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

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**Chair**

**Mr. David Chatters**

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

Thursday, November 3, 2005

•(1115)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** I call the meeting to order, ladies and gentlemen.

This is the Standing Committee on Access to Information, Privacy, and Ethics. The order of the day, pursuant to Standing Order 32(5), is the report of the Ethics Commissioner on activities in relation to public office holders for the fiscal year ending March 31, 2005, referred to the committee on Wednesday, July 20, 2005.

We have before us the Ethics Commissioner, Mr. Shapiro, who is here today with some of his staff. I think I'll let him introduce them. There are a number of them here.

Good morning, Commissioner.

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

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

You have a brief presentation you wish to give to us, and you've given that to us in writing as well.

Just before you start, sir, I remind members of the committee that the time with Mr. Shapiro will end no later than one o'clock, and then we have other matters to discuss.

Mr. Shapiro.

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

[Translation]

Mr. Chairman, I'd like to begin by making a brief, informal announcement of note.

I just learned a few moments ago that this is the final meeting at which Mr. Bernard Fournier will serve as committee clerk. I hope the coming years will be good ones for you and your family. All the best to you, Mr. Fournier.

[English]

Mr. Chairman and members of the committee, more formally, I'm here today to address my annual report with respect to public office holders. The report covers the period from May 17, 2004, the day on which I took office, through March 31, 2005, the end of the fiscal year.

With me today are a number of staff who will be of assistance to me in responding to your questions in a helpful way: Mr. Robert Benson, the deputy commissioner; Mr. André Levasseur, director of

executive affairs; Ms. Champagne-Paul, director of legislative affairs; and Ms. Lyne Robinson-Dalpé, director of corporate services.

The first year has been, as one might have expected, full of challenges and lessons learned with respect to the revised ethics regime, as public office holders, members of the House of Commons, and the public at large began to work with the changes enacted and began to grasp the implications of the often quite general, and sometimes ambiguous, nature of the new arrangements.

There were also external phenomena, such as the election in 2004 and the establishment of a minority government, which also impacted on public expectations and the perception of the role and mandate of my office, all of which are normal in the course of political events, but which led to a need for the office to be much more reactive than proactive in the first year. One would hope that this could gradually move in the other direction over time.

Further, as I discussed with the committee last spring, an undue amount of energy was required and devoted to overcoming the bureaucratic roadblocks to the effective transition of my office from the public service to the parliamentary environment.

Whatever the difficulties, these first few months were marked by a number of accomplishments. With specific reference to public office holders, among the accomplishments worth noting were the contributions of my office to the revisions of the public office holders code, in effect since October 2004, which includes more stringent guidelines, as reported on page 7 of my annual report; compliance with the revised code of all ministers, ministers of state, and parliamentary secretaries by the end of the fiscal year; the development of new guidelines to ensure consistency and fairness in the reimbursement of costs associated with blind trusts and blind management agreements; the completion of the first inquiry pursuant to the Parliament of Canada Act; and the restaffing of the office to accommodate the needs of the new ethics arrangements.

I am glad to add, as well, that in the months since the end of the fiscal year, we have launched a process review of our operations so as to determine to what extent its efficiency and effectiveness can be improved. We also launched, on September 27, just a couple of months ago, a totally revised website to provide information to all Canadians concerning my role, the mandate of my office, our legislative framework, the conflict of interest codes for both public office holders and MPs, the two public registries, and the fully itemized budget of my office, updated on a monthly basis.

The first year was also characterized by a number of interesting challenges, and from an operational perspective, with respect to the transition to a parliamentary entity, as I said in my report, while there had been proposals to move responsibility for ethics from the executive branch of government to the legislative branch for many years, it soon became clear that neither the Privy Council Office nor the House of Commons itself had considered carefully the means for effecting such a transition. Consequently, much effort and a quite unreasonable amount of time was needed during the first year of the new office to accomplish that transition. In this regard, although some progress has been made and is much appreciated, I must still report that many issues remain. Indeed, several key services, such as various human resource services, but more particularly, language testing and training services, occupational health and safety services, inclusion on global lists and directories, and inclusion in interparliamentary training programs, are still not available to my employees.

With respect, however, to staff turnover and loss of previous expertise, the transition in my office has been reasonably well managed. Thus, in spite of staff turnover, the staff remaining, and those gradually added to this base, were able to complete compliance cases at the rate of almost 1,500 cases per year, as compared to the average of 755 cases per year over the previous 12 years in the former office. This is another issue that had its costs, as you can imagine. Because the priority was clearly based on making sure that people were in compliance in respect of public office holders, and of course the MPs in another respect, there wasn't nearly enough time for us to reach out and meet with people, speak to people directly, as would be desired in the future.

• (1120)

There were also challenges on the policy side, including the need to provide clearer and more consistent interpretation of the two codes, especially with respect to gifts, hospitality, and political activities for public office holders; the promised review of the recusal process, especially with respect to the Prime Minister; and a myriad of issues related to the conduct of inquiries, including the administration of oaths, the power to compel witnesses and persons of interest, and the meaning and extent of the requirements for confidentiality.

Finally, with respect to the mandate and role of the Ethics Commissioner, a number of ambiguities in the Parliament of Canada Act are now the subject of a joint review by my office and the office of the law clerk. I would hope that we would be able to report to you by the end of the current calendar year or early in 2006.

In dealing with these challenges I indicated when I last appeared before this committee, on June 23, that I would develop a paper that would raise these issues in the light of the office's first year of operations. I am pleased to be able to table this paper with the committee today. It's entitled "Issues and Challenges" in English, "Enjeux et défis" en français. Its primary objective is to serve as a means to initiate dialogue with stakeholders on possible ways to improve the current ethics regime. It will be available from our website later today. Members of Parliament will be able to obtain printed copies from the parliamentary distribution outlets next week.

With respect to our budget, the financial statements provided in the annual report were unofficial and not audited, since financial transactions to the previous year continue to be processed through a three- to six-month period after the end of the fiscal year. However, only a small adjustment—the total adjustment was only \$4,700—was needed for the official financial statements. Moreover, since the office's financial system was implemented in February 2005, the expenses do not yet quite adequately reflect actual activity expenditures. The office's 2005-06 financial statements will present a fuller picture of the actual expenditures within each activity: operations, policy, communications, and corporate services. Further, in order to ensure transparency and accountability of the office's financial activities throughout the year, the office's website will present detailed monthly transactions.

Finally, with respect to budget reporting, I wish to indicate that its timing at the moment is for June 30, three months after the end of the fiscal year. As far as my office is concerned, it remains an issue for future discussion—that is, if the committee would prefer to have the official financial statements in the actual annual report, we can always do that if we just delay two or three months in order to present the report, but that would be entirely up to you.

Finally, the overall purpose of the new ethics arrangements developed by the Prime Minister and Parliament last year was to increase the confidence of Canadian citizens in their democratic institutions and elected representatives. In my opinion, one of the most promising features of the new arrangements is their relative transparency, although it remains, of course, to be seen how this will work out over time.

I and my staff are ready to answer your questions with respect to the first year of operations. As an officer of Parliament, however, and in accordance with my duties with respect to confidentiality, I will sometimes have to stop to think, because I'd have to be careful to use caution and judgment in answering questions, particularly those with respect to matters currently before some other committee of the House and therefore not within the mandate of this committee. It may not arise, so I don't want to create an issue beforehand. I'm pleased to be here and I look forward to responding to you.

Thank you.

• (1125)

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

We all stop to think every once in awhile.

Mr. Epp.

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

Again, I'd like to welcome you to our committee, and I look forward to the debate we are going to have now.

I'd like to open my questioning with respect to the website and the issue of confidentiality. I haven't actually looked at that website. I think that having your financial transactions be up there monthly sounds like a good idea, but I wonder whether putting the details up there is going to in any way compromise the issue of confidentiality.

**Mr. Bernard Shapiro:** I hadn't thought so. I certainly wouldn't do it if I thought that was the case. Perhaps you could give me an example and I could respond more helpfully.

**Mr. Ken Epp:** I'm thinking, for example, that if you were to have the need to hire legal advisers, perhaps indication of where they are geographically might give away some information that would help to identify who that is being directed toward.

**Mr. Bernard Shapiro:** We would normally not include those things in a specific way like that until after the report had been submitted to Parliament. We wouldn't be doing that in advance.

**Mr. Ken Epp:** With respect to your office, you obviously have had an interesting year of transition in several different areas you work on, including this public officers code. I'd like to know how many people you have in your office altogether now.

**Mr. Bernard Shapiro:** I believe the number is 35.

**Mr. Ken Epp:** Do you have a budget of around \$2 million a year?

**Mr. Bernard Shapiro:** It's \$3.8 million.

**Mr. Ken Epp:** It's \$3.8 million. That's a lot of money. Do you think Canadian taxpayers are getting value for the expenditures out of this office?

**Mr. Bernard Shapiro:** I believe they are. I wouldn't want to be associated with the office otherwise. That's a judgment other people might make in a different way.

**Mr. Ken Epp:** Do you think it could be done in a more financially efficient way?

**Mr. Bernard Shapiro:** Well, right at the moment we're undergoing a process review that we ourselves have initiated. We've just begun that. If there are ways in which it can be done more efficiently, we'll certainly try to find them. That's a constant problem for all organizations, and we'll keep constantly at it.

**Mr. Ken Epp:** I was interested in the fact that you indicated how many cases you dealt with. I was quite surprised that you had this large number, 1,500 cases per year. Why is there such a huge increase compared to previous times?

**Mr. Bernard Shapiro:** I'm not sure there's a huge increase in the absolute number of cases, except in one respect that I'll get to in a minute. With public office holders, they are constantly being appointed and reappointed, new ones come, so there's a constant flow of people who are being appointed to various boards, agencies, and other kinds of operations of the federal government. That's one thing, the constant turnover in the public officer cohort. In another respect, of course we have the members of the House of Commons, who we did not deal with before but currently work with our office. That's an increase in another respect.

The increase this year, when I was comparing 755 to 1,500, which was the number I think you may be referring to, has to do with the priority I placed on cleaning up the backlog. When I first came to the office there was a large backlog of cases that were in the pipeline but hadn't been dealt with by the appropriate deadlines. We spent a lot of time and a lot of effort trying to make sure this didn't recur.

• (1130)

**Mr. Ken Epp:** You indicated that one of your challenges was that of replacing staff. A number of the people who worked in the previous office chose not to continue with you. I imagine that would

be true in both the application of the MPs code as well as the public office holders, which are two separate entities, as I see it. So the MPs were new—that part was a whole new project—and then besides that you had 13 people who chose to stay, and all of the others decided to stay with the public service. You had to hire all these new people. You've probably hired more people than you started with.

So you had all those challenges. Do you feel that now your office is totally up to speed and running and efficient and everything, or do you still have some ongoing challenges in that area?

**Mr. Bernard Shapiro:** I believe we've reached a reasonable plateau in terms of ongoing operations. I don't feel the need for more staff. My staff is fully occupied trying to do the work that's in front of us. I feel that we have in a sense gotten over that difficult transition period.

**Mr. Ken Epp:** Do you have one person who works entirely on the website? Is that a shared responsibility, or is it contracted out?

**Mr. Bernard Shapiro:** No, it's not contracted out. In terms of the technology involved, we work with the Library of Parliament. In terms of the actual input and the upkeep of the website, that's the responsibility of the communications department inside my own office.

**Mr. Ken Epp:** Are you currently looking for new communications people?

**Mr. Bernard Shapiro:** I think we have one opening in that area, but the director is already in place.

**Mr. Ken Epp:** The last question I'm going to have time for has to do with the actual cases you deal with. I would like to know approximately how many cases you've had with actual conflicts. I know there's a challenge in getting all of these disclosures and everything up and running. Have you had complaints that have been brought to your office that you've had to deal with with respect to the public office holders, and if so, how many?

**Mr. Robert Benson (Deputy Ethics Commissioner, Office of the Ethics Commissioner):** There's no formalized process for complaints coming into the office, other than the one we received in relation to former minister Sgro. That was a formal request for an inquiry that was conducted under the Parliament of Canada Act. We do get inquiries into the communication side of our office from media in relation to issues that may have appeared in the newspapers. Other than that, there's no formalized complaint process there. It's just reacting to situations as they arise.

**Mr. Ken Epp:** So you don't have a proactive approach to potential problems at all—or do you?

**Mr. Bernard Shapiro:** What we do when we look at each of the confidential disclosures is try to imagine which kinds of conflicts might emerge, and we keep track of those through the annual review. We try to work with the people involved to make sure they stay out of conflicts of interest so that they're in compliance with the code. We do not have what someone else might refer to as a policing function in the sense that we're actively out looking to find conflicts of interest. That is not the approach that the current code encourages.

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

Monsieur Laframboise.

[Translation]

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

Mr. Shapiro, my questions concern the section of your report on the recusal process, particularly as regards the prime minister. You state that the ethics counsellor who preceded you had determined that there was still a non-arms length relationship between the owners of Canada Steamship Lines, namely Mr. Martin's sons, and their father. In fact, since ownership was not transferred to a third party, there continues to be a non-arms length relationship.

You note the following in your report:

Our office reviews various documents, including the agendas of all meetings of Cabinet and Cabinet committees, in order to determine which, if any, items necessitate recusal.

You do an analysis, and conclude on the following note :

Although cumbersome and time-consuming, the recusal system works reasonably well.

When you say “cumbersome and time-consuming”, how much time are you talking about? Does this represent a full-time job for someone? How does the system work?

• (1135)

[English]

**Mr. Bernard Shapiro:** There isn't any one person who is full-time on this particular file. How much time is spent depends on the nature of the cabinet committee and committee agendas that come forward. Sometimes there are items that require careful thought, and sometimes there are not. There are at least three or four people in the office who are familiar with the refusal process, including myself, so the decision can be made in each case.

I don't remember the exact figures from last year, but as I recall them, there were about 37 times when it seemed to us we had to think about this carefully before deciding, and in about ten of those the Prime Minister needed to be recused.

I can't easily answer the question, *combien de temps*, because I really haven't thought about it in those terms.

[Translation]

**Mr. Mario Laframboise:** I could ask you to provide us with some specifics, but I won't. It's merely for the principle of the thing, because in essence, it's important to understand that, for ethical purposes, you still consider the Prime Minister to be a shipowner.

In fact, you base your analyses on considerations such as maritime policy, shipbuilding, fees and so forth. I certainly can understand how this can be very time-consuming. To analyse Mr. Martin's unique position is a costly undertaking.

My second question concerns blind trusts and blind management agreements. You've established a trust management reimbursement schedule the details of which are set out in Appendix IV. You say that you are working on a strategy. Is that strategy in effect or are you in fact encountered some problems? Is it operational?

[English]

**Mr. Robert Benson:** The table that was included in the annual report is the reimbursement schedule that has been reviewed annually. The office has undertaken to contact firms that do trust arrangements across Canada—legal firms, accounting firms and brokerage firms that do this trust arrangement—and puts together the costs for annual administration.

This is what you're referring to, I think, isn't it, the reimbursement of costs?

[Translation]

**Mr. Mario Laframboise:** That's right. Do all stakeholders comply with these guidelines? Is this the actual reimbursement schedule?

**Ms. Lyne Robinson-Dalpe (Director, Corporate Services, Office of the Ethics Commissioner):** When we receive a claim for reimbursement, we review the invoice or document. The standard \$300 fee is respected. If a client submits a claim that exceeds this amount, the maximum that is reimbursed is \$300 per hour.

Therefore each client will be reimbursed a maximum of \$300 per hour, even if that the hourly rate paid was \$500. However, if the cost was less, for instance, \$220, then the eligible amount reimbursed will be \$220. The maximum hourly rate that can be claimed is \$300, to prevent clients from submitting invoices with an hourly rate of \$500, because that is deemed to be an unreasonable rate.

**Mr. Mario Laframboise:** You mention an hourly rate of \$300. In terms of annual administration costs, you show a schedule based on market value, for instance, 1.5 per cent on the first \$500,000, and so forth.

However, you say that other costs may be reimbursed, such as commissions for transferring, converting or selling assets. Does this provision apply when you yourself request the sale of the asset, or anytime an asset is sold? Are the costs incurred for all commercial transactions reimbursed?

• (1140)

**Mr. André Levasseur (Directeur, Executive Affairs, Office of the Ethics Commissioner):** I'd like to answer that question. First of all, when an individual declares his or her assets, a certain procedure must be followed to determine whether that individual must divest himself of the assets, either by selling them or by placing them in a trust.

When an individual has a choice and decides to sell the assets, any commissions arising from the sale are not eligible for reimbursement. However, when he does not have a choice, the commissions are eligible for reimbursement. In other words, if a person has interests in a company, the code does not provide for the placing of the shares in a trust. The only option provided for by law is the sale of these shares. In this case, costs incurred will be reimbursed. This is the only time that commissions are covered. If the individual decides to place assets in a trust arrangement, then we're talking about costs associated with setting up or administering the trust, but not costs associated with selling assets.

**Mr. Mario Laframboise:** You're talking about selling assets during the process of setting up the trust. Therefore, if a person sells off the assets, indirectly he assumes the cost.

**Mr. André Levasseur:** Correct. In other words, the only time costs are eligible for reimbursement is when the trustee is involved in the administration process, but not in the acquisition or sale of the asset. Often, related costs are not eligible for reimbursement.

[English]

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

Mr. Bains.

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

Mr. Shapiro, I appreciate your opening remarks. In your opening remarks, you have spent a fair amount of time on the challenges you've faced and you have highlighted your accomplishments. I'm going to focus on some of the areas that you've identified as challenges.

In your first paragraph, under "Challenges", you've indicated that "neither the Privy Council Office nor the House of Commons itself had considered carefully the means for effecting such a transition". A considerable amount of time was spent in setting up your office. Could you elaborate on that? Was there a lack of understanding? Was it a turf war?

**Mr. Bernard Shapiro:** I hadn't got a sense that it's a turf war. I wouldn't really know exactly. I haven't been in Ottawa long enough to recognize it easily. I don't think that's the issue. I think it is an issue of not having thought about it in advance. So although it was clear that we were to leave the public service, it was not clear what we were to do and where we were to go. It was in Parliament, but none of the parliamentary entities were really ready to receive us and didn't feel quite comfortable in doing so.

It seems to get worked out over time, but it just takes a huge amount of time, going through the Board of Internal Economy and letting them get to the staff so the staff will actually respond to the decisions the board actually made. Talk is quick, but it has taken months and months and months and has had a very mixed outcome.

When the service is provided, which does seem to happen in the end, it is very good service, I have to say. It really is high-quality service. It's just getting it that's the problem. The reason I'm so interested in getting it is that I think it would cost a fortune to provide it on our own. The budget would have to be twice as high as the one we actually we have, and that would certainly make no sense.

**Hon. Navdeep Bains:** You've also indicated in your remarks that certain services were not provided to your staff with respect to human resources, occupational health, and language testing. I'm alarmed at why that is. Could you elaborate on that? Was there an explanation given? Is that again a reflection of not accepting—

**Mr. Bernard Shapiro:** I'll ask Ms. Robinson-Dalpe to respond, since she's been in charge of working through those negotiations.

**Ms. Lyne Robinson-Dalpe:** The staff that's in the office are not government employees, they're parliamentary employees. Because of the transition, a number of them had access to services in the

public service beforehand. For occupational health and safety, for example, at the public service level there's a committee that meets and there are some requirements to ensure staff safety and a good environment for the staff to operate in.

Within Parliament, they have such a committee that looks at occupational health and safety issues for parliamentary staff. Unfortunately, we're still not at that table, no matter how much we press, saying that employees within the office are parliamentary employees and therefore we should be part of that table.

Employees should not be penalized because they decided to accept a job within the parliamentary environment. Right now, the debate is more with regard to the independence of the office, where the House of Commons and other parliamentary entities do not want to address that issue.

From an employee perspective, the independence of the office remains, because the activities are still independent of Parliament, but the employees need to feel that they're part of a more global group, the parliamentary group, and not just employees of the Office of the Ethics Commissioner.

• (1145)

**Hon. Navdeep Bains:** In light of that, are you able to absorb some of these costs in your department and provide the training, or is it something that you still feel should be provided by Parliament?

**Ms. Lyne Robinson-Dalpe:** We can do some of the stuff internally.

**Hon. Navdeep Bains:** And have you done some of it? For example, on language testing and occupational health and safety services, have you provided some of those?

**Ms. Lyne Robinson-Dalpe:** Actually, yes, we have. We provide some general direction.

On the language testing, all the new employees have been tested. As Dr. Shapiro mentioned, the House of Commons has accommodated us a number of times to provide these services to the office, yet they're not willing to acknowledge the fact that they should be providing this on a regular basis and we should not have to always push for services to be offered to the office.

**Hon. Navdeep Bains:** There's a fear of independence...keeping the two separate. That's the concern they have. Is that a reflection of the policy, then? Who's developing that fear for them? Is that something that's been instructed to them? Is that based on their experiences? Is that a lack of...?

**Ms. Lyne Robinson-Dalpe:** From our perspective, it's an interpretation. In some cases we say that our employees should have access to this, and in other cases, they're a bit resistant with regard to the independence of the office.

**Hon. Navdeep Bains:** There's also another question subsequent to that.

You say there are also policy challenges with respect to operating your office; there is the need to provide a clear and more consistent interpretation of the two codes, especially with respect to gifts, hospitality, and political activities for public office holders. Is that still inconsistent? Do you still feel there's a gap and some inconsistency?

**Mr. Bernard Shapiro:** I think there are two issues involved. One is an existential issue, in the sense that it will always be present and it will always have to be worked on. I didn't develop either of these codes, of course, but the people who did develop them took what I would call a principle-based or a common-law-based interpretation of how to proceed. So there are a series of principles and there is a code derived from those principles, and there's a gap between the two.

In an effort to provide flexibility, which was what I think people had in mind, there was a constant need to interpret what these words mean. Those interpretations may change over time, so what we're hoping to do—and we've done it a couple of times already, but we're hoping to do it more frequently—is to continuously let our clients know, so to speak, just how the law is developing, how the interpretations are developing, so that people can act clearly without having to ask all the time.

The ideal thing, of course, is to have the arrangements so clear that people don't have to ask; they just have to look and they would know. That's a little bit of a utopian notion, but that's at least the goal we would like to strive for.

We are currently in the midst of working on the two policies you mentioned, which is political activities on the one hand, and then gifts, including political gifts, on the other. It's not an easy area to work through, but we are currently working on it.

**Hon. Navdeep Bains:** Do you receive a fair number of calls from MPs' and ministers' offices asking for clarification on these rules? I'm assuming that's part and parcel of the reason for a lot of the increases in the volume in that. Do you do that?

**Mr. Bernard Shapiro:** We do receive a fair number of calls, and we encourage them. That's part of what we have to do and what we want to do. We're glad to receive the calls. We're trying to make the necessity for them less than it would otherwise be, just by trying to clarify the code.

**Hon. Navdeep Bains:** Are your responses consistent and clear among all the various calls that come in?

**Mr. Bernard Shapiro:** We certainly try to be consistent. I can't promise that it is in every single case, but we certainly make the effort.

**Hon. Navdeep Bains:** My colleague alluded to this, and this is my question as well. Are these conversations documented? Is there a paper trail to verify the constituency?

**Mr. Bernard Shapiro:** We do prepare notes to file for all of these kinds of issues.

**Hon. Navdeep Bains:** How am I doing on time?

**The Acting Chair (Mr. David Tilson):** I am afraid you're out of time.

**Hon. Navdeep Bains:** Okay. Thank you.

**The Acting Chair (Mr. David Tilson):** That concludes the seven-minute round.

Monsieur Desrochers, you have three minutes. You don't get his seven minutes.

[*Translation*]

**Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ):** Thank you very much, Mr. Chairman.

Mr. Shapiro, you stated that your Office has processed about 1,500 claims, whereas your predecessor had processed only 750. Could it be that you're more efficient than he was?

● (1150)

**Mr. Bernard Shapiro:** I don't wish to brag, but we are more efficient and we make it a priority to be more efficient. We made this our top priority this year and we've met the challenge. What more can I say?

**Mr. Odina Desrochers:** I'd like to focus on your Office's accomplishments. On page 2 of your opening statement, you refer to "the compliance with the revised Code of all Ministers, Ministers of State and Parliamentary Secretaries by the end of the fiscal year".

Why the delay? Is it due to staff shortages? Are you getting good cooperation from the parties in question? I'd like to know why compliance will not be achieved until the end of the fiscal year.

[*English*]

**Mr. Bernard Shapiro:** It is the case that at the end of the fiscal year all were in compliance. There were no exceptions.

There are changes in this group as well. It's very rare that at any one point in time you have all of them in compliance, because some are just new, and there are 120 days available to come into compliance with the code.

In general, I can say, and this is true on both sides—both among the members of the House of Commons and the public office-holders—most people are quite cooperative. We sometimes have a little difficulty in getting them to put this somewhere on their priority list so that it rises to the top of the pile and they respond on time, but in general I'm quite satisfied with the level of cooperation I'm receiving.

[*Translation*]

**Mr. Odina Desrochers:** How many ministers need to be persuaded to cooperate better and to comply faster with your requirements?

[*English*]

**Mr. Bernard Shapiro:** I have no idea.

[*Translation*]

I'll ask Mr. Levasseur if there are problems on that front.

**Mr. André Levasseur:** The problems are very minor. However, obtaining the cooperation of ministers, parliamentary secretaries and ministers of state has always been of utmost importance. Occasionally, we can afford to wait a day before getting a response, but more often than not, they reply within the Office's standard time frame.

**Mr. Odina Desrochers:** Fine then, Mr. Chairman. Thank you.

[English]

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

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

Commissioner, there are a couple of things I've observed in your "issues and challenges". I'm wondering out loud whether there might be another opportunity, other than a formal parliamentary committee, and whether you would consider some other more informal opportunity, to consult with members of Parliament, specifically in the areas you've noted where you refer to "lessons learned". You used the example of the Sgro case, where you talk about a minister and about a parliamentary secretary.

I would suggest to you—and would be interested in your point of view—that even members of Parliament, under the benchmark you've established, might find themselves in perceived conflict of interest even in writing a letter to an immigration board, or making some intervention involving immigration. I'm mentioning that because that's specifically the example you've used.

I noticed also that you talk about perceived conflict of interest and real conflict of interest. I think it would be helpful for us as members of Parliament, outside the scope of this parliamentary committee—but perhaps this committee would decide this is the appropriate forum—to enter into a dialogue, and wondered what mechanism you might suggest. We as MPs are looking—this is new law—for some mutuality from you and from us to figure out how to proceed.

**Mr. Bernard Shapiro:** I referred briefly, a little earlier, to the issue of a proactive as opposed to reactive stance for the office. I know that in the first year it's been far too reactive and not proactive enough.

We have in fact adopted inside the office a communication and education plan for the coming year. This features a number of different ways in which we are going to try to meet with a whole variety of different groups within the client group, so to speak—the members of the House, the public office holders—to discuss what things are working, what things aren't working as well, what changes might be made to make it more effective.

You certainly are right: this is not something we should just dream up inside my office; it is something we need to be in constant interaction with.

We tried a stab at this last year, because I was determined to do something, by sending out a survey to all the members of the House. We got really quite interesting responses. But that isn't enough either. We have to find ourselves some opportunity for face-to-face interaction with people, and we intend to do that in the coming year.

• (1155)

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

I wonder, Mr. Chairman, whether this might be a subject—not for a future business meeting, but for the steering committee—to consider: this whole area, and whether we as an ethics committee might consider this subject area of the issues and challenges with the Ethics Commissioner.

I'm not making a formal motion, but I would respectfully ask you as our chair to consider this area. It seems to me this might be the

kind of thing that, in the future as we move forward proactively, in order to give it some legs and some real breadth, all parties should participate in—in a non-partisan way—to give the Ethics Commissioner some guidance. I'm wondering what you as chair might think of that suggestion.

**The Acting Chair (Mr. David Tilson):** Mr. Zed, I'm always in the hands of the committee, and we'll discuss it at a future time. Thank you for that suggestion.

**Mr. Bernard Shapiro:** [Inaudible—Editor]

**The Acting Chair (Mr. David Tilson):** I've got to follow the rules here. Let's do that another time in another round.

**Mr. Bernard Shapiro:** That's fine. Sure.

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

[Translation]

**Mr. Mario Laframboise:** My question is for Mr. Levasseur and again, it concerns the recusal process.

Mr. Shapiro explains clearly on page 10 of his report that in 2003, before becoming Prime Minister, Mr. Martin had sought advice to ascertain what arrangements he should make to avoid a conflict of interest situation. As a result, a recusal process was developed. According to the report, at the time, Mr. Martin held a controlling share in Canada Steamship Lines.

However, on the very same page, the report notes that in 2003, Mr. Martin transferred control of the company to his three sons. I'm assuming that theoretically, he no longer holds any shares in CSL.

Who paid the costs associated with the transfer of shares from Mr. Martin to his sons? Were these costs reimbursed by your office, or did Mr. Martin cover the costs himself?

**Mr. André Levasseur:** A claim was never filed with our office seeking reimbursement of the costs associated with this transfer.

**Mr. Mario Laframboise:** I see. To your knowledge, were all company shares transferred to his sons?

**Mr. André Levasseur:** Yes.

**Mr. Mario Laframboise:** Upon reviewing the recusal process, we see that you limit yourself to areas such as marine transportation policy, shipbuilding and fees.

Who decides these matters? Are you the one who decides when Mr. Martin must recuse himself?

[English]

**Mr. Bernard Shapiro:** No, it wasn't me, because I was not here at the time. This happened before I came to Ottawa. It was worked out, as I understand it, with the Ethics Counsellor at the time, Mr. Wilson.

We have kept the matter under review since then. We keep asking ourselves whether this is right, wrong, too narrow, too wide, or whatever. We have only made two changes since then. One change is that we've widened the recusal so that it includes certain kinds of appointments as well. The Prime Minister is also recused from appointments to certain boards and agencies because they're too closely related to the kinds of concerns that Canada Steamship Lines must have.

The second change relates to something we suggested in the issues and challenges paper that's in front of you. We want to make the recusal process more transparent by recording in the public registry when a recusal is required and for what reason. Our recommendation is that this be made more transparent by putting it on the public registry as soon as possible after the cabinet meeting or cabinet committee meeting in question.

We've tried to develop a kind of balance in the recusal area. There's no doubt that the recusal process is cumbersome, but on the one hand, the Prime Minister was elected by the constituency and by the party. In a sense, he must run the government, and that's his responsibility. We give a lot of credit or a lot of concern to that. We can't disable and enable a Prime Minister at the same time. We're always trying to balance that against keeping him out of actual conflicts of interest.

We now also sometimes decide, depending on the specific item—and it does depend—to recuse the Prime Minister for a reason that isn't in that area but relates to something that we nevertheless believe is very close to the interests of Canada Steamship Lines.

•(1200)

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

Mr. Powers.

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

My questions are somewhat technical.

Further to the question of my colleague with regard to people seeking advice from you, does that response come back in a written format? What's the normal process of responding?

**Mr. Bernard Shapiro:** We always have a note to file. As to whether it's a written comment, we will provide a written comment if requested. We're glad to do that.

**Mr. Russ Powers:** It's not automatic.

**Mr. Bernard Shapiro:** No.

**Mr. Russ Powers:** Are your responsibilities with this side of the House, the House of Commons? Do you have any other dealings at all, other than perhaps cooperative ones, since there's a new Senate ethics counsellor? Is there a working relationship or a direct relationship?

**Mr. Bernard Shapiro:** That's dealt with a little bit further in the actual issues and challenges paper that I tabled today, so if you look at that you'll get the response.

I think it's like any piece of legislation: the words often seem clearer to the people who put them down than they do to the people who read them without the benefit of that background. So a number of times during the year, this has come up. You may recall, the question of whether or not the act enables an investigation of somebody other than an MP, minister, or parliamentary secretary is apparently an open question. Some interpretations say yes, some say no.

There are a variety of issues like that, which I think need to be clarified in order to make it simpler to administer the code.

**The Acting Chair (Mr. David Tilson):** Yes, you have time, Mr. Powers.

**Mr. Russ Powers:** You indicated that accounts were still being cleared three to six months out. Is that because of the transition and all these particular things that the year-end didn't happen as anticipated?

**Mr. Bernard Shapiro:** What the transition did cause was the budget allocation by activity not to be nearly as clear as it would otherwise be and will be in the future.

The question of the year-end is a general question for all units, not only my own, and that is that there are financial transactions for one year that get posted, in some sense, or developed or processed some time after the end of the year itself. That's why a report that must be tabled by June 30 is unlikely to be able to include the official financial statements for that year. It could also, of course, include the official ones for previous years. So one option always is to delay that until September, but that would be up to the committee. I couldn't make that choice myself.

**Mr. Russ Powers:** The assumption is that there might be—

**Mr. Bernard Shapiro:** Right.

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

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** We're moving along here pretty quickly.

I wanted to address an item on page 8 of your "Challenge" booklet. It has to do with the recusal issue. It looks as if you, as Ethics Commissioner, have given advice to the Prime Minister or the Prime Minister's Office that when the Prime Minister recuses himself from a cabinet meeting, for the reasons outlined here, the Prime Minister's staff should also not be in the cabinet room.

I need to put a few more things on record, because the answer is going to gobble up.... I suppose I could take another three minutes, couldn't I? Why don't you explain that to me, and then I'll use the three-minute round to continue.

**Mr. Bernard Shapiro:** This has to do with a question that Mr. Zed asked earlier, or at least it's related to that question, and that is the difference between real and apparent conflict of interest.

It is my point of view that if the Prime Minister's staff is in the room, from the point of view of an ordinary person looking at the recusal, they will regard it as ineffective, because they see the Prime Minister's staff as the alter ego of the Prime Minister, and that therefore for that item they should also be excused.

This raises a larger question of the difference between real and apparent conflicts of interest. The reason I raised that issue inside the "Challenges" report is because I began to ask myself—and it's included in the report simply as a way of starting a discussion, not as a way of finishing it—whether or not the Ethics Commissioner is well placed to make that assessment, or whether that assessment is a highly political assessment best made by the voters. As you get transparency, you show everything, and then the voters decide whether the apparent conflict of interest is such that they don't want this person to represent them.

This is a very complicated issue, so I'm not pretending to have the answer. I'm simply raising the question because I'm finding myself very frequently making these choices and I'm finding them difficult to make in a way that I can explain well to other people, so that they will be satisfied that I've done the job appropriately.

• (1205)

**Mr. Derek Lee:** My reaction—perhaps it's an overreaction, but I'm not understanding it fully, given my background, whether it's adequate or inadequate—is that it appears to me to be somewhat overreaching, because if that principle holds true in the parliamentary precinct, you would therefore have to give similar advice to the staff of any minister who recuses, in any context, and any member of Parliament who recuses in any context. You would therefore have to be inferred to have assumed that the staff of an elected official is, by their very presence, exercising the same influence in voting and other functions that the elected member does, and that is simply wrong.

I would secondly ask you to be more specific about which staff you're referring to. Are you referring to staff of the Prime Minister employed as part of the Prime Minister's Office, or are you referring to prime ministerial staff employed as part of the Privy Council Office?

This is very important stuff. This has just been thrown out here today, and I'm concerned that the principle that you have in all fairness and in good faith tried to be squeakier clean than anyone else is bumping up against some very fundamental principles in terms of elected governance and how we do business generally in government right across the country.

**The Acting Chair (Mr. David Tilson):** Commissioner, all these questions are important, but my job is to keep the rules flowing. If we wish, if Mr. Lee wants to raise that later, we can do it again, but we're on to round three, which is Mr. Zed.

**Mr. Paul Zed:** I'll follow up on what my colleague Mr. Lee has raised, because I think it is important. It's not a partisan issue. This is really the whole issue of our democracy. It's responsible government. I share the concern that we are bumping up against what responsible government is about.

We're all elected. Therefore, as a result of that, I take your point on transparency, which is that from a transparency point of view you make all the information available and at the end of the day the voters will make a decision about what is or isn't a conflict. But I think, Commissioner, the fact that you are a commissioner raises the level or standard that we as parliamentarians expected when the law was passed that gave you this authority. So whether we like it or not, you're not a counsellor any more; your office is not an adviser. You're an ethics commissioner, and as a result, you have to issue a standard.

When we look at words like “perceived” conflict of interest, “potential” conflict of interest, or “real” conflict of interest, there are all these floating standards, if you will, that blur.

This is not directed as a criticism of the chair, but obviously the issues and challenges you raised are real and important issues that this committee, or somebody, in an exchange way, is going to have to deal with in the future.

**Mr. Bernard Shapiro:** You should be clear: I agree with that. That was the point of the “Issues and Challenges” paper to begin with. But I think I should add one thing about “perceived” and “real” conflicts of interest. These are not words that I invented. These words are in the code, in both the Prime Minister's code and the code for the members of Parliament, so we have to deal with it.

That doesn't mean the code shouldn't be changed. It doesn't mean there shouldn't be adjustments so as to get along. It doesn't mean I can't learn something from the interaction that you described and change my mind about what would be appropriate.

To answer a previous question, I had intended it to be limited to the Prime Minister's political staff, so to speak, as opposed to the members of the Privy Council Office.

• (1210)

**The Acting Chair (Mr. David Tilson):** Have you finished, Mr. Zed? Okay.

Mr. Lee.

**Mr. Derek Lee:** I appreciate the clarification that you were referring to the political staff. So it is appropriate for the Prime Minister's other non-political staff to be there in the meeting.

How does that accomplish your goal of the appearance of non-conflict, if certain staff can be there and other staff cannot be there?

**Mr. Bernard Shapiro:** I think the public service is seen differently than is the Prime Minister's own staff. I don't mean as individuals, of course; I just mean their legitimacy in this context is seen quite differently by people looking in than it is with other people.

**Mr. Derek Lee:** Then I'd ask you to explain to me just what a staffer in either category might or might not do that could sully the appearance of pristine non-conflict of interest. What did you have in mind that the staff would or wouldn't do that might impair the appearance of a conflict or non-conflict?

**Mr. Bernard Shapiro:** It isn't what they do or don't do that I am concerned about. The appearance is not relative to the appearance to other people in the room; it's the appearance relative to people not in the room. I stand to be corrected and to learn differently in the future, but my belief is that having the Prime Minister's staff—to use that example—in the room when the Prime Minister himself is being recused would not appear to be appropriate to people outside the room. I don't mean literally outside the room, but people—

**Mr. Derek Lee:** Can you articulate the rationale for that? What is it about that appearance that doesn't look right to you, or might not look right to somebody else?

**Mr. Bernard Shapiro:** I can only repeat what I've already said. I don't have anything much more to add. It appears to me that people outside that room would believe that the recusal process was being undermined because the Prime Minister was effectively, by proxy, in the room.

**Mr. Derek Lee:** The staff members of the Prime Minister are observing, not voting. Recusal means removing oneself from the presence of the debate and not voting on the issue, not taking part in that decision. Staff members are there observing.

**Mr. Bernard Shapiro:** I understand that.

**Mr. Derek Lee:** Can you please explain to me how the observation of a meeting by staff—something the Prime Minister would probably be able to read later in the minutes of the meeting—would, in the mind of anyone, be regarded as participating in the decision-making in that meeting?

**Mr. Bernard Shapiro:** I can only repeat what I've already said, so I don't think there's much point in doing it.

**Mr. Derek Lee:** You, sir, have just made a recommendation that could potentially, if it's accepted, hobble representative government right across this country by pulling the chief political person, the head of government, from his or her cabinet meeting because of an appearance that somebody who doesn't understand what's going on might have. You've also pulled out the head of government's staff, by your recommendation.

I'm afraid that if we're going to run the risk of disconnecting the head of government from the core of government, there had better be a very good reason. To ask the person's staff to recuse when they're not even involved in the decision-making.... I think you're going to have to do more than just say "I've said what I said, and that's about it".

**Mr. Bernard Shapiro:** Fair enough. I'll certainly think about it again. I don't want to hobble government, and nobody has that objective in mind. I'm open to suggestions, and I hope the discussions that will take place because of the paper will help me understand things more clearly than I otherwise would.

**Mr. Derek Lee:** Well, that's quite positive.

Thank you, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** Monsieur Laframboise is next, and then Mr. Zed.

[Translation]

**Mr. Mario Laframboise:** On the contrary, Mr. Shapiro, I'm fascinated by your analysis of the recusal requirements in the case of the Prime Minister. I'm pleased that this issue is generating some debate. I see that you've examined the processes in place in other countries. Clearly, the public must have the impression that the Prime Minister is not in a conflict of interest because of private interests.

It's not my fault that the Prime Minister is a shipowner. Nor is it the fault of the public. He happens to be the only shipowner who decided to run for the Prime Minister's office. The others decided to stay out of the limelight. Someone needs to look out for him and I find your analysis of the situation quite interesting.

You want to generate some debate? You examined the recusal process in other countries. Is that correct?

•(1215)

[English]

**Mr. Bernard Shapiro:** I have not actually done the analysis of other countries in this respect, relative to this specific issue. I'm glad to undertake to do that, but I haven't done it yet.

[Translation]

**Mr. Mario Laframboise:** Fine.

[English]

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

Mr. Zed.

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

Commissioner, I don't want to beat a dead horse, but the reality is I'm very concerned. I think "concerned" is too strong a word, but I think of the Old Testament: "Let him that is without sin cast the first stone."

I don't want to find us hobbling ourselves or creating an environment where we as members of Parliament can't even do our job by virtue of rules that make us irrelevant.

From a responsible government point of view, that's why it is a slippery slope to start moving from an ethics adviser to an ethics counsellor to an ethics commissioner. I think it's really important, just for the record, that I put on record my concerns that your office not constrain all members of Parliament, because what may be sauce for the goose today might become something else in the future. I'm looking at Mr. Epp. He and I began this journey a number of years ago together in this area of ethics and lobbying and governance. My concern as we move forward is that we not try to make everyone so pristine that no one can run for public office.

I'd be interested in your views on that.

**Mr. Bernard Shapiro:** Well, I certainly don't envision an end result of not being able to get people to run for public office because of the nature of the constraints that exist. That's a matter of balance all the time. The issues and challenges paper is meant to help make the conversation happen. I don't enter this conversation with some sense that everything I'm recommending is something that absolutely must happen. That wouldn't be a conversation; it would be an announcement. I don't want to do that. So I look forward to the debate.

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

**The Acting Chair (Mr. David Tilson):** Mr. Commissioner, obviously there is some interest on this topic among the committee members, and as I said earlier, if the committee decides to get into this issue—and I have a feeling they will—we hope you and/or Mr. Benson and your staff would cooperate with us.

Mr. Lee.

**Mr. Derek Lee:** I'm back on the same issue with Mr. Shapiro.

I realize you regard this as the opening of an issue in giving advice, but in your own notes you've said that you've given the advice and the Prime Minister has accepted it and implemented it. We have already gone there, based on your advice. Maybe you should in your own mind give your advice higher regard than you do. Your advice, once given, would only be rarely not accepted, and I'm saying this is a very important issue.

I also want to point out that not only does the Prime Minister appoint his chief of staff, who is not going to be at the meeting, but he also appoints every other cabinet minister and he appoints the Deputy Prime Minister. So maybe they should all absent themselves from the room because they have some relationship to the Prime Minister.

Somebody—please—has to think this through. It's the tail wagging the dog if I've ever heard of it. I don't for a moment second-guess your good faith and your attempt to make this system run well, without the appearance of conflict, but I am not going to let this sucker go. If I were in that office and I got the advice, I would thank you, sir, but I would not have accepted your advice, for the reasons I have tried to articulate here.

I'm asking you to re-engage on this one, because if the principle you have enunciated carries through, you have just inserted a mechanism that could in theory constitutionally hobble representative government as we now know it in our cabinet room.

**Mr. Bernard Shapiro:** I'm going to ask Mr. Benson to say something. He wants to make a comment.

But in response, I'm going to try not to give in to the temptation to give my advice more value than it actually has. I understand what you're saying. It's not that I don't; I do understand the issue. I'm certainly glad to re-engage. That is not a problem for me.

Mr. Benson.

•(1220)

**Mr. Robert Benson:** In relation to this particular item, I'm not sure whether it's understood that it's solely focussed on the actual cabinet meeting. A lot of activity occurs within the executive part of government before cabinet. There are consultations between departments; there are papers that are prepared; there are memoranda; there are documents. The staff is not excluded from that process at all. They have to be aware.

Take the budgetary process. If things are going to impact on the budget, the Prime Minister's Office has to know. If it's a recusal item, they don't pass it on to him, but they have to have a global picture of what's going on. So the staff is fully aware, up to the cabinet door, because there are memoranda to cabinet. The issues, the subject matter, everything is open. They're aware of it; if it's a recusal item, the Prime Minister is not.

The cabinet door opens and they go in. That's where the decision is made by members of cabinet, and if the Prime Minister is not able to, whoever is chairing the meeting—if it's full cabinet, it's the Deputy Prime Minister—the decision is made by the ministers in that cabinet. The door opens and the decision is communicated to everybody.

So this principle is only focussed in relation to cabinet at this point in time. That's all it is. Just open the door to cabinet. Then the cabinet ministers who are appointed to make the decisions are the ones who make the decisions.

**Mr. Derek Lee:** Those cabinet meetings are the core of our constitutional government, the heartbeat. Some people say Parliament is okay. Well, we're part of that trilogy that makes up the governance picture here. But that's the core. That's it.

**Mr. Robert Benson:** Right. But if there's a recusal item, the Prime Minister is not to participate in that decision—

**Mr. Derek Lee:** He has accepted that.

**Mr. Robert Benson:** —and I don't think you would want to have unelected officials sitting there who.... That's how they get to be ministers—

**Mr. Derek Lee:** Unelected officials, like all the Privy Council staff and the staff of the ministers, sit there.

**Mr. Robert Benson:** They are there to run the cabinet meeting.

**Mr. Derek Lee:** Yes, that's right.

Okay, that's it.

**The Acting Chair (Mr. David Tilson):** That appears to be the conclusion of the questions and comments, Commissioner.

**Mr. Bernard Shapiro:** May I make one comment? Now that the "Issues and Challenges" paper is out, we will ourselves make attempts to get in touch with people so that it can be discussed. But I would encourage you, if you have any ideas of how you would like those discussions to go on, either in your particular group or in some other group, not to hesitate to get in touch with our office, because we'd be glad to arrange it.

**The Acting Chair (Mr. David Tilson):** Thank you and your colleagues for coming.

The witnesses are dismissed. We're going to suspend for a couple of minutes.

•(1222)

\_\_\_\_\_ (Pause) \_\_\_\_\_

•(1228)

**The Acting Chair (Mr. David Tilson):** The meeting is resumed. I call the meeting to order.

Mr. Martin has given us a notice of motion.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Mr. Chair.

I'm glad we have this opportunity to give some time to this motion. I would like to move this motion with the knowledge or with the forewarning that there will be a friendly amendment moved that would in fact remove the three numbers, 1, 2, and 3, of the motion. Also, to change the language in the second paragraph, rather than direct the Minister of Justice to put legislation forward, we would ask the Minister of Justice to consider the advisability of tabling legislation to that effect.

Having said that, I'd like to speak to the motion briefly.

I believe that this access-to-information committee was struck with all the best—

[*Translation*]

**Mr. Odina Desrochers:** Mr. Chairman, I've just uncovered a small glitch. The English version refers to points 1,2, and 3, whereas the French version refers to points 4, 5 and 6. I feel it's important for both versions to be consistent.

[*English*]

**The Acting Chair (Mr. David Tilson):** Thank you for your point of order.

Mr. Martin.

•(1230)

**Mr. Pat Martin:** Thank you. That's a very valid point, and I take it under advisement.

I would like to speak briefly to this idea... I know that when this new standing committee was struck—and ethics, of course, is of primary concern, but equally as important, I think, is—

**The Acting Chair (Mr. David Tilson):** You know, we're somehow getting into debate here. I'd like to get a motion on the floor, and if someone's going to make an amendment, they can do that. But I think we're perhaps putting the cart before the horse, Mr. Martin.

**Mr. Pat Martin:** Perhaps, Mr. Chair.

Then I'll move the motion, as submitted, and maybe there will be an opportunity afterwards, if I get a seconder, to speak to it.

**Mr. Russ Powers:** On a point of clarification, can the corrected motion be read into the record for us, please?

**The Acting Chair (Mr. David Tilson):** Well, I'm sitting here waiting for something to happen.

Mr. Lukiwski has now asked to speak.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** I would like to propose a friendly amendment to Mr. Martin's motion. If you want to follow along, Mr. Powers, we can read it in at the same time.

In the first paragraph, the final line, third line, I would like to put a period after the word “Canada” and delete “with the following changes”. Then I would propose that we eliminate or remove the three points that are listed there, or in Mr. Desrochers' case, points 4, 5, and 6.

In the final paragraph, it should read “It is further recommended to the House of Commons that it instruct the Justice Minister to consider the advisability of introducing legislation in the House of Commons, based on the provisions of this act and these proposed amendments, by December 15, 2005.”

In other words, in that final paragraph we delete the words “to table”. We add the words “to consider the advisability of introducing” and we change “within” to merely “in”.

That would be my friendly amendment, Mr. Chair.

**The Acting Chair (Mr. David Tilson):** Debate on the motion, as amended. Are there any questions on the proposed amendment? Then we'll have debate on the.... I see no hands going up.

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

The clerk has pointed out something else. I had forgotten to eliminate in the final paragraph, the second sentence, towards the end of the sentence, “and these proposed amendments”, because we are not proposing any amendments, obviously.

Thank you, Mr. Clerk.

**The Acting Chair (Mr. David Tilson):** Committee members, debate on the amendment.

Mr. Epp.

**Mr. Ken Epp:** Thank you.

I would like to ask the mover of the original motion, Mr. Martin, whether these amendments are in agreement with what he thinks and whether the whole motion now becomes redundant, because

undoubtedly the minister is considering this anyway. I think it takes a lot of weight and teeth out of the original motion as it was being proposed. In other words, here's the thing that we're saying should be the act, and of course if the minister were to do that, it could then be amended in committee to reflect the changes he wants. But otherwise, to say that he “consider” it, my goodness, what all is he considering? The only tooth that's left in it is “by December 15”.

**The Acting Chair (Mr. David Tilson):** I don't know whether you had any comments, Mr. Martin.

**Mr. Pat Martin:** I'll just briefly answer that, Mr. Epp. We actually felt that it was advisable to remove these very specific directives at this stage and that we may be able to make those changes at a later date—if it ever became an act—at committee, or even during the stage after the researchers have written a report and we do a line-by-line study of that report prior to submitting it to the House of Commons. There would be ample opportunity then to amend or revise. We want the motion to be very straightforward here today, and direct the researchers to write a report based on the Open Government Act submitted by Mr. Reid.

● (1235)

**The Acting Chair (Mr. David Tilson):** Are we ready to vote on the amendment?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Acting Chair (Mr. David Tilson):** We will now have debate on the motion as amended.

Mr. Martin.

**Mr. Pat Martin:** Thank you.

If I could, I'll open the debate, then, on the subject.

I feel really strongly that the House of Commons should be seized of the issue of access to information at this point in time, prior to the end of this session of this Parliament. And I believe that this committee has done a great job in studying the issue, generally. I think it's gone through some of the nuances, and I don't need to make an argument as to why we believe that open government is a good thing. I think that's self-evident.

This is one method we could use, prior to the end of this session of Parliament, to make this committee's views known to the main body, the main House of Commons, by way of a report from this committee. I think we should have it on the record and bring all the fine work you've done to date to a useful conclusion, which would in fact give direction to the House of Commons. I feel strongly that we should do this. It would be a suitable way to conclude an otherwise thorough and worthwhile exercise.

[Translation]

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

**Mr. Mario Laframboise:** I'll be brief, Mr. Chairman.

Given that we asked the Information Commissioner to draft a bill, since we felt he was the person best suited to advise us, and given that we have accepted his bill, there is every reason to move that this process be deemed to be a committee report that we should discuss at the earliest opportunity before December 15.

I concur with the amended motion. You will have the support of the Bloc Québécois.

[*English*]

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

**Mr. Derek Lee:** I am definitely in support of this motion generally. Of course, it bundles together some focus that goes back a few years to the work of Mr. John Bryden, the work of Mr. Martin, the work of the informal committee that got together to work on this, the work of the Information Commissioner, and the departments carrying on work on this too.

Wouldn't it be unfortunate if we went through the next few months and never reported anything to the House on this issue? I think we should.

In my view, if this had been a four-year Parliament, we really would have had a shot at getting a new act in. I'm sure we could have worked quite collaboratively on that, but ours is not to reason why.

• (1240)

**The Acting Chair (Mr. David Tilson):** Do you know something that we don't know?

**Mr. Derek Lee:** No, although we can't presume to know what's going to happen in March.

In any event, it would be really nice if the minister and the government had completed the work on this so that they could introduce something. They would have at least crystallized all the work that has gone on over the past few years. This motion is an attempt to induce that.

The only question I have is this, and I'll ask the clerk. I'm happy with the wording in the way it has been revised, with one exception. I'm a little curious about the use of the word "instruct". I know that we can't instruct anybody to do anything here.

**The Acting Chair (Mr. David Tilson):** Where does it say that?

One moment.

**Mr. Derek Lee:** Yes.

**The Acting Chair (Mr. David Tilson):** Okay, proceed.

**Mr. Derek Lee:** I wonder whether the word is House-parliamentary, if I could put it that way. Is it a word that's inappropriate and dumb, or is it firm enough to make the point?

**Mr. Paul Zed:** It's his last day.

**Mr. Derek Lee:** Yes, it's his last day. What a strange thing that I'm asking him such a tough question on his last day.

**The Acting Chair (Mr. David Tilson):** You appear to have a point.

**Mr. Derek Lee:** I'm all ears.

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

It would be suggested that in the final paragraph, if you could follow along with me, it would read: "It is further recommended to the House of Commons that the justice minister..." In other words, we would delete the words "to the" and delete the word "instruct".

I suppose that if we want to do it properly, we'll have to have another amendment. I'm open to that.

**Mr. Derek Lee:** I'm happy to move the amendment suggested by the chair, with the clerk's advice, if members are okay with that.

I'd like to hear the final wording, because I think we want this to be fairly firm. We want it to appear like a real exhortation rather than a fake exhortation.

**The Acting Chair (Mr. David Tilson):** Is there any debate on the amendment?

(Amendment agreed to [See *Minutes of Proceedings*])

**The Acting Chair (Mr. David Tilson):** All those in favour of the motion as amended?

(Motion as amended agreed to)

**The Acting Chair (Mr. David Tilson):** Before we leave, this is the last day for our clerk, Mr. Fournier, in advising the committee. I have approached the caucuses individually as to whether they'd be interested in saying a few words in his honour.

I know that he seems to be honoured by almost every committee in this place. We walked into public accounts earlier, and they did that as well. He has certainly been of great use to this committee.

I invite someone from the Liberal caucus to make any comments with respect to our clerk.

Mr. Lee.

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

We don't often get a chance, around the House, to thank the committee clerks and other staff when they leave. The House clerks often get a moment, but the committee clerks don't. Our current clerk, Mr. Fournier, has worked with us on the House of Commons committees for some 30 years. That is a huge career.

The work that the clerks do is actually quite difficult. Not only do they have to back up the chair, but they have to take care of a lot of the administrative work. Sometimes the work around here is a little bit like herding cats—all of whom have attitude. Once in a while, they take some polite abuse, if there is such a thing.

I know that Mr. Fournier has been through that—a whole career of it—so he knows the place inside out. We're sorry to lose his expertise, but I'm sure he's trained a few people in his day.

From the Liberal caucus side of the House, I want to thank him for his years of service and wish him well in all the fun he's going to have in the days to come.

I did ask him a few days ago what he was going to do on his first day of retirement, and he said he had left the calendar open. I thought he might do something bizarre like demonstrate in front of the House or carry a placard.

Anyway, thank you for all your service, and best wishes for your future days.

**Some hon. members:** Hear, hear!

**The Clerk of the Committee (Mr. Bernard Fournier):** Thank you very much.

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

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

I'm at a bit of a disadvantage compared to some of my other colleagues who have served in this capacity for many more years than I, but from the limited time I have been on this committee and observed Mr. Fournier, I can honestly say that he will be missed. To spend 30 years in a job, as Mr. Lee said, "herding cats"—I put it more akin to being a tender at a zoo, because most Canadians think this place is more like a zoo—and survive with his wits and integrity intact, and with the goodwill of all parties, is an amazing accomplishment.

I know that dealing with parliamentarians at some times has probably been a challenge to you, sir. Most Canadians consider it to be an almost insurmountable challenge, because parliamentarians and politicians by their very nature, I suppose, at times are high-strung, egotistical, and opinionated. Those are perhaps some of their good points. To be able to deal with all of those egos and those personalities on a continuing basis and yet, move through and always have the respect of everyone around the table, of politicians from all competing parties, I think is a huge accomplishment.

And I can certainly say on behalf of the Conservative Party that you have our untold respect. We wish you extremely good health and much success in your future.

I can only say this from a personal level, but I know anyone who has a passion for golf, as you do, can't be all bad. I encourage you to go to Florida, as you and I discussed, take advantage of a golf school, get your handicap down from 15 into single digits and report back to this House. Perhaps some day in the future, members of this committee might be fortunate enough to have a game of golf with you at a course here in Ottawa.

So good luck to you, sir. It's been an honour knowing you and a privilege serving with you.

**Some hon. members:** Hear, hear!

• (1245)

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

[Translation]

**Mr. Odina Desrochers:** Mr. Fournier, I'd like to thank you, both personally and on behalf of the Bloc Québécois.

I vividly recall when you initiated me to the proceedings of the Public Accounts committee. As a newly minted MP, I was confounded by all the figures. I really hated figures, but I gradually got used to them, because you gave me sound advice. You showed me the ropes and helped me to like my work on the Public Accounts committee. Serving on this committee has been a very rewarding process for me.

You've never hesitated to give me good advice and you were always quick to respond to my requests for documents.

You always expedited matters and we never had to press you to find out if it was our turn to speak. You were always very open with us.

I'm already speaking about you in the past tense.

Obviously, I think you're a very courageous person for having worked at the House of Commons for 30 years. Knowing the history of Parliament, I'm sure you've seen just about everything.

One thing is certain. All of the MPs who have worked with you will remember you as a helpful, amiable and generous individual who always gave of his time freely.

I wish you all the best as you begin your retirement. Take the time to distance yourself from the hubbub of the House of Commons. Perhaps we'll see you again at Bluesfest and we'll have the time to share a beer and listen to some good blues music.

Happy retirement, Mr. Fournier.

**Some hon. members:** Hear! Hear!

[English]

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

Mr. Martin.

**Mr. Pat Martin:** Thank you, Mr. Chair, for the opportunity to echo the voices heard around the table, from the New Democratic Party caucus.

I have to confess, when I first arrived here in 1997, I really had no idea what the role of a clerk of a committee was. I think I underestimated greatly what that work really entails.

We should acknowledge that the clerks who serve the House of Commons standing committees are first and foremost academics, as a rule, people very highly educated and very highly technically skilled in the procedure and affairs of the House of Commons, with a great depth and background in their intellectual training. More than anything, they have a unique ability and skill to corral the flashes of genius that may occur around the table and direct them into something meaningful. Without the discipline of the rules of order, the hard work of members of Parliament would be useless, really.

We know, Mr. Fournier, that you have dedicated much of your adult life to serving the House, and by doing so you're serving democracy. By doing so you're making the work we do meaningful by giving it order and allowing it to have some meaningful import. I thank you for that on behalf of the New Democratic Party.

**Some hon. members:** Hear, hear!

• (1250)

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

Mr. Epp.

**Mr. Ken Epp:** I just have one little word. Somebody said he's been serving here for 30 years. Did he really start when he was 12?

**Mr. Tom Lukiwski:** You don't have to suck up any more. He's leaving.

**Some hon. members:** Oh, oh!

**The Acting Chair (Mr. David Tilson):** I asked the clerk if he wished to say a few words, and true to the end, he said the clerk is not supposed to speak. But since this is his last day, he's going to speak.

**Some hon. members:** Hear, hear!

**The Clerk:** I'll keep it very short and brief.

I want to thank everyone for their kind words. I've had over 15 committees in 32 years at the House of Commons, of which over 30 as a committee clerk.

It was a pleasure having this committee to end with, because I was part of the first meeting. We met without even a mandate. We managed to get a mandate.

After the kind words I've heard around the table, I can't think of any other committee in the 32 years where I could leave on better terms and hear such appreciation for my work. It's time for me to go, but I have very good memories.

[*Translation*]

Thank you very much for your kind and gracious words.

[*English*]

I won't be watching CPAC for the next couple of weeks, but I will be watching what you guys are doing, and thanks a lot for everything.

**Some hon. members:** Hear, hear!

**The Acting Chair (Mr. David Tilson):** The bells are ringing. It appears to be a quorum call.

I'm going to adjourn the meeting until Tuesday, November 15, at 11 a.m.

There has been a letter distributed to you from the Privacy Commissioner. We will deal with that at the next meeting back. It's not translated into French, but perhaps you could take that under consideration.

The meeting is adjourned.

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