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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Thursday, June 23, 2005**

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**Chair**

**Mr. David Chatters**

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## Standing Committee on Access to Information, Privacy and Ethics

Thursday, June 23, 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, pursuant to Standing Order 108(3) (h), are to study the report of the Ethics Commissioner on the Sgro inquiry.

We have before us the Ethics Commissioner, Dr. Shapiro, and with him is the Deputy Ethics Commissioner, Robert F. Benson.

Good morning to both of you.

Commissioner, you have a brief statement to make, and then we'll proceed with comments and questions from the committee. Thank you for coming today, sir.

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

[Translation]

Mr. Chairman, distinguished Members of the committee:

[English]

at my last appearance at your committee, on June 9, I promised I would return once the Sgro report was released. I made that commitment in spite of the recognition by this committee that my inquiry reports on ministers, ministers of state, and parliamentary secretaries are not referred to this or any other parliamentary committee, since they are not tabled in Parliament.

Indeed, the legislative framework envisages a process whereby it is the Prime Minister who is accountable for the ethical behaviour of cabinet members, as it is the Prime Minister's responsibility to ensure their compliance with his *Conflict of Interest and Post-Employment Code for Public Office Holders*. However, in the spirit of what I hope to be seen as transparency, and even though there is no requirement to do so, I immediately informed members of the House of Commons of the release of the report through a global communiqué, and I provided individual copies for members. I intend to continue this practice for future similar reports.

With respect to today's appearance, I wish to remind members of certain sections of the Ethics Commissioner's enabling act that pertain to the examination of ministers, ministers of state, and parliamentary secretaries, particularly subsection 72.1(5), with respect to the non-disclosure of information gathered in the conduct

of an inquiry, and subsection 72.12(1), with respect to the non-compellability of me or of any person acting on my behalf.

These sections have a direct impact on the independence of the Ethics Commissioner with respect to the function and duties I perform under the Parliament of Canada Act.

The first section reads as follows:

[Translation]

(5) The Ethics Commissioner, and every person acting on behalf or under the direction of the Ethics Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

(a) the disclosure is, in the opinion of the Ethics Commissioner, essential for the purposes of this section; or

(b) the information is disclosed in the course of a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made to the Ethics Commission.

[English]

The next relevant article reads:

[Translation]

72.12 (1) The Ethics Commissioner, or any person acting on behalf or under the direction of the Ethics Commissioner, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Ethics Commissioner under this Act.

[English]

Therefore, while I may address a number of issues related to the Sgro inquiry, I do not intend to engage in, nor will I, any exchange where it relates to the facts, findings, or conclusions regarding the same inquiry. The report, from my point of view, speaks for itself, and I intend, as I said previously, to continue to protect the office in this regard.

In summary, again—to repeat a little bit—neither I nor any member of my staff will discuss anything that might have come to our knowledge within the context of the inquiry that is not contained in the report. I stand by my report, as I took care to provide Parliament and the public with all the information I thought necessary to support my findings with respect to the allegations made.

Within that context as well, I now wish to address some specific outstanding previous requests from this committee related to the Sgro inquiry: first, the release of my confidential letter to Ms. Sgro in response to her request for confidential advice. As I mentioned on June 9, I am tabling today the original letter, as requested. You will note that the names of the staff indicated in that particular letter are indeed contained in my report, which was released on Tuesday. In doing so, however, I wish to repeat my commitment to maintain the confidentiality of any advice provided to my clients, and I wish to repeat as well that I will try to guard that confidentiality carefully.

The committee requested the legal opinions provided to me within the Sgro inquiry with respect to my powers to report. After consulting with Mr. Joseph Maingot, former law clerk and parliamentary counsel and the author of *Parliamentary Privilege in Canada*, I understand that the Standing Committee on Procedure and House Affairs, in its 34th report, dated June 15, 2000, concluded that the work of the legislative counsel, another officer of Parliament, is covered by parliamentary privilege. It therefore follows that the legal advice I obtain as an officer of Parliament is covered in a similar matter.

Furthermore, the solicitor-client privilege is not to be taken lightly. As a principle, therefore, I will protect and maintain that privileged relationship, to be further protected within the context of parliamentary privilege. Therefore, as a matter of principle, and as an independent parliamentary officer, I do not intend to provide legal opinions my office obtains in relation to the discharge of my functions and duties under the Parliament of Canada Act.

However, in the context of the present request from this committee, the opinions being requested relate to a matter that is of mutual interest to both my office and the committee—that is, possible amendments to the legislation. Therefore, I am willing to share these opinions, on a confidential basis, with the committee and the law clerk and parliamentary counsel as soon as these opinions are available in both official languages. This is done, from my point of view, in a spirit of cooperation and on the understanding that it is without any prejudice to future inquiries and is not to be treated as a binding precedent.

Finally, there is also the general previous commitment to work with the office of the law clerk and parliamentary counsel on proposing amendments to the Parliament of Canada Act. I am pleased to report today that this process has begun. Both the law clerk and I have appointed our representatives on the joint working group, and we are currently considering a mutually convenient date for a first meeting.

[Translation]

I will now be pleased to answer your questions, with the caveat and within the context provided above.

Thank you.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Commissioner. Your comments are well taken.

I don't think anyone on this committee wishes to challenge your independence. We're here to talk about the process. This is the first real case you've had to deal with, and I think members of the

committee are concerned that the process will be consistent in the future, and that we're satisfied it's a good process. We thank you for coming to share your comments with us.

With respect to the legal opinions, we look forward to receiving those. The issue of the dispute between the two sections is worthwhile, and we look forward to receiving those opinions.

• (0910)

**Mr. Bernard Shapiro:** They should arrive quite shortly. It's now just a question of translating them, because we have them.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, Mr. Chair, and thank you, Dr. Shapiro, once again, for appearing before the committee.

I should probably preface my remarks by saying that after the last time we met, when I was quite adamant in my line of questioning that we get this report out as quickly as possible, I'm glad to see it. I thank you for getting this report to all members of this committee before Parliament rises.

I do have, however, a few questions concerning the report. They're not on any of the decisions you made. I think all of us here on the committee agree that your decisions are your decisions, and that's why, as Ethics Commissioner, you are in that chair.

But we talked at great length, over your last couple of appearances here, about ministerial accountability and responsibility. If I'm wrong, or if I'm putting words in your mouth, sir, or if I'm paraphrasing you incorrectly, please correct me, but I believe we said, and you agreed, that ministerial accountability and responsibility are things that are paramount, inasmuch as if staff members on behalf of a minister make decisions, the minister is ultimately responsible for those decisions. We talked again at length about whether a decision made or a course of action taken by a staff member would be cause for the minister to then be investigated by your office. Throughout your report you seem to indicate that many of the decisions emanating from Ms. Sgro's office were decisions, or perhaps violations, or conflicts of interest that were not made by the minister herself but by her staff members.

My question, sir, is, why couldn't you make any solid conclusions based on the violations of the codes that were identified, notwithstanding the fact that many of these violations were made by staff members? It just doesn't appear, sir, in this report—that I see—that there are many hard conclusions per se. I wonder if you could comment on that to start with.

**Mr. Bernard Shapiro:** I have a couple of comments to make. One is on the question of accountability, more generally speaking, as you think about accountability not relative to that report but generally. That is, I try to be quite careful not to invent my own theory of accountability. What I'm relying on is the material in *Governing Responsibly*, which is the Prime Minister's booklet. I'm sure you've seen it. It outlines, and I quoted it in the report, as you may recall, what that responsibility is. That's what I'm trying to administer. I don't claim it's my version of responsibility or accountability; that's a different question altogether.

I believe in my report I came to a conclusion, and that's all I can really say about that. You don't believe I have, apparently, but I thought I had. I don't have anything to add to it.

**Mr. Tom Lukiwski:** Could you just paraphrase for the record, sir, what those conclusions might be?

**Mr. Bernard Shapiro:** The conclusion is in the report. As I recall, though, and I certainly don't remember the exact words, what I said was that the minister bore major responsibility because she was accountable under the policy the Prime Minister put together.

**Mr. Tom Lukiwski:** Be that as it may, sir, again, in reading the report, it seems to me a little lax in that respect. We agree to disagree, and I won't pursue that. Obviously your opinion is that you had made some definite conclusions; I think not, but again, that's only my opinion.

Let's go to a different line of questioning based on some of the information you had before you that you examined when coming to your conclusions, or the finality of this report.

Your report, on page 23, for example, talked about the TRP system collapsing during the last few days of the campaign. In other words, we talked about the—

• (0915)

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** A point of order, Mr. Chair. Mr. Lukiwski appears to be going into factual elements of the report here. I thought he had indicated he wasn't going to do that. Mr. Shapiro is here on more general matters. This is not a court of appeal for the work of Mr. Shapiro. Mr. Shapiro reports to the House. I detect from Mr. Lukiwski's question that he's asking Mr. Shapiro to go back into his report to clarify and discuss factual elements, and I don't think we have a mandate to go there. I don't think Mr. Shapiro is comfortable going there, based on his remarks.

I'd ask you to address this as a point of order.

**Mr. Tom Lukiwski:** If I may respond, Mr. Chair, perhaps if Mr. Lee would listen to the complete question he could comment. I was not attempting to get into anything on the decision itself, but I do have a couple of questions about the facts he presented.

**Mr. Derek Lee:** That's my point, Mr. Lukiwski. You're getting into the facts on which Mr. Shapiro has based his decision. You are in effect making this a court of appeal, a second board of inquiry, for work that's been completed by Mr. Shapiro fully in compliance with the provisions of the statute under which he was appointed and works.

I'm going to stand down now and let the proceedings take their course.

**The Acting Chair (Mr. David Tilson):** The chair tends to agree with Mr. Lee, Mr. Lukiwski. As I said in my opening comments, we're here to talk about process. To use your description, this report is *Many Shades of Grey*, and I can appreciate that we may get into areas of the decision that are affecting the decision, but please remember we're trying to talk about process here.

**Mr. Tom Lukiwski:** Would it be fair if I asked for clarification on some of the points contained in the report?

**The Acting Chair (Mr. David Tilson):** You know, Mr. Lee is 100% right that this is not a court of appeal.

**Mr. Tom Lukiwski:** Okay. Thank you.

Dr. Shapiro, I'll go back to my original line of questioning on the fact that I didn't really see many firm and hard conclusions. Some of that ambiguity I ascertained actually comes from the title of your report, *Many Shades of Grey*. My experience has always been that reports of this manner just detail the facts as presented to you and the conclusions you made. Yet throughout your report there seems to be a theme or a tone of ambiguity, of uncertainty. I'm wondering if you could just comment on that.

**Mr. Bernard Shapiro:** I'm not going to respond to this in terms of any particular conclusion, but in a very general way, one of the reasons why this report took as long as it did to prepare was that there was enormous disagreement on the facts and there was contradictory evidence under oath. It was always a question of trying to assess what the underlying truth might be. That's what led to a kind of ambiguity.

It's usefully compared in this regard to the Grewal report we issued earlier this week, immediately after the Sgro report, in which there was no disagreement over the facts; therefore, it was easier to come to a clearer decision.

**Mr. Tom Lukiwski:** You indicated on the final page of your report, page 24, that you had a number of future concerns. You outlined them, and you said that at some future date you would be addressing them.

Could you just go into a little further detail on how you plan to address some of these concerns you've identified?

**Mr. Bernard Shapiro:** My current plan isn't very detailed, but it's to develop a report called "Policy Challenges". It would include a whole series of considerations of issues that have arisen in the first year of my tenure—not simply about inquiries but a whole range of things—and try to bring those up for discussion some time in the fall. That is my current plan.

• (0920)

**The Acting Chair (Mr. David Tilson):** You have one minute left, Mr. Lukiwski.

**Mr. Tom Lukiwski:** That's all I have for now, Mr. Chair.

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

[Translation]

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

I will dispense with discussing the facts, but for the sake of clarity, I will refer to some dates. On November 15, 2004, you received a letter from the Minister asking for confidential advice in the matter of Ms. Alina Balaican. If I understand correctly, as part of your work, you are required to respond to such requests for confidential advice. Subsequently, on November 22 and on December 14, a Member made a complaint to your office, which later led to your submitting a report. When you receive a complaint from a Member or Senator against a minister or the Prime Minister, you have an obligation to produce a report.

You note on page 7 of your report that “Initially, Ms. Sgro had agreed that this report would deal both with the confidential advice [...]” Therefore, from the outset, the Minister had mentioned to you that she was prepared to accept one single report, and to forego any confidential advice.

You go on to state: “Ms. Sgro later changed her mind and asked if I would deal with her letter on a separate basis”, which you in fact proceeded to do.

Was the Minister within her rights to do that? Can she initially request that the matter be addressed in a report and subsequently, change her mind? Could you have refused her request?

**Mr. Bernard Shapiro:** She was within her rights to make the request, and I could have refused. However, as you know, I decided to send her a letter. I didn't have to do that.

**Mr. Mario Laframboise:** That is the source of the confusion. Advice was given directly to Ms. Sgro and she decided to make that advice public. According to the act, such advice is confidential and, if I'm not mistaken, can only be publically disclosed by the person receiving it. Theoretically, if this matter had been covered in a report, we wouldn't be in this predicament. So then, the Minister subsequently requested independent advice from you.

With respect to your findings, you note the following in your summary statements on page 21 of your report:

In this case, Minister Sgro clearly was placed in a conflict of interest [...] and with respect to Ms. Alina Balaican in particular. The Minister has already resigned, and without comment on that decision. I have no further recommendation to make.

As I understand it, basically you're saying that had the Minister not resigned, you would have found that she was no longer qualified to hold the position because of the conflict-of-interest situation. Is that in fact the conclusion you reached in your report?

[English]

**Mr. Bernard Shapiro:** It's always hard to know what you would have done if.... There were two possibilities facing me. One was to say this was

[Translation]

a conflict of interest, as you said.

[English]

Without recommending anything, that was a possibility. On the other hand, as you suggested, I could have recommended to the Prime Minister that he ask for the resignation of Ms. Sgro. I'm not going to hypothesize what I would have done if the issue hadn't come up.

[Translation]

**Mr. Mario Laframboise:** Fine.

However, on reading your report, I see that your job was made easier by virtue of the Minister's resignation.

**Mr. Bernard Shapiro:** That's correct.

**Mr. Mario Laframboise:** It's important that members of the public who are listening to us have a clear understanding of the context in which you work. This brings me to other inquiries that have been requested.

Your office has received other requests for inquiries. Discussions have taken place in the matter of MP Grewal and Tim Murphy who works in the Prime Minister's Office, among others.

Have you made any findings in this case?

[English]

**Mr. Bernard Shapiro:** Yes, I have.

This decision has been the subject of a number of letters that passed between me and a couple of members of the House who have asked about this question—specifically Mr. Godin and Mr. Reynolds, who wrote me about it. I've given the same response to everyone.

I'm not going to read from the letters because those are confidential, and I don't want to be the one to break that confidentiality, but I don't mind taking you with me through the thought process that I've been going through relative to this particular dossier.

First of all, I think I have to repeat, as I've said earlier today, and as the committee has earlier emphasized a number of times, that obviously I do accept the position that the Prime Minister is ultimately responsible to Parliament for the action of Mr. Murphy or anyone else who works for him. I've asked the law clerk again, and he tells me that I'm correct. My understanding continues to be that the legislation means Mr. Murphy cannot be the formal target of an inquiry.

On the other hand, my view is that he's so central to the issue that I would intend to include him in the inquiry, as soon as I'm able to begin it, which should be in the coming week or two.

As I proceed in the inquiry, I expect, as in the case of Ms. Sgro, that I will find it appropriate to widen the examination. It may include the Prime Minister or anyone else who seems to have a material relationship to the events in question. That's how I'm proceeding. That's a decision I made.

Since it's quite likely, I would imagine, that in this case I will widen to the Prime Minister, it does, I guess, beg the question of why he is not included in the first place. That would have been another way of proceeding.

I decided not to, not because he's the Prime Minister—it wouldn't have made any difference to me who the person was—but because the case initially.... Why were there the three people—that is, Dosanjh, Grewal, and Murphy? It is because they are the people about whom there is some evidence immediately at hand relative to the tapes themselves, and it makes sense, therefore, it seems to me, to focus on that particular trio.

Where it leads in the end is where it will lead in the end. It's exactly like the Sgro inquiry in that respect. I had not started expecting to take sworn testimony from 40 people, but that's where it led, because that's where events took me.

• (0925)

**The Acting Chair (Mr. David Tilson):** I'm afraid your time has expired.

I just want to be clear. Are you telling us you cannot question Mr. Murphy?

**Mr. Bernard Shapiro:** Oh, I can; of course I can.

**The Acting Chair (Mr. David Tilson):** You can.

**Mr. Bernard Shapiro:** And I will.

**The Acting Chair (Mr. David Tilson):** And you are.

**Mr. Bernard Shapiro:** Absolutely.

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

**Mr. Paul Zed (Saint John, Lib.):** Thank you, Mr. Chairman.

First I want to make it clear, right off the bat, that I find it completely wrong-headed that this committee is even contemplating an expression of non-confidence in the Ethics Commissioner.

**The Acting Chair (Mr. David Tilson):** Mr. Zed, just a minute. That's not—

**Mr. Paul Zed:** Mr. Chairman, with the greatest respect, I have the floor.

**The Acting Chair (Mr. David Tilson):** Mr. Zed, that motion hasn't occurred yet, and it may not occur.

**Mr. Paul Zed:** I used the word “contemplating”, sir, and it's my time. If you wish to—

**The Acting Chair (Mr. David Tilson):** You have a time, but you have a time to be relevant. Please be relevant.

**Mr. Paul Zed:** Mr. Chairman, I believe I am relevant when I use the word “contemplating”. Perhaps you may want to reflect on the word and rule on that before I proceed.

**The Acting Chair (Mr. David Tilson):** Well, Mr. Zed, I do not want to talk about whether or not this committee is going to talk about non-confidence in Dr. Shapiro. I don't think it's relevant at this point. We're talking about the process.

**Mr. Paul Zed:** Okay, Mr. Chairman.

Certainly the inference of Mr. Hiebert's motion, the amendment we tried to make, was to talk about the process without even discussing the report, Mr. Chairman, or the fact that the report—

**The Acting Chair (Mr. David Tilson):** Mr. Zed, that discussion was held in a private session. I'd like you to honour that.

**Mr. Paul Zed:** I believe it's a motion that's now before us.

**The Acting Chair (Mr. David Tilson):** We're not talking about that motion. We're talking about—

**Mr. Paul Zed:** I disagree with the chair. If the chair wishes to rule on that—

**The Acting Chair (Mr. David Tilson):** You can disagree with me all you like, but that's my ruling.

**Mr. Paul Zed:** The motion, Mr. Chairman, was adopted, so I don't think it was in private. The motion has been adopted and published in both official languages.

**The Acting Chair (Mr. David Tilson):** Proceed.

**Mr. Paul Zed:** Are you going to allow me my honoured time, sir, or do you want to continue to debate me?

**The Acting Chair (Mr. David Tilson):** I'm going to rule you out of order. We have some guests here before us, and I'd like you to talk to the guests.

**Mr. Paul Zed:** This is an independent officer of Parliament who reports directly to Parliament. It's not a political office, and it should not be politicized for partisan purposes.

As many of you know, I've been involved in this area for a number of years. Dr. Shapiro, in 1988, I made a submission to the Holtmann commission on behalf of the Canadian Bar Association. I chaired the 1994 committee of this House, where we wrote the ethics legislation that dealt with lobbying and the creation of the ethics counsellor.

Now, we, in Parliament, have been moved away from the ethics counsellor to your role now as the independent Ethics Commissioner who reports directly to Parliament. I believe that was the right thing to do. All parties of this House have agreed with the appointment of Dr. Shapiro, who I believe is a respected and distinguished academic and a former senior public servant.

Dr. Shapiro, I appreciate the fact that you're now coming forward to this committee to discuss a process, the process of changes, the growing pains, that may be occurring within your office as you assume the mantle and the mandate. I would like you to first share with us a plan for some of those changes that you might want to put forward.

• (0930)

**Mr. Bernard Shapiro:** There are a couple of things. There are two or three kinds of things you learn when you do something for the first time. There are what I would call simple, logistical things—nothing about grand principle or anything of that sort. For example, what I learned from the experience with this first inquiry, the Sgro inquiry, is that the first step in taking it should be an informal conversation with the people involved—the people making the complaint and the people against whom the complaint is made. I found out of that experience that it's incredibly important. It clears away a lot of the underbrush and you can get more easily to the centre of what you're trying to do. So there is a series of things like that—not of particular interest to this committee, I don't think. It's just a question of processes you learn by experience that will help make it more efficient in the future.

That's one kind of thing.

The second kind are issues of what I would call general importance. You may recall the issue I raised a couple of weeks ago over the question of the possible conflict of interest when I'm asked for confidential advice about the same thing I'm asked to do an inquiry about. It happened in the Sgro case. Mrs. Jennings was quite interesting in pointing out that this had to do with the original idea, which was that advice would be prospective, not retrospective. That's something we have to think about in order to try to introduce changes in the legislation. But I'll talk about that when we meet with the law clerk and go through the law in a careful way.

My own plan, as I said earlier, is to try to benefit from the first year's experience by writing a report, which I've tentatively called "Policy Options", for the fall of this coming year, in which this and a whole number of other issues have arisen. There's a question of recusal for the Prime Minister, for example. There's the question of access by citizens to the Ethics Commissioner. There is a whole series of issues of that sort that have come up to which I don't pretend to have the immediate solutions, but the policy challenges paper will, I hope, lay out some of the alternatives so that people can discuss the pros and cons and then decide if we want to make any changes.

**Mr. Paul Zed:** Dr. Shapiro, I guess what I find inconceivable is that every time a member of Parliament disagrees with the Ethics Commissioner, we seek to replace him.

What's the point of having an independent Ethics Commissioner, colleagues, as an officer of Parliament if we're going to politicize his office and try to replace him or her when it suits our political ends?

Dr. Shapiro, I think you've acknowledged that there are some growing pains with your office. I believe that we, this committee, should be looking at recommending the necessary tools in order to have the Ethics Commissioner do his job. Frankly, I'm very concerned that we even have this report before us today, and I will be watching very carefully to ensure, as I know will Mr. Lee and a number of other members, that we don't veer into an area where we shouldn't be veering into or sliding into.

I think, Mr. Chairman, what will happen is we will taint the office of the ethics counsellor. We will taint the process of the office of the counsellor. We'll use partisan political purpose to besmirch the name of the ethics counsellor. Either that or we're in the wrong business. We shouldn't have an Ethics Commissioner...I'm sorry, I even called him a "counsellor", because I'm used to the old word from when Mr. Epp and I served on the committee together and did good work.

But this is not an ethics auditor. This is not an ethics counsellor. This is an Ethics Commissioner who reports to Parliament. I think, colleagues, we need to be very careful about moving down that road and going on a fishing expedition with every report that Dr. Shapiro proceeds with.

Dr. Shapiro—

• (0935)

**The Acting Chair (Mr. David Tilson):** Mr. Zed, even allowing for our exchange, your time has expired.

**Mr. Paul Zed:** Thank you very much, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** You're quite welcome.

Mr. Broadbent.

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

Welcome, Dr. Shapiro.

I want to say at the outset that I totally respect the point that you made in your opening statement about not wanting to get into any substantive discussion of the report that you issued the other day. Therefore, I intend to ask no questions on that whatsoever.

However, the question of whether or not Mr. Murphy comes within your purview is on the table, quite independent of your report. A minute ago, in response to another member, you said you intended to look into Mr. Murphy's role in what I'll call the exchange of the tape affair.

**Mr. Derek Lee:** I have a point of order, Mr. Chairman.

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

**Mr. Derek Lee:** I'm going to make this point pro forma. I have a lot of respect for Mr. Broadbent and I have a lot of time for him. But the question that he appears to be asking is so clearly out of order, based on our reference for today, that I have to ask him to think about that.

I am interested in the issue, though.

**The Acting Chair (Mr. David Tilson):** I agree with you, not only for that reason but for the reason that the Speaker of the House made a comment with respect to talking about any potential investigations that are under way. Members of the House, whether in committee or in the House, aren't supposed to talk about that.

I agree with what you say, and I'll add my own comment. Please, Mr. Broadbent, be very cautious in your question.

**Mr. Derek Lee:** Thank you, Mr. Chair.

**Hon. Ed Broadbent:** Unlike some people, who seem to think this is going to be a politicized process, I hope it is not. I respect your ruling. I respect the opening statement. I will conclude with my questions.

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

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Chair.

Thank you, Commissioner, for being present today and for being prepared to discuss the process of applying and interpreting those sections of the Parliament of Canada Act that relate to the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the code of conduct for members of Parliament.

I only want to put a couple of things into place. If I'm not mistaken, the act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) came into force on May 17, 2004. Is that correct?

**Mr. Bernard Shapiro:** That's correct.

**Hon. Marlene Jennings:** The revisions to the conflict of interest and post-employment code came into effect May 17, 2004. Is that correct?

**Mr. Bernard Shapiro:** It was October 2004, several months after the officer.

**Hon. Marlene Jennings:** It was October 2004. Very good. What was your appointment date?

**Mr. Bernard Shapiro:** It was May 17.

**Hon. Marlene Jennings:** It was May 17, 2004.

In fact, when one looks at the whole issue that has brought you here, it's an incident that took place during the 2004 election, sometime in the month of June 2004. Less than five months later, after you had been appointed, you received a request for advice from a public officer-holder. Less than a week later, you received the first complaint. Approximately a month or three weeks later there was a second complaint. In fact, in terms of all of the new authorities that had been created, your agency had less than six months in which to examine all of the new legislative authorities and put into place a process for dealing with potential complaints and potential situations where you might be asked for advice.

Are you aware of other organizations where such a short lead time was given? I ask you that because I am aware of organizations at other levels of government, when a new agency is created or an agency that already exists has its mandate significantly changed, where there are at least 12 months, if not 18 months, of lead time to allow them to actually do all of the preliminary work. Once the legislation comes into place or the new authorities take effect, you are then already in a position to actually work and operate.

• (0940)

**Mr. Bernard Shapiro:** I'm not familiar with what has gone on in other agencies or other kinds of arrangements of this sort. I just don't have the background to be able to respond to that.

I would say that the difficulties facing my office when we first began were not so much related to the inquiry process, which came, as you say, five months later and added to the tumult, but, I would say they were related to two other things. One was that although the legislation had been discussed for years really, on and off in a variety of different ways, no one in either the House or the Privy Council Office had given the slightest thought to how you would actually implement in a logistical way: getting salaries paid, getting lights turned on, and getting offices and things of that sort. So an enormous amount of time—an unwarranted amount of time—was spent just on bureaucratic and logistical matters.

The second was, of course, that we gave precedence and priority to the launch of the new code for the members of the House of Commons—which had not had been prepared for either, as it turned out. So there was a kind of press to moving forward, but I thought the staff responded reasonably well.

There is a kind of cultural issue that might be mentioned. I think it's important, because it pits me sometimes against members of my own staff, let alone anybody else. That is, there seems to be a culture around Ottawa that makes admitting a mistake a mistake. Instead of thinking about it as a learning experience—

**The Acting Chair (Mr. David Tilson):** Commissioner, we're well over. We have to move on.

Mr. Hiebert, please.

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

Thank you, Mr. Shapiro, for being with us again today. I appreciate your presence.

I have a series of questions and I'll try to keep them brief. Hopefully the answers can be brief as well. The first question I have is, you mentioned at the last meeting that you might make changes to the report after reviewing the replies of individuals who had a chance to review portions of the report.

Did you ever make any changes to the report as a result of those replies—

**Mr. Paul Zed:** A point of order, Mr. Chairman.

With the greatest respect to my colleague, I thought the chair had already ruled that we aren't talking about the report.

**Mr. Russ Hiebert:** I think we're in agreement that we can talk about the process used to create the report. Is that not correct, Mr. Chair?

**The Acting Chair (Mr. David Tilson):** Yes, well, it's....

**Mr. Russ Hiebert:** It's a slippery slope, Mr. Chairman. We're dealing with the process, Mr. Chair, and this is part of the process.

**The Acting Chair (Mr. David Tilson):** Well, at the risk of having everybody turn against me....

Please be cautious that this is not a court of appeal.

**Mr. Russ Hiebert:** I understand.

Again, my question is, Mr. Shapiro, were any changes made to the report?

**Mr. Bernard Shapiro:** I made changes to the report up until the very last second, but they tended to be quite minor in nature.

**Mr. Russ Hiebert:** And were they as a direct result of the replies you received?

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

**The Acting Chair (Mr. David Tilson):** You are getting into the decision, really.

**Mr. Russ Hiebert:** Okay.

Mr. Shapiro, when did you first communicate with the Prime Minister's office about this investigation?

**Mr. Bernard Shapiro:** I'm trying to recall if I ever did; that's what I'm trying to recall. I can't answer the question. I don't know.

**Mr. Russ Hiebert:** More specifically, when did you first communicate with Mr. Reid about this particular scandal?

**Mr. Bernard Shapiro:** I don't remember the date. I didn't communicate with him directly; it was part of the fact-finding exercise our lawyers undertook.

**Mr. Russ Hiebert:** Okay. You state in the report that Ms. Abbott spoke to Mr. Reid. Do you know when that happened?

**Mr. Bernard Shapiro:** No. I know it was after the election. That's all I know, which is what's in the report.

**Mr. Russ Hiebert:** That's correct. But more specifically, was it weeks, months...?

**Mr. Bernard Shapiro:** I just don't recall.

• (0945)

**Mr. Russ Hiebert:** Okay.

**The Acting Chair (Mr. David Tilson):** You're making it very difficult for me, Mr. Hiebert.

**Mr. Russ Hiebert:** Okay. I'll move on to further questioning.

I note that when the scandal eventually surfaced publicly, Mr. Wons offered to resign, but he was encouraged to remain—

**Mr. Derek Lee:** Come on. Let me go with a point of order here.

**The Acting Chair (Mr. David Tilson):** I have Mr. Zed first.

**Mr. Paul Zed:** I'll cede to my colleague.

**Mr. Derek Lee:** The approach taken by my friend Mr. Hiebert is bordering on the scurrilous. He has taken the report, which deals with a subject that I understand as being conflict of interest. He has described it here as a "scandal". He has associated with those words, which I believe to be fallacious, other individuals who are not the subject of the report but who were witnesses and who deserve the protection of the House and Mr. Shapiro for everything they've contributed to Mr. Shapiro.

So I'm going to be religious in dealing with any further questions. I ask you, Mr. Chair, please—

**The Acting Chair (Mr. David Tilson):** Mr. Lee, I've heard enough, and I agree with you.

You're getting into the decision. You can't get into the decision, if we're talking about process.

**Mr. Russ Hiebert:** Mr. Chair, we have agreement that we're talking about how these decisions were made. I'm asking questions about when these decisions were made, the context of that.

**The Acting Chair (Mr. David Tilson):** Well, you have to stop referring to people in this issue.

**Mr. Russ Hiebert:** That's very difficult, Mr. Chair, because people are the subject of the investigation.

Okay, let me try this one.

Mr. Shapiro, your website reveals filings of numerous ministers and their staff. One of the filings deals with somebody mentioned in the report who indicates that they serve on the board of the Streetlight Support Services, which is a Toronto-based outreach to sex trade workers. My question to you is this. Did you investigate the possible connection between this individual and the organization they work with, and what he does in his public life?

**Some hon. members:** A point of order, Chair.

**The Acting Chair (Mr. David Tilson):** Well, I'm saved by saying he's out of time.

Mr. Lee.

**Mr. Derek Lee:** Thank you.

I'd like to refocus on some more generic matters. I'd like to deal with the concept of conflict of interest, which lies at the root of a lot

of what you're working with. I'd like to throw two concepts on the table, and my three minutes will probably expire before we're finished.

I'd like to suggest, and I think I'm right in saying this, that unless a public office-holder, an MP, creates a public interest for his or her own benefit, essentially conflicts crop up as no-fault occurrences. That's how I see it. They simply mature.

For example, if your nephew, Mr. Shapiro, were to be elected as a member of Parliament, a conflict scenario could evolve, and you would have to recognize it and deal with it appropriately. So these conflicts come up all the time if they're not constructed by the members. I'll put that out there as a construct.

What can happen, then, is if one of the public officer-holders has staff, you end up with a vicarious conflict of interest. The public officer-holder might not even know it existed, he or she wouldn't have any intention to act on it, or not act on it, wouldn't be aware of it. Yet through vicarious liability, the staffer might see the conflict... might not even be aware of it; the staffer might just be doing his or her job. In fact, everybody's just doing their job. Where is the jurisprudence? Where's the law that deals with this vicarious conflict-of-interest concept?

**Mr. Bernard Shapiro:** I'm not competent to answer that question. I'm not a legal expert and I don't want to pretend that I am, so it's not up to me to make those kinds of comments. I'm glad to look into the matter for you, but I'm not competent to answer myself.

**Mr. Derek Lee:** It's probably going to come up again.

**Mr. Bernard Shapiro:** Yes, it may well.

**Mr. Derek Lee:** It could happen to me. All of us as MPs have an interest in getting re-elected, all except for Mr. Broadbent who is not going to run again, unfortunately. We have an interest in being elected, so we're always doing things for our political self-interest. We do things for our constituents and others, either because we're really nice people or because we're politically self-interested. So the conflict is always there. How are we going to manage that conflict? Even when we have staff who knows there are conflicts all the time, how are we going to manage that conflict problem? That's my question.

• (0950)

**The Acting Chair (Mr. David Tilson):** You have 30 seconds.

**Mr. Bernard Shapiro:** I would say it requires constant vigilance on your part. It's not easy. It's very difficult. This requires constant vigilance. I think that's partly what the Ethics Commissioner's office might create, a sense in other people that this is a matter to be considered every time you do something.

Finally, I could say, of course, that there is a provision in the legislation for people who've done something with the best of intentions but nevertheless have come a cropper, so to speak.

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

**The Acting Chair (Mr. David Tilson):** Mr. Epp.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Thank you, Mr. Chairman.

I appreciate your being here. I have five quick questions. I'm going to give my preamble. We're here to talk about process. The best information we have is to observe the process that was just completed. So my questions are going to be general, but they're going to be based on things that happened in this process in this report.

First, you have the power to compel witnesses. According to your report, at least one of them refused. I would like to know to what extent you pursue witnesses who refuse to show up and give testimony.

Second, you have apparently been giving copies of factual information to people prior to writing your final report. Do these things go to complainants as well as to witnesses, or just to the principals?

Third, what process is used in selecting counsel? You've indicated that you needed more help, that you didn't have enough in-house staff to do this. In general, what process do you use to select counsel?

Fourth, when you make a response to a person who has asked for confidential advice, and this person chooses to make your letter public, does it concern you if the letter made public is different from the original?

Those are my questions. Thank you.

**Mr. Bernard Shapiro:** The witness you're referring to actually showed up but refused to speak. I did not pursue it further.

What was the second question, again?

**Mr. Ken Epp:** It was whether the copies you give to people prior to the report go to complainants as well as witnesses.

**Mr. Bernard Shapiro:** The copies go to the people about whom critical comments were made in the report. That's it.

Your third question had to do with counsel. I will describe the way I used to do it and the way we're planning to do it in the future. I used to do it by just asking people I knew for suggestions, asking them why they thought the suggestion was a good idea. It was in this way that the choice was made. I can understand why that's an inadequate way of doing it. We're now in the midst of putting out a standing offer for legal services, and we'll choose from that list the next time we do this.

In regard to the question of the letter and whether it gives me any concern, the answer is yes. For one thing, in response to a question Monsieur Laframboise asked a little bit earlier, if I had to do it again, I probably wouldn't have agreed to provide anything in advance of the report itself. It creates a possible conflict, which is what you were referring to.

**The Acting Chair (Mr. David Tilson):** Just so I'm clear, giving copies of the report to people being ruled on—will that process be continued in the future?

**Mr. Bernard Shapiro:** It wasn't copies of the report.

**The Acting Chair (Mr. David Tilson):** Sorry, you're right. It was copies of portions of the report.

**Mr. Bernard Shapiro:** I'm sorry to be particular, but I know it makes a difference.

**The Acting Chair (Mr. David Tilson):** Actually, you're correct.

**Mr. Bernard Shapiro:** I'll have to take that under advisement. I had originally intended to give a copy of the complete report, a few days in advance of the report's being issued, to the person about whom the complaint was made. It was at a meeting of this committee that the law clerk advised me that this was not possible, so I didn't do it. I'm going to think that through in the future. I haven't yet come to a decision.

**The Acting Chair (Mr. David Tilson):** Several members of the committee have raised that issue. Perhaps you could tell us in the future what you intend to do.

Mr. Powers.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you, Dr. Shapiro.

I have a couple of quick questions.

The Sgro report took about seven months from the time of the initial complaint to the time you tabled your report. Is that correct, sir?

• (0955)

**Mr. Bernard Shapiro:** That's correct.

**Mr. Russ Powers:** I need this for comparison. In regard to the Grewal report, how long was it from the time of complaint to the time you tabled your report? Was it about six weeks?

**Mr. Bernard Shapiro:** It was much shorter.

**Mr. Russ Powers:** Much shorter, okay.

**Mr. Bernard Shapiro:** I don't remember the exact dates.

**Mr. Russ Powers:** Okay.

You indicated that part of the challenge in doing the Sgro report was the fact that there was some disagreement on the evidence provided, whereas with the other report, there was verification of the information, which made it that much easier for you.

My question is, in view of these two lessons, how would you improve the process?

**Mr. Bernard Shapiro:** Well, there are probably a number of ways in which I'd improve the process. I mentioned one earlier in terms of trying to meet with the participants earlier, one by one, separately, to try to clear away some of the questions.

A second way to improve the process is to make sure in advance to what extent my mandate actually includes the complaints being made, which is not an issue I had thought of in advance of this time, simply through inexperience—there's no excuse, it's just inexperience. So you can, in a sense, clear away complaints that ought to be directed to other agencies or other tribunals or other groups of people, if there are any such complaints. So those are the two logistical things I took from this.

I think I would be very reluctant to accept an inquiry and try to deal with confidential advice to one of the participants at the same time. That turns out I think to be a conflict of interest.

**Mr. Russ Powers:** And the other thing is, you're seeking—

**The Acting Chair (Mr. David Tilson):** Your time is up.

**Mr. Russ Powers:** Okay, fine. Thank you.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

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

Dr. Shapiro, again following up on the line of questioning of Mr. Powers as to the process, and I wouldn't say the lessons you have learned but what you have learned during this process.... Let me back up just a little. This was clearly the first case you'd had. During the time of the investigation, was this the only case before you?

**Mr. Bernard Shapiro:** It was the only case for quite a while, for at least three or four months. I don't remember the exact details, but the Grewal thing came in about two months ago. Up until then, it was the only case. It wasn't the only thing I had to do, but it was the only case I had to deal with.

**Mr. Tom Lukiwski:** Accepted.

Correct me again if I'm wrong. It took about eight months from the time the first letter of complaint was received by your office until the time of the final report. Is that about right?

**Mr. Bernard Shapiro:** I think it was seven, actually.

**Mr. Tom Lukiwski:** It took seven months. In future, knowing what you know now about the time it took and the things you had to do during the investigation to satisfy yourself and the office—and I don't intend this to be an unfair question—but if you had to do it all over again, knowing what you know now about the process you went through, do you see that a complaint of this sort could be completed somewhat more quickly than the seven-month period in which you completed this one, and if so, why?

**Mr. Bernard Shapiro:** If I were to do a report exactly like this again, it would take somewhat less time. It wouldn't take months and months less, but it might take a month less, or six weeks less. I've learned a lot. You learn how to do things more quickly. You learn how to do them more efficiently, and you try to do, perhaps, more things at the same time rather than seriatim, so you do learn things as you go along.

On the other hand, everything depends on the complexity of the actual case. The cases I have in front of me now—the Dosanjh, Grewal, and Murphy case, on the one hand, and then another one from a member from Calgary—are very complicated, either in principle, that is, the actual issues are very complicated, or they're complicated because getting to the people who are involved in order to establish the facts of the case is itself problematic. So it's really very hard to say. I can say that both of the cases I've got now will be quicker than they would have been if I hadn't done the first, because you just learn things, but I can't forecast how long they'll take.

And I have considered at least the possibility of whether you ever have a context, for example, in which an interim report should be issued. It's very hard to do because it is usually unsatisfactory, but I can see why people want to know and want to hear something from all the activity that's going on, and I'll have to judge that as I go along.

• (1000)

**Mr. Tom Lukiwski:** Finally, if I do have any time left—

**The Acting Chair (Mr. David Tilson):** You don't.

**Mr. Tom Lukiwski:** All right. Thank you.

**The Acting Chair (Mr. David Tilson):** Mr. Bains.

**Mr. Navdeep Bains (Mississauga—Brampton South, Lib.):** Thank you, Mr. Chair.

Thank you very much, Dr. Shapiro, for coming out.

I have a couple of questions.

I respect the opening remarks you made with respect to the independence of the office, and we won't comment on the specifics of the cases. We are here to deal with the process. But one thing that was brought to my attention—or at least something I noticed sitting in the House during question period, specifically—was when we were dealing with the investigation with Judy Sgro, the Speaker did not rule on the ability of the opposition or any other member to comment on the specifics of the investigation, and there were remarks made on a daily basis. And then when we were dealing with the Grewal case, with respect to the immigration concerns that were brought forth by Mr. Volpe, the Speaker ruled that we could not comment on the specifics.

So first of all, I'd ask you to comment on that. What are your thoughts on that? I found it a bit unusual.

**The Acting Chair (Mr. David Tilson):** My recollection is—and no one has challenged me so far—that the Speaker said that no one, either in committee or in the House, could comment or ask questions with respect to Grewal, Dosanjh, or Murphy.

**Mr. Navdeep Bains:** No. My apologies. This has to do with the report that has already been submitted on the Grewal inquiry into the immigration issue. This is not on a current investigation that's taking place; this is an investigation that has already concluded. So I'm just asking about that.

**The Acting Chair (Mr. David Tilson):** I'm sorry. I misinterpreted what you said.

**Mr. Navdeep Bains:** It has to do with the first inquiry. The present situation is not something I want to comment on.

**The Acting Chair (Mr. David Tilson):** I'm sorry, Mr. Bains.

**Mr. Navdeep Bains:** I just want your thoughts on that, because I find that a bit unusual.

**Mr. Bernard Shapiro:** There are two different codes at hand: the Prime Minister's code for public office-holders and the members' code. The issue you are talking about relates specifically to the members' code and not to the code for public office-holders.

When the person complained against is a member and not a public office-holder, that specific provision is inserted into the code. Whether one should or shouldn't do it for public office-holders is another matter, but it's not included in that code.

**Mr. Navdeep Bains:** Did that have any impact on the investigation? In terms of the process, did it cause an issue with the process, for example, in Judy Sgro's case, where there was a barrage of questions on a daily basis, versus Grewal, where we were unable to comment at that time because the investigation was taking place?

**Mr. Bernard Shapiro:** All I can tell you is what I did at the time. I ignored what was going on in question period.

**Mr. Navdeep Bains:** My second question is on the report itself. Once you went through the fact-finding mission, for example, in Judy's case or in Grewal's case, were they given the report in advance?

**Mr. Bernard Shapiro:** They were not given the report in advance. Anybody about whom a critical comment was made in the report received an indication of the nature of the critical comment made, along with some of the facts upon which it was based. They were asked to comment on errors in the facts.

**Mr. Navdeep Bains:** In terms of process, when that practice takes place, are those rebuttals or revised comments that are given by the particular individual taken into account in the report? In that process do you go back and forth with that?

**Mr. Bernard Shapiro:** There is no back and forth; it's not debated. I take them into account and write my report.

**Mr. Navdeep Bains:** So it's not a back-and-forth process.

**The Acting Chair (Mr. David Tilson):** Mr. Boulianne.

[Translation]

**Mr. Marc Boulianne (Mégantic—L'Érable, BQ):** Welcome, Mr. Shapiro. I have a very general question for you. I'd like to follow up on Mr. Lee's question about conflict of interests, but from the perspective of ministerial responsibility or accountability.

As you know, the principle of ministerial accountability was hard won, in Canada and in Quebec. However, on reading this report, we're left with the impression that this principle was disregarded in this case. At times, you say the Minister wasn't responsible, that her staff was to blame, whereas at other times, you say that one cannot... However, facts are facts.

You maintain that the Minister exercised discretionary authority, bearing in mind a number of facts, including family. In your opinion, can a minister exercise discretionary authority and in so doing, waive his or her ministerial responsibilities?

[English]

**Mr. Bernard Shapiro:** I don't think it's at all possible. The minister remains responsible, irrespective of whether they knew, didn't know, did it purposely, or did it inadvertently. It remains the same thing. The question of the consequences of that is a whole other issue, but you can't derogate the responsibility of the minister.

[Translation]

**Mr. Marc Boulianne:** We have our doubts about that. Be that as it may, can you explain to us the meaning of the report's title *Many Shades of Grey*?

•(1005)

[English]

**Mr. Bernard Shapiro:** To be honest with you, it first occurred to me in English, which has many shades of grey. There is no French expression that's exactly the same, at least that I could find.

I meant to convey that the ambiguity of the evidence made it hard to be really dramatically clear about who was right, who was wrong, and the facts upon which you would make such a judgment. There was just too much contradictory evidence to be able to do that in this case.

[Translation]

**Mr. Marc Boulianne:** Thank you, Mr. Chairman.

[English]

**The Acting Chair (Mr. David Tilson):** I think you're going to find this place is full of ambiguity.

**Mr. Bernard Shapiro:** That's right.

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

**Mr. Paul Zed:** Thank you.

Dr. Shapiro, there are a couple of points, actually in follow-on to my colleague Russ Powers.

I'd like you to comment on the tools you need to do your job. You mentioned law firms, and there was a lot of discussion about the law firms you chose. You touched on it briefly. You may remember that I even asked you a question in a previous inquiry, when you were here earlier, about how your office is funded. One thing I'd like you to comment on is whether you have enough money to do your job. That was a matter that came up in the past.

The other question I'd like you to comment on is this. You're dealing with a new statute, this is a new position for you, you're staffing up, and, as I understand it, you have 35-plus employees.

**The Acting Chair (Mr. David Tilson):** You have a minute.

**Mr. Paul Zed:** I understand.

I'd also like to touch upon something that may be a little difficult for you, sir, but I understand your wife was very ill and passed away this year. I wanted to know whether the financial pressures of the office, your own personal situation—did those factors in any way contribute to some of the difficulties that might have made your task in replying more difficult?

•(1010)

**Mr. Bernard Shapiro:** I appreciate the question, but the—

**The Acting Chair (Mr. David Tilson):** He's taken up three minutes to ask a question.

**Mr. Bernard Shapiro:** I will be brief. I appreciate the question. The answer is no in both cases. I had enough money, and although it was a sad time of year, it didn't keep the investigation from moving forward.

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

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

Mr. Commissioner in a letter you wrote to my colleague, Mr. Godin, who is sitting here, you categorically say you don't have the authority to investigate anyone "other than ministers, ministers of state and parliamentary secretaries". You specifically excluded from your mandate the investigation of staff of ministers. I want to challenge that by specific reference to two acts.

Under the Parliament of Canada Act the primary role of the Ethics Commissioner is:

to administer any ethical principles, rules, or obligations established by the Prime Minister for public office holders

It's true, if reference is made only to the Parliament of Canada Act—specifically subsection 72.08(1), cited by you—that the Ethics Commissioner is only required to investigate ministers of the Crown, ministers of state, and parliamentary secretaries. However, the *Conflict of Interest and Post-Employment Code for Public Office Holders* clearly applies to ministerial staff, and the Ethics Commissioner is the person charged with the administration of the code, including violations by ministerial staff. It's in the code, subsection 5(1), “Duties of the Ethics Commissioner”:

Pursuant to subsection 72.07 of the Parliament of Canada Act, the Ethics Commissioner is charged with the administration of this code and the application of the conflict of interest compliance measures set out in this Part as they apply to public officer holders.

Public office-holders, as defined in both the code and the Parliament of Canada Act, include ministerial staff. In each, a public office-holder is defined as including:

a person other than a public servant who works on behalf of a minister of the Crown or a minister of state

**The Acting Chair (Mr. David Tilson):** You have a minute.

**Hon. Ed Broadbent:** Okay. I just want this on the record.

Thus both define the public office-holder as including:

a person, other than a public servant, who works on behalf of a minister of the Crown or a minister of state

Ergo, Mr. Murphy or any other staff member, in my view, according to the law, comes within your purview.

Would you respond to that?

**Mr. Bernard Shapiro:** I'll certainly try.

I think one has to be careful about how we use words, because clearly public office-holders do come within my purview. Mr. Murphy and other ministers' exempt staff are part of the public office-holder group. I think that's clearly the case. On the other hand, the advice I received was that formal targets for an inquiry, which is a different section, would be limited to—

**Hon. Ed Broadbent:** A different act; it's not in the code.

**Mr. Bernard Shapiro:** I'm only going to try to tell you what I believe. If I'm wrong, I'll be wrong.

So since Mr. Murphy is not one of those, I didn't believe he could be the formal target of the investigation, which was one of my responses. I expect him to come within the purview of the investigation, since he's so central to the events in question. That is a different issue, whether or not—

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

Mr. Hiebert.

**Mr. Bernard Shapiro:** Sorry.

**The Acting Chair (Mr. David Tilson):** My problem is that the committee gives me rules, and I have to try to follow them.

**Mr. Bernard Shapiro:** No, I'm not complaining.

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

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

For the benefit of my colleagues on the government side, I want them to know that I've pre-cleared these questions with both the clerk and the chair, so hopefully we can actually have some questions and answers this time around.

**The Acting Chair (Mr. David Tilson):** I don't know where you're going, but I didn't clear anything.

**Mr. Russ Hiebert:** I have two questions. I'll state them both, and then I'll ask for your answers.

The first deals with the question we asked at this committee two weeks ago, when I asked about your ruling on two former Liberal cabinet ministers and why they were exempted from the two-year cooling-off period. That's the first question, and perhaps you could provide us with the answer to that at this time.

The second question has to do with the question I'd started earlier, and this has to do with the process of the investigation. It has to do with the question of whether or not you investigated a particular connection. Let me give you the context of this possible connection.

Your website indicates that Mr. Wons filed information that states he serves on the board of Streetlight Support Services. We know that he does this in his private life.

**Mr. Paul Zed:** A point of order, Mr. Chairman.

**Mr. Russ Hiebert:** We also know that he promoted a program that brought these workers to Canada—

**Hon. Marlene Jennings:** A point of order, Mr. Chair.

**Mr. Russ Hiebert:** —and that he also worked with owners of clubs.

Did you investigate this connection?

**Mr. Paul Zed:** Mr. Chairman—

**Hon. Marlene Jennings:** A point of order.

**The Acting Chair (Mr. David Tilson):** Order!

A point of order, Mr. Zed.

**Mr. Paul Zed:** It's clear that—

**The Acting Chair (Mr. David Tilson):** It is clear, Mr. Zed.

You know, you can't use the word “process” and then start talking about the facts of the case, which is what you've done.

**Mr. Russ Hiebert:** It's the context—

**The Acting Chair (Mr. David Tilson):** I'm not going to allow any questions about the facts of this investigation.

**Mr. Russ Hiebert:** Mr. Chair, with all due respect, I'm not asking about the facts of the report. I'm asking, in the process of his investigation did he investigate this very particular connection? That's all I'm asking: yes or no.

**The Acting Chair (Mr. David Tilson):** Order.

I don't think, Mr. Hiebert, this committee has the right to ask how the commissioner conducted his investigation.

**Mr. Russ Hiebert:** That's part of the process, Mr. Chair.

**The Acting Chair (Mr. David Tilson):** I think we're entitled to talk about process, but we're not entitled to talk about how he performed in this particular investigation. I'm going to rule that question out of order.

**Mr. Russ Hiebert:** Can you answer the first question I asked?

**Mr. Bernard Shapiro:** I'm going to ask the deputy commissioner to answer your first question.

**Mr. Robert Benson (Deputy Ethics Commissioner, Office of the Ethics Commissioner):** The issue of the ruling has been brought up before the committee. From our understanding, it relates to two former ministers. The first one—and the information I'm giving—had been dealt with, and it was in the public media within the last year. There were calls made to the office. There was no ruling made. It was communication with the media. Prior to communicating back with a reporter from the CBC, I did contact and speak with former Minister Vanclief. I did obtain his consent to speak to the media. The concern was this. After there were newspaper articles on his joining Hill & Knowlton, how could this possibly occur in light of the fact that he is subject to a two-year post-employment provision? The response provided to the one inquiry that we did receive from the media, with the consent of Mr. Vanclief, clarified for that individual from the media the application of the post-employment provisions. He was at liberty to be employed with Hill & Knowlton because in the previous year of his work in the government he did not have any direct and significant official dealings with Hill & Knowlton. That is a specific requirement of the code. There were no dealings. He was at liberty to be engaged with that firm. The issue was he had been registered under the Lobbyists Registration Act to make representations concerning regulatory changes to Environment Canada regarding fuel additives. The concerns arose that, again, how could this individual now be making representations back to the government in this situation, and he had filed his form on the lobbyists registration public registry indicating he was going to lobby.

Again, in accordance with the public office-holder code, an individual public office-holder, whether it be a minister or any other public office-holder, may make representations provided they have not, within their last year of employment, had any direct and significant official dealings with the entity they are approaching. In this case, Mr. Vanclief had not, in his last year as agriculture minister, had any direct links or official dealings with the Department of the Environment or Health Canada. He was therefore at liberty to make representations to that department. That was communicated to the media. There was no ruling. It was a media inquiry.

In relation to the other minister, I'm not sure whether the name has been made public. I'm not absolutely sure on that. I did review the file of a minister, which I believe was the subject of a concern expressed before the committee, and we have no record of our communicating in any shape or form regarding any public office-holder code issue.

What may have been at place here that brought concerns to arise was the fact that there were media reports regarding issues related to the Lobbyists Registration Act and the registration of that former minister. There were no inquiries made to our office, or there were no rulings made whatsoever. That's it.

•(1015)

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

[Translation]

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

I'd like to come back to the whole question of public office holders. I'd like you to confirm my interpretation of section 72.08(1), which states the following

72.08 (1) A member of the Senate or House of Commons who has reasonable grounds to believe that a minister of the Crown, a minister of state or a parliamentary secretary has not observed the ethical principles, rules or obligations [...] may, in writing, request that the Ethics Commissioner examine the matter.

Therefore, under the Act, the only recourse for us is to request that you examine the actions of a minister, minister of state or parliamentary secretary. Basically, that's what you're saying. Admittedly, you have the authority to examine a matter if the Prime Minister, a minister or a public office holder requests advice from you. The act confers this authority on you.

The problem is that the act does not authorize us, as parliamentarians, to request that your office conduct an inquiry into a public office holder other than a minister, minister of state or parliamentary secretary. That's what you said.

Knowing what you know, do you think the act should be amended to allow members of the House of Commons or Senate to request an inquiry?

[English]

**Mr. Bernard Shapiro:** I wouldn't be prepared at the moment to say just which change should be made. I think it's incredibly important that it be clarified so that we don't have this discussion another time. When we come to meet with the law clerk on the amendments, we should at least reach for clarification. It's another question about which kind of step we would like to take. I think to make it clear would be an enormous advance, because I wish to administer the law. In order to do that, I have to know what it is, and there is some disagreement about it.

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

The committee has some private business to conduct, Mr. Commissioner. On behalf of the committee, I'd like to thank you and Mr. Benson for coming and making your presentation to us this morning.

**Mr. Bernard Shapiro:** Thank you very much.

**The Acting Chair (Mr. David Tilson):** The committee will suspend for a couple of minutes so that we can clear the room to proceed with our private business.

•(1019)

(Pause)

•(1022)

**The Acting Chair (Mr. David Tilson):** We're still in public session.

The chair took the position that normally we have committee business in private session. It's been drawn to my attention that the committee should decide whether we go into a private session or whether we hold this in public session. I'm at the will of the committee.

The ruling is that unless there is a motion to go into a private session, we will continue in public session.

Ms. Jennings.

**Hon. Marlene Jennings:** Chair, I move that we move in camera. Given your statement that we have always dealt with committee business in camera, I propose that we move in camera. Then the issue of whether the majority of the committee wishes that committee business be discussed in public can be debated, can be voted on, and, if it's adopted, we can move back into public....

**The Acting Chair (Mr. David Tilson):** The motion is made.

**Mr. Navdeep Bains:** I have a quick question, Mr. Chair, on what motion she put.

•(1025)

**The Acting Chair (Mr. David Tilson):** Wait a minute. I have Mr. Lee first and Mr. Broadbent.

**Mr. Derek Lee:** I think Mr. Broadbent has moved his motion. Somebody has moved a motion that we—

**The Acting Chair (Mr. David Tilson):** There's a motion that we go in—

**Mr. Derek Lee:** I don't want to be out of order here.

What's the motion on?

**The Acting Chair (Mr. David Tilson):** The motion we're discussing is whether we will move into private session. Ms. Jennings has moved that we proceed to private session.

**Mr. Derek Lee:** I will make a very short comment on that.

Over the past, for all the years I've been here and before that, members generally have selected the in camera mode for discussion of future business. That is because that particular mode allows all members to be much more free in discussing the matters before them, all of the contingencies, without being visibly, publicly in conflict with their own party positions, with their leader's position, with other people's positions. It allows a much freer discussion and deliberation as to what the priorities of the committees are. Sometimes as we discuss future business, matters that you wouldn't normally make public and may involve personal things, privacy things, come up. So that is why we normally do it. I'm in favour of maintaining that, but if the majority of the committee wants to go public—

**The Acting Chair (Mr. David Tilson):** We're going to vote on this somehow, Mr. Lee.

The motion is that we will go into private session in camera—I'm using the wrong terminology. All those in favour of the motion? All those opposed to the motion?

It's a tie. I hate ties. We seem to be having a lot of votes and tie votes in this place.

The suggestion has been made to me that the chair is obliged to keep the status quo. The status quo is, certainly since I've been involved in this committee, that we hold committee business in private session, so we will therefore recess to private session.

*[Proceedings continue in camera]*







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