportation Safety Board, a Mr. Walsh, who attended a Liberal caucus Christmas party.

Perhaps you could provide us with an explanation of the process you used in coming to that decision.

Mr. Bernard Shapiro: I do remember that, in the sense that our advice was asked in advance of that particular event. We advised against doing what Mr. Walsh eventually did. But I've not pursued it for another reason altogether, and it doesn't relate to Mr. Walsh or any particular group; it's that I've become convinced—this is something I hope to be in touch with the Prime Minister's Office about, and fairly soon—that the language of the code in this area that says you can't participate in partisan political activities is so vague as to be not enforceable.

What I've done since then is prepare new suggestions on how we could clarify that so we can give better advice and better guidance to the members.

Mr. Russ Hiebert: Do I have more time?

The Acting Chair (Mr. David Tilson): It appears I have Mr. Lukiwski on the list. We're now on the fifth round.

Mr. Tom Lukiwski: Thank you. Time goes by so quickly.

The Acting Chair (Mr. David Tilson): It's going to run out pretty soon.

Mr. Tom Lukiwski: I just want to make a comment before my last question, and it's in reference, sir, to when I asked you about whether or not you believed you had any political acumen or not, and you refused to answer. Well, based on your non-answers from my last questioning, I can assure you, sir, you do have acumen in spades.

Again, a little earlier you stated that you believe the minister is accountable and responsible for the actions of his or her chief of staff. However, because of the parameters and restrictions of your office, you couldn't really investigate a complaint lodged against a chief of staff. Is that correct?

Mr. Bernard Shapiro: That is my understanding. I may be wrong, but that is my understanding.

Mr. Tom Lukiwski: That's your understanding. Okay. Let's go on that for now.

I have a follow-up question, sir. Would it be fair to say—you may want to think about this—that if this committee or any other individual had a complaint against a chief of staff, and you were unable to investigate because of the fact that they were not a minister, you would in fact agree to investigate the minister proper because of the actions of his or her chief of staff, if a complaint was lodged against the minister?

Mr. Bernard Shapiro: Without prejudice to the legislation or the actual law in the question, because I'm not sure about that, I would say it would make sense to do either one or the other—that is, it would be hard to say you could do neither. That would be not sensible.

• (1045)

Mr. Tom Lukiwski: Again, I'm just trying to interpret your answer. You're basically saying that you—

Mr. Bernard Shapiro: If you weren't able to investigate a chief of staff, let's say, then you ought to be able to investigate the minister to whom that chief of staff reports.

Mr. Tom Lukiwski: That is your considered opinion?

Mr. Bernard Shapiro: That's assuming that the law permits. That's what I'm not sure about; that's the only.... But if you're just asking about the principle, that's what I believe.

Mr. Tom Lukiwski: Thank you for that.

The Acting Chair (Mr. David Tilson): There are three more members of the committee, sir, who wish to ask you questions. We are going to run out of time. Before we do, I have a quick question as chair with respect to an unrelated matter.

This past Tuesday, the clerk sent to you, on the direction of the committee, asking for “all legal opinions received for the legality of issuing reports regarding the conflict of sections 72.1(5) and 72.08 (4) of the Parliament of Canada Act. These opinions are to be given to the Clerk of this Committee for distribution to the Members.”

Can I ask when those opinions will be available?

Mr. Bernard Shapiro: I'll respond the way I did—to Ms. Jennings, I think it was—a little earlier. That is, I'm taking the matter under advisement. I want to think carefully about what I do on this occasion, because it will be a precedent for a future occasion. I have to think about the lawyer-client relationship; I have to think about the ease with which such opinions can be sought, if they are to become public, for example, and things of that sort. I don't foresee, at the moment, any particular barrier in front of me, but I am seeking advice on the matter, and I'll get back to you as soon as I can.

The Acting Chair (Mr. David Tilson): Okay, sir. It's a direction given to me as the chair to ask that information of you. I trust you will provide that information to us as soon as possible.

I have Ms. Jennings.

Hon. Marlene Jennings: Thank you, Chair.

Given some of the issues I raised, Commissioner, you have stated that on some of them you're already reflecting and seeking expert advice and on others you will seek advice and try to make a determination about particular amendments that might be required to the legislation to clarify some issues. One in particular is the disposition of your confidential advice to a public office holder on a

specific matter that subsequently has become the object of a specific complaint under the code.

Would you agree that in such a situation it would be preferable that your confidential advice to the public office holder not be provided to the public office holder until you've disposed of the complaint that deals with the same matter?

Mr. Bernard Shapiro: I think so. I think I would agree. I really have to think about it carefully, because there is a question of timeliness that gets involved, but putting that aside for the moment, I would agree.

The Acting Chair (Mr. David Tilson): I'm sorry, we're literally running out of time here.

I have Mr. Hiebert and then I have Mr. Broadbent. I'm going to give you each two minutes, so they had better be quick.

You're first, Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

My questions relate to the very first questions I asked at the beginning of this session, relating to the letter that was released to the public by Ms. Sgro. The letter wasn't complete, in the sense that it had been altered by your office before it was released.

My question to you is, do you think there was an ethical breach in failing to advise Parliament that you had in fact altered that letter?

Mr. Bernard Shapiro: I hadn't thought of it that way, no, or I wouldn't have done it.

Mr. Russ Hiebert: You do understand that you are an officer of Parliament and that your first obligation is to us, don't you? I found it surprising, in fact, that you chose not to disclose the fact that you had changed the letter. It came out as a bit of a conspiracy later on. I would hope it would not set a precedent for future activities of your office, to be releasing some things and not commenting on how they had been altered.

Would it not have been appropriate for you to have made mention of that in your news release of May 11? Would that not have been a prudent thing to do, to mention that you had altered it?

• (1050)

Mr. Bernard Shapiro: Sure.

Mr. Russ Hiebert: So perhaps some reflection—

Mr. Bernard Shapiro: I agree. I think you're correct.

Mr. Russ Hiebert: So you admit making a mistake, and perhaps this won't happen again.

Mr. Bernard Shapiro: Well, I hope not.

Mr. Russ Hiebert: I'm glad to see that we're learning from this experience, because I find it particularly frustrating when we have differing reports coming from the media. We seem to be getting stuff at the last minute, as we did again today.

This issue has been on the table for nearly a month now. This morning, minutes before we're asked to question you, we suddenly get a statement from you saying what happened. It would have been nice to have these comments well in advance.

I'm not sure if I have any more time. We have two colleagues acting as chair.

The Acting Chair (Mr. David Tilson): Those colleagues are correct.

Mr. Broadbent.

Hon. Ed Broadbent: Mr. Chairman, I only have one question.

Mr. Shapiro, I was quite surprised by your answer a minute ago in reference to whether chiefs of staff of ministers, including the Prime Minister, would be within your mandate. Earlier in this morning's hearing, I quoted from the act on the definition of a public office holder. It says that it's "a person, other than a public servant, who works on behalf of a minister of the Crown or a minister of state". That includes the chief of staff.

Mr. Bernard Shapiro: That's right, it does.

Hon. Ed Broadbent: If so, don't you then have a mandate to pass judgment on the ethical behaviour of a chief of staff?

Mr. Bernard Shapiro: Perhaps I'll explain it a little bit more. The question in my mind was that I didn't believe I could accept a request for an inquiry against a person who was a public office holder, other than the minister, the parliamentary secretary, and the minister of state.

I may be incorrect in this regard. That may have been wrong. In response to the question a few minutes ago, I said that I felt if one couldn't do that, one ought to be able to direct oneself to the minister.

Hon. Ed Broadbent: With due respect, we both acknowledge that we can all be fallible, but my interpretation of this is that you would be clearly wrong in what you've said. It says that a public office holder includes someone who "works on behalf of a minister of the Crown or a minister of state". Well, the chief of staff is certainly doing that.

Mr. Bernard Shapiro: You may be right. I will check again.

Hon. Ed Broadbent: Okay.

The Acting Chair (Mr. David Tilson): We appear to have—

Mr. Russ Hiebert: Could I ask one more?

The Acting Chair (Mr. David Tilson): Yes, Mr. Hiebert.

Mr. Russ Hiebert: I certainly have additional questions, and I'm sure my colleagues also have additional questions to ask on this issue. We're restrained from asking other questions that relate to the commissioner's office. I would ask the committee to request that he come back at the earliest opportunity to continue this discussion on a broader range of topics.

The Acting Chair (Mr. David Tilson): The chair, as always, is in the hands of the committee. We have a schedule set for the next number of weeks. But if the committee is in agreement with what you're asking, then I'll look for other comments.

Mr. Russ Hiebert: It may not take a full session.

The Acting Chair (Mr. David Tilson): Otherwise, you're in the minority.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise: Mr. Chairman, we can ask Mr. Shapiro to appear every single day until he releases his report, but the problem is that I am really anxious to see the report.

[*English*]

The Acting Chair (Mr. David Tilson): Mr. Broadbent.

Hon. Ed Broadbent: If I could say this to my Conservative colleague, it seems to me that the appropriate time would be when Mr. Shapiro's report comes down. We could make a collective decision now that at the next meeting of the committee, following that report, we could ask Mr. Shapiro to come to discuss the report and related questions.

That's a suggestion, Mr. Chair.

Mr. Russ Hiebert: Mr. Chair, is it such that if this report were to be released after the House has risen for the summer, we would reconvene at the first opportunity to discuss this report?

The Acting Chair (Mr. David Tilson): I'm in the hands of the committee.

Hon. Ed Broadbent: I say through you to Mr. Hiebert that maybe we don't need to jump off that bridge until we come to it. My expectation is that we're going to have this report soon, unless some grotesque factual error is brought before Mr. Shapiro.

If we act on the assumption that we're going to get this report before the House adjourns, we can act on the assumption that we will meet. If the report isn't in, then at the very next meeting of the committee, we could take up the question raised by Mr. Hiebert.

• (1055)

Mr. Russ Hiebert: But Mr. Chair, that might be next October.

Hon. Ed Broadbent: No, we meet next week.

The Acting Chair (Mr. David Tilson): There are two ways of doing this. One is we agree to set a date, and the other is it's at the call of the chair. A third is that four members of the committee can request a meeting.

The commissioner has indicated he is unable to give us a date for the release of his report. My suggestion, subject to the members' wishes, is we wait until that report has been released.

Mr. Russ Hiebert: Mr. Chair, with all due respect, I think it's fair for us to consider the fact that this report will not be released, if Mr. Shapiro's testimony is to be believed, until after the House has risen. So it's not inappropriate for us to consider the fact even now that we could have a sitting sometime immediately after the report is released, after the House has risen.

The Acting Chair (Mr. David Tilson): I've learned that anything is possible in this place.

It's been suggested, and I think it's a good suggestion, that perhaps a member could make a notice of motion to discuss this at the end of the next meeting, which would be a more appropriate time. We're really running out of time here, Mr. Hiebert. If we wish to pursue this matter further, someone give us a notice of motion and we'll discuss it at the end of our next meeting.

Commissioner, I want to thank you for coming.

Mr. Bernard Shapiro: Can I make just a brief comment? I'm glad to meet whenever it's convenient for the committee. I would hope that since you've encouraged me to give you as much information as possible as soon as possible, you can tell me what the meeting is going to be about before I come so I can come properly prepared.

The Acting Chair (Mr. David Tilson): Indeed, we'll endeavour to do our best on that, Commissioner.

Thank you again, Commissioner.

I'm going to adjourn this meeting until Tuesday, June 14, at 9 a.m. The tentative schedule is for a briefing by the staff of the lobbyist registration branch on the new regulations coming into force on June 20, 2005.

The meeting is adjourned.

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