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Chair

Mr. David Tilson

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● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen.

This is meeting number eight of the Legislative Committee on Bill C-2. The orders of the day, pursuant to the order of reference of Thursday, April 27, 2006, are for Bill C-2, An Act providing for conflict of interest rules, restrictions on elections financing and measures respecting administrative transparency, oversight and accountability.

Our guests today are from the Office of the Ethics Commissioner. We have with us the Ethics Commissioner, Dr. Bernard Shapiro; the deputy commissioner, Robert F. Benson; and the director of corporate affairs, Lyne Robinson-Dalpé.

Good afternoon, Dr. Shapiro. Could you proceed with a few opening remarks. As you know, I'm sure members of the committee will have a few questions for you.

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

[*Translation*]

Mr. Chairman, members of the committee, thank you for the invitation to appear before your committee today.

To begin, I would like to introduce my colleagues who are with me — Mr. Robert Benson, the Deputy Commissioner, and Ms. Lyne Robinson-Dalpé, Director of Corporate Services.

I have some brief opening remarks with respect to various issues related to Bill C-2, then I will be pleased to answer your questions.

At the outset, I want to point out that my comments will focus not on Bill C-2 generally, but on the proposed Conflict of Interest Act, which creates a new conflict of interest regime for the public office holders in the federal government.

[*English*]

In general, I am pleased to see many positive features in the proposed regime in which the role and mandate of the commissioner will be expanded, notably in four areas: first, responsibility for the administration and compliance of the conflict of interest code for senators; second, investigative authority to include all current and former public office-holders, not just ministers, ministers of state, and parliamentary secretaries; third, authority for the commissioner to self-initiate inquiries; and fourth, powers of the commissioner to issue notices of violations and to impose administrative penalties.

I'm also pleased to note that some of the proposals included in the act directly address some of my own concerns and recommendations raised notably in my *Issues and Challenges 2005* paper issued last fall and during my appearances before parliamentary committees in the last Parliament. These include the requirement for a timely publication in the public registry of ministerial recusals from cabinet meetings and adoption of a formal mechanism by which members of Parliament can refer requests for examinations from the public to the commissioner.

However, I do have some general comments on the overall approach of the proposed Conflict of Interest Act and the implications of this approach. The most important of these is that the new act represents a fundamental shift in the federal conflict of interest regime for public office-holders from a values-based system based on explicit principles to a rules-based system enshrined in legislation, which in some ways of course strengthens the regime.

On the other hand, this change in the foundation of the conflict of interest regime has a number of potentially problematic implications, and I will just raise three.

First, the act does not include any preamble or principles upon which ethical conduct can be evaluated as in the current code and indeed in the current code for the members of the House of Commons as well. Thus there is, for example, no mention of the requirement to conserve and enhance the objectivity and impartiality of government to make decisions in the public interest and to avoid giving preferential treatment to any person.

Second, the act sets out a definition of conflict of interest for the first time, which in itself, I think, is a step forward. However, there is no explicit mention of apparent or potential conflicts of interest. If the intent of the bill is for the commissioner to deal only with situations of what are referred to as real conflicts of interest and that cases of apparent or potential conflict of interest should be dealt with in the political arena, then the current wording of the bill is probably appropriate. Otherwise it could lead to ambiguity on the exact role of the commissioner.

Third, the focus of the new model is on enforcing specific conflict of interest provisions rather than managing conflict of interest in situations that might arise. Moreover, the statutory nature of the new model will require significant legal resources to interpret and of course enforce the rules.

Nevertheless, I believe that in general a lot has been gained under the proposed act. But something of course may have been lost in terms of some of the good features in the transition from a values-based system to a rules-based system. Relative to the observations I have made, I would like therefore to suggest three proposals for your consideration.

First, I believe it would be beneficial to add a preamble to the act setting out the ethical principles that the Conflict of Interest and Ethics Commissioner would be empowered to use to interpret the act. These principles, of course, need not be the current ones. They could be a different set altogether, as long as there was some reference to standards that could be interpreted. Then if a public office-holder is engaged in an activity that might be perceived to be a conflict of interest but that is not covered specifically by the legislation, the commissioner would be able to advise, at least, on the manner in which the matter could be resolved.

Let me give you an example. Suppose a minister is faced with having to decide whether to personally approve a large amount of public funds to a business entity in the minister's own riding. In this situation, even though the minister's private interests would not be furthered, as provided in the definition of conflict of interest included in the act, I believe the public expectation is that the minister should not personally approve this funding, unless of course it is one in a series of selected business grants across Canada. However, there is nothing specific in the proposed act that would require the minister to recuse himself in this situation, as it is not considered, apparently, a conflict of interest in terms of personal financial interests. Under the current code the principles of impartiality, making decisions in the public interest, and avoiding preferential treatment to anyone would provide the rationale for requiring a recusal.

● (1535)

Second, it would be very helpful to the commissioner, in carrying out his or her functions and responsibilities, if he or she had some additional discretionary authority for the interpretation of the act on the basis of the principles that might be included and, as is currently the case, for the extension of compliance deadlines where warranted —for example, to deal with a large number of new clients after an election, where there's a tsunami of material coming forward as various new people are appointed.

Third, I would like to propose that a clause requiring the act to be reviewed in five years be added. I know it is getting to be a bit of an annoying habit for many members to be constantly reviewing acts that have already been passed. Nevertheless, I think it would provide an opportunity to evaluate the experiences of this new regime and to make any necessary changes.

I believe these amendments would go a long way toward meeting the intent of the act, which is, I believe, to underline the importance of accountability in general, and ethics in particular, and to provide Parliament, the public office-holders, and the Canadian public with a solid framework to achieve these results.

In addition to these three suggestions, I want to point out two provisions in the bill that will pose some interpretation and compliance challenges. Subclause 15(4) on political activities appears to be wide open on the type and extent of political activities permitted for a public office-holder, and this could engender—I'm not saying that it will, but it could—difficulties in terms of the perception that a public office-holder would be biased in carrying out his or her official duties. However, if the intent of the bill is that any apparent or perceived conflict of interest situations are to be dealt with in the political arena, and that the commissioner is only required to deal with substantive conflicts of interest, then the proposed arrangements are appropriate as they are; if not, the section could be problematic.

The current wording of proposed section 64 on the activities of ministers and parliamentary secretaries vis-à-vis their activities as parliamentarians may create some confusion. Under what circumstances exactly should a minister wear his or hat as an ordinary MP and serve the constituents? This confusion would be especially acute when the minister is asked by constituents to deal with a quasi-judicial body, or a crown corporation, on their behalf.

[*Translation*]

The last area I would like to mention is that there will be administrative challenges in the implementation of the new act and the expanded mandate of the commissioner. Additional immediate and longer-term resources will be required for inquiries and legal services, as well as for system adaptations and changes.

In addition to the issues I raised above, I do have comments on other areas of the act. Given the limited time available this afternoon, I cannot raise them all, however, I will be glad to provide them to the committee if it wishes to receive them.

Along with my colleagues, I would now be pleased to answer your questions.

● (1540)

[*English*]

The Chair: Thank you, Dr. Shapiro.

Mr. Owen has some questions for you.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Chair.

Dr. Shapiro, thank you for your presentation and the work you have done on behalf of Canadians in initiating the Office of the Ethics Commissioner. It's been an extremely difficult task, and Canadians should be most appreciative of the efforts you've made.

I have a couple of quick questions.

One is that when you had the opportunity after the last election to review the crossing of the floor by a person who then became a minister, I can't remember the exact words you used, but they seemed similar to your concern with respect to the need for a preamble to the act, but almost in reverse, that the code provided you with the principles that may have caused some concern, but the—

The Chair: Mr. Owen, I took on Mr. Martin this morning on this; I feel strongly about it. I don't think we should get into personal situations. I know you haven't mentioned anyone's name, but we all know who you are speaking of, and I'd like you to try to avoid that if you can.

Hon. Stephen Owen: Fine. Thank you, Chair. I'll try to generalize a little more.

I took from previous remarks you've made that although something seemed to have perhaps offended the spirit of the rules of conduct, it had not actually offended the legislation, and that in that sort of situation you would invite Parliament to consider remedying that.

We're almost looking at the reverse here, where we've got remedies and you've made some comments about amending the statute, but adding a preamble gives you wider scope to provide advice to the people you have the responsibility to oversee in a way that can add interpretive value.

Mr. Bernard Shapiro: I think the operative word is advice. That is, I think that having a preamble of some sort, having some standards against which we try to interpret the meaning of the act—and the act is going to be interpreted over and over again in the event that it passes—is terribly helpful in trying to sort out the differences between situations that appear the same but are in a context that in fact makes them different. It's impossible to imagine all the rules one could ever need in administering any kind of code that relates either to conflict of interest or ethical matters in which value systems obviously differ. I think it would be helpful.

As I say, I've no particular preference for the ones we have. They've turned out to be useful in some respects, but others could easily be developed. I don't want to make that argument. I'm just arguing that something would be helpful.

Hon. Stephen Owen: Thank you.

I have just one further question and then I'll hand it over to my colleagues.

In relation to the additional responsibility the act would give for the Ethics Commissioner to have responsibility for the Senate as well, there was previously a lot of discussion within the Senate as well as outside of the value, from the Senate's point of view, of having their own ethics adviser or officer, because of concern, whether real or perceived, that an officer appointed by the executive would not have authority, in a sense, over that independent house of Parliament. I wonder if you have any concern or comment on the complication that it might provide to a single ethics commissioner.

Mr. Bernard Shapiro: I certainly don't want to prejudge what the Senate is going to be concerned about when they consider this bill. That was an issue the last time around; I was not present at the time and I can't comment on its details. I think one thing you said would not be helpful if it were repeated too easily, and it is that it is not envisioned that the appointment be one of the executive. The appointment is one of the House of Commons, in one case, or it could be the Senate in the other. There is a variety of different ways in which the system could be jointly managed. I think there's a lot to be said for having the operation focus on a single office rather than on multiple offices, but that would be up to the senators and the House, eventually, to decide.

● (1545)

Hon. Stephen Owen: Thank you.

The Chair: Mr. Murphy has a pinch.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): In a pinch...what difference does it make whether a person is an executive assistant to an opposition critic or leader of the opposition, and then, after the government changes, is allowed to lobby the same people he or she worked with for eight or ten years—I'm keeping it hypothetical, of course, Mr. Chairman, pursuant to your direction—or whether they've been in government and leave government? What difference does it make?

Surely it's the influence, and not who they worked for and what paycheque they received. Do you see a conflict of interest as much proscribed prospectively here as there would be for someone who's been so close to someone who is now in power?

Mr. Bernard Shapiro: Again, these things tend to be context dependent. It's always easy to think of single examples and then try to generalize them to everybody. I think that both people who are in power obviously have access to power in certain ways, and therefore one has to be careful about what their previous associations were and how they deal with those in the context of their current environment. I think it's equally important to go the other way—that is, someone who previously had access, and is now in another context, can produce the same result and ought to be dealt with in a similar way.

The Chair: Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Firstly, thank you for being here this afternoon, Mr. Shapiro.

I would like to apologize for the ill-mannered way in which we are treating you and all the other witnesses that have appeared, or will appear, before this committee. Unfortunately, an utterly unconscionable time restriction has been imposed on the committee and on you. That is probably why you ended your presentation by saying:

> In addition to the issues I raised above, I do have comments on other areas of the act. Given the limited time available this afternoon, I cannot raise them all.

You were being very diplomatic. Other potential witnesses have refused to appear before the committee. I think that this situation is utterly inexcusable.

You said that you would be glad to provide your additional comments to the committee if it wishes to receive them. I do not know whether the committee wishes to receive them, but I certainly do. You can send them to me, along with any other information, through the clerk.

I would like to thank you for having suggested amendments. I do not have any questions for you. I simply wanted to make an observation, but you should feel free to respond to it if you wish.

The bill before us comprises 317 clauses and 250 pages. Yet, for the first time in 13 years, I find myself faced with a time restriction for studying the bill, a little like the time restriction imposed upon you for your presentation. The Conservatives have given us approximately two and a half weeks; I find this utterly mind-boggling. Other time restrictions are also being imposed, and the NDP has joined the bandwagon.

[*English*]

Mr. Pierre Poilievre (Nepean—Carleton, CPC): On a point of order, Mr. Chair, the member is stating that we imposed some sort of time on him. In fact, that position was made by the committee as a whole. We have the minority of representation on this committee, and the other parties agreed with it. I think the record should be corrected that we have not imposed any time as a party.

Thank you.

The Chair: Try to do your best, Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Carry on speaking to your staff, Mr. Poilievre, and let me do my work. Thank you very much.

It is utterly mind-boggling that we have been given so little time to study this bill. All of the witnesses who have appeared before the committee have suggested amendments, and those who have still to appear will do the same. I would like to thank you for having proposed what I believe to be the most important amendment, that is to include a mandatory five-year review of the act, which will, inevitably, be flawed because we are being rushed in our study of it. Bear in mind that what you sow is what you reap. As I was saying, the most important amendment is probably the inclusion of a mandatory five-year review, as was provided for under C-11 last session. The Conservatives have not included a mandatory review because for them, Bill C-2 is equal to God's Ten Commandments.

I would like to hear your comments on the five-year review, the time restriction, the lack of preamble, and, time permitting, any other amendments that you believe should be made to Bill C-2.

● (1550)

[*English*]

Mr. Bernard Shapiro: In making the three amendments I suggested, I tried to keep in mind what appeared at least to be the legislative calendar, or what appeared to be the calendar through which this was going to be considered and then dealt with. I made no attempt whatsoever to go into a detailed clause-by-clause imagination of how a revised bill might look in trying to realize whatever the government's intentions were. I made no attempt to do that. I just focused on the things that I thought would be most useful in the context we had.

It seems to me that adding some set of criteria—as I said, the principles we had may not be the ones that are wanted; there may be others that may be more useful—that would give both the people subject to the law—because it's a law now, it's not just a guideline—and Canadians in general some idea of what the objective was. Certainly we'd be glad to work with anybody who wishes to work those out. I offer the possibility, but that's a question of what the committee wants and wishes to do. I thought that would be helpful.

On a more minor scale, the question of discretion, it seems to me, is very helpful. It needs to be limited; it can't be too wide. For example, in the current situation the government changes and there's a huge tidal wave of paper that comes to the office, and it is probably impossible to deal with in the time limits that are provided. So some discretion to let that move a little so you can deal with the odd special occasion seems to me to be a good idea.

The revision of the review, I think, would be a natural consequence of the fact you raised earlier. There hasn't been a lot of time in some ways to consider this as carefully as might otherwise have been the case, but perfection can get in the way of the goods, so to speak, to use an English expression. I think a serious attempt at review of the experience once a number of years has passed—it could be three or four or five—would be a useful idea.

Another useful idea the committee may wish to consider as it looks at the law in detail is what the implementation calendar is like. There are some things that, of course, could be implemented right away, but very careful thought should be given to which of the sections may require more work—not on the section itself, but more work to get implemented. An example is anything that requires a regulation such as fines. It's a complex process, so the development of those can't be done in any instant way. Some thought about the implementation calendar should be given, and some thought has already been given, I should say, but I think more thought would be very helpful.

[*Translation*]

Mr. Benoît Sauvageau: You are absolutely right in what you say, but, unfortunately, due to the time restrictions that have been imposed upon us, we will be unable to improve the bill. Given the desire to pass the bill at breakneck speed, we will have no choice but to subject public servants, public office holders, and others affected by the bill, to a flawed piece of legislation.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Martin.

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

I'm interested, Dr. Shapiro, in one aspect. The government contemplates a new Conflict of Interest and Ethics Commissioner—a dual function. They've made the case that this new appointee must have a judicial background, or something to that effect. I don't fully understand what they're getting at or why. Do you see that this would be necessary, given what you know about the new...?

Mr. Bernard Shapiro: That is a difficult question for me to comment on, since in a sense it's a personal question. I find it very awkward to make any comment at all. I think in that sense it's unintended, but I think it's a little unfair. I'd rather make no comment, if that would satisfy you.

Mr. Pat Martin: I'm sorry. That's fair enough. I understand. I'm trying to get my mind around what—

Mr. Bernard Shapiro: I understand. I get the point.

● (1555)

Mr. Pat Martin: Again, maybe you can be of some help. We're planning on putting in an amendment under this section of the bill to deal with floor crossing. We view it as an irritant that a lot of Canadians are concerned about. We're finding your rulings helpful on a couple of complaints that have been made, actually, in that your rulings pretty much cited that if the floor crossing could have been tied to some personal gain or tied directly to an actual vote in the House of Commons, then not only could it be viewed that it was an ethical breach, but it could also even be viewed that the person may have been induced with some monetary or....

I have two questions. Could you expand on that one a little bit? Also, do you see that personal interest could be something other than monetary gain, such as status or career laddering? Do you see other ways of taking a more generous interpretation of personal interest?

Mr. Bernard Shapiro: Relative to the last point, the issue—at least, the issue as it appeared to me—was whether anything special that isn't offered to any other person who has been in cabinet is being offered in this case. When a person gets an opportunity to be a minister, something special has happened to the person's life and career in every case, but we don't consider it a conflict of interest, simply because it's part of the package that is offered to everyone and therefore is not any kind of special inducement. It's only if the inducement is unusual in a particularly egregious way that you would want to say it was therefore a breach of the code.

Relative to the first part of that question, I think it's important to understand that when you're dealing with ethical issues in which conflict of interest is a subset—ethics is a much bigger question than conflict of interest—values almost always collide. Otherwise we wouldn't be discussing this year after year after year. Therefore, it becomes very context dependent. It depends a lot on the particular circumstances of a particular case; making general rules about this is very difficult.

Mr. Pat Martin: I can understand that.

If we could go back to another point I asked, if that floor crossing were perhaps tied to a specific vote, would that cross the line, in your view? In other words, to co-opt a person into your camp to help win a specific vote with an offer of reward...? I understand that everything you deal with is in varying shades of grey, but I still see this as soft—

Mr. Bernard Shapiro: I'm not going to comment on a specific case, which leads me back...because that's the one that comes to mind, so I won't comment on that. I do think it makes it much more problematic than the question of status, the salary that goes to a cabinet minister, or things of that sort.

Mr. Pat Martin: Do you foresee any problems or confusion with this one new officer's having to enforce two, or perhaps even three, separate conflict of interest codes? There's the Senate and the House of Commons at the very least, and, I suppose, the act.

Mr. Bernard Shapiro: As the current commissioner, I administer two, one for public office-holders and one for members of the House of Commons. I don't see anything conceptually difficult about expanding to three. It does mean you have to be careful when you're asked for advice, because it means you have to differentiate, for example, between whether the person is a public office-holder, a member of the House, or a senator. That is not, however, enormously difficult to do. It's one of the reasons behind a decision we recently made operationally to try to assign each file that we get to the same adviser, in a sense, for life, so that they focus on that particular relationship and whether that person is a public office-holder, a member of the House, or a member of the Senate.

Mr. Pat Martin: Okay. Thank you.

Mr. Bernard Shapiro: You're welcome.

The Chair: Thank you.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair.

Dr. Shapiro, it's good to see you again. I have a couple of questions, but first I want to focus on your suggestion that ministers should perhaps recuse themselves from projects where funding goes to their home riding, even though the project does not benefit the minister personally or his personal interest, because you're suggesting there would be difficulties with the public perception of that. And perception is reality in politics.

I agree with what you're getting at and the spirit of it, because you want the public to be confident that the minister is not trying to feather his or her own nest, but I have difficulty in how you would administer that. I'm going to give you a couple of examples, because I really can't get my head around how you would deal with this.

In a general sense, any time there is a project that would go to a minister's home riding, regardless of whether that minister had anything to do with that file or with approval of that funding, when the announcement comes, the minister is going to be there for the photo ops and to make the announcement and perhaps to hand out the cheque, and everything else. So even though that minister had absolutely nothing to do with the funding of that, the perception may be, well, he certainly had some influence, and behind the cabinet's closed doors he did whatever he could to make sure the project went to his riding.

So how do you propose that a minister recuse himself, or are you suggesting that a minister should recuse himself?

I'll give you a second example, because it happened in Saskatchewan. Mr. Chair, I'm not doing this to get into personal examples here, but in my province of Saskatchewan, prior to the last election, we only had one government member representing the province, and he happened to be a cabinet minister. So realistically, whatever projects came to Saskatchewan, that minister was on hand to hand out the cheque. It could be argued that the entire province was that minister's home riding.

So are you suggesting that in any case where any funding or project happens, and a minister happens to be involved because it happens to be in his or her home riding, or home province, they should recuse themselves and not be available to participate even in a cheque-signing ceremony? I just can't get my head around how that —

● (1600)

Mr. Bernard Shapiro: It's certainly flies in the face of ongoing experience. But in any case, I think it's never a serious issue when the project is one of a large number of projects that arise out of a particular government program. Let's say that if it's in support of small business and a whole series of grants are going to be made on various criteria, it doesn't matter that one of those grants happens to go to the minister's riding, and there's no need to recuse him or her in that respect. But when something is specific to that riding and not, for example, generally available elsewhere, you get into problems of apparent conflict of interest.

I don't think any Canadian objects to the fact that the minister shows up to hand out the cheque; it's understood as part of the culture of political life in the country, and I think that's reasonable. It's not unreasonable. But I think the minister has to be very careful in dealing with projects that relate only to their riding, as opposed to relating to a series of ridings of which theirs might be one.

Mr. Tom Lukiwski: All right, I'll give you another example from my own province. The minister was the Minister of Finance, the only Saskatchewan minister in the previous Liberal government. There was a project that was very well received in Regina called "The Big Dig". It was for deepening Wascana Lake, and it was a Canada-provincial infrastructure program, so there was a program in place.

Would you suggest in that particular case—

The Chair: There's a point of order.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Mr. Chairman, I was wondering why some members are not allowed to make reference to specific cases, yet the Conservatives are. Surely Saskatchewan is a specific example of a specific province?

At times, I get the feeling that we have two chairmen for this committee. Mr. Poilievre sometimes takes on the role of chairman. My question was, however, for the committee's real chairman.

Could you please clarify this for me, Mr. Chairman?

[*English*]

The Chair: Your point is well taken. We're going to be consistent; we should not give specific examples. You're absolutely right.

Mr. Lukiwski, please.

Mr. Bernard Shapiro: Perhaps I could add a general comment that's not related to the specific examples. In general, when we try to administer these guidelines, we try to focus on decision-making; it's who made the decision that's really crucial, not who gave out the cheque or who appeared to shake hands, or whatever. So if you keep those two principles in mind—who participated in the decision-making, and is it a program that is one of a large class of other beneficiaries, or is it specific—they usually give sufficient guidelines to move ahead.

Mr. Tom Lukiwski: Would it not be fair to say, though, that a cabinet decision was made and a minister in question was involved with the decision even though it may not have been his or her particular file?

Mr. Bernard Shapiro: I would say that in some of those cases the minister should recuse himself or herself from the decision made at cabinet.

Mr. Tom Lukiwski: Then you would have a situation where ministers would be recusing themselves for any decision that would be going back to their own riding, under any circumstances.

Mr. Bernard Shapiro: Going back to their own riding only. It makes a big difference.

Mr. Tom Lukiwski: I have two other quick points. How much time do I have, Mr. Chair?

The Chair: Two minutes.

Mr. Tom Lukiwski: One is with respect to a comment, and it was a comment made by one of my honourable colleagues, about the conflict of interest. If there was an opposition executive assistant or an executive assistant to a member of the opposition or its leader, should they not follow the same standards as a ministerial aid? I think that's an excellent suggestion, frankly, and I would certainly hope that we get an amendment coming from my honourable colleagues opposite to that effect.

I have another question for you, sir, on what I think is a decent suggestion. On the current wording of the section with respect to the activities of ministers and parliamentary secretaries and their activities vis-à-vis parliamentarians as opposed to a public office-holder, you say the wording may create some confusion. Under what circumstances should a minister wear his or her hat as an ordinary MP and serve the constituent? This confusion would be especially acute when a minister is asked by a constituent to deal with a quasi judicial body or a crown corporation on their behalf.

What wording would you suggest would clarify that situation?

● (1605)

Mr. Bernard Shapiro: I haven't got a wording right now to suggest, but I'd be glad to provide one.

Mr. Tom Lukiwski: You're going to be providing some information, some proposed amendments to this committee, and if you could provide some wording on that particular case as well, that would be helpful.

I think that's all I have, Mr. Chair.

The Chair: Thank you.

We're going to have a problem each time. We have five minutes left in the 40-minute period. Hopefully somewhere along the line I'll be allowed to alternate it. We'll go the five minutes for the Liberal caucus this time, and hopefully in the future I can move that around.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman.

On the lighter side, Mr. Shapiro, when you were being introduced, the Hallelujah Chorus was going in the back here. Given the tremendous amount of exposure that you've had recently, I thought that was appropriate, poetic justice actually.

Mr. Shapiro, you've talked about moving from a regime that you have been familiar with, which is not a statutory but a values-based regime. I infer from that that it has allowed you to play a little bit of a different role from time to time in advising individuals with respect to their possible conflicts and so on. In fact, members can come to you and ask for your advice with a certain degree of confidentiality. In moving to a rules-based and a more statutory regime, you have indicated that there should be a continuity of that values-based regime by having an ethical mission statement—call it what you want—that would still give you that element of advisory, intercessional role.

My concern, and I wonder if you would address it—and I think the committee should be concerned about it—is that in a rules-based regime, if the balance is too far in that direction, then it's possible that the natural justice, the opportunity prior to huge publicity depending on your reporting responsibility, would really deny a member their opportunity to have a day in court, so to speak.

Could you make a comment based on your experience? Could you suggest any way the legislation could be written in such fashion that this possibility would not occur?

Mr. Bernard Shapiro: There isn't any way to write any legislation guaranteeing that everybody will always be dealt with in exactly the appropriate manner all the time. This is a human effort, and humans will make mistakes and do things they will regret, etc. We all do, and we try to minimize them, but there's no perfection to be had out there.

Let me put it another way. A rules-based regime, if it's a good one—and let's assume they're all reasonable—tends to be a smaller box, as this one is compared with the previous one, and a stronger box. It's smaller; it's much more carefully defined. I think it provides less flexibility—not no flexibility, but less flexibility—than would otherwise be the case. And what I'm suggesting is not necessarily a set of principles, although that's one approach, but that a preamble might perhaps be devised. Again, I'm not part of the writing team for this legislation, so I don't want to put words into their mouths. I'm suggesting a preamble that might at least give the people subject to the regime and the person administering it—the new Conflict of Interest and Ethics Commissioner—some way to make advice more meaningful, by being able refer back to something and therefore appear less arbitrary than might otherwise be the case.

None of these regimes is perfect; let's not pretend they are. Nevertheless, that's the challenge for those people putting the legislation together.

● (1610)

Mr. Alan Tonks: Mr. Shapiro, if there were an absolute point reached by a conflict where you were required to report somewhere on that, or to take some particular action, whom would you report to in this regime? What is the closing of that accountability loop when you act? How does that work?

Mr. Bernard Shapiro: Relative to the members, it would be to the House itself. It's the Speaker of the House of Commons to whom I've been reporting for the last two years. On other occasions, it turns out that it has been the Prime Minister in administering his particular code. There are requirements for publicity in both these cases for public...[*Inaudible—Editor*]...and things of that sort, and those have to be paid attention to.

One of the difficult things I've faced, I must say, over the past few years is that it's not clear whom I should report to all the time. So I've used the Speaker of the House as the most neutral person I can think of, and he has been very helpful in assisting me.

Mr. Alan Tonks: Thank you.

The Chair: Thank you, Dr. Shapiro, and colleagues, for coming this afternoon. Thank you very much.

We will take a break for a few moments, thank you.

● (1612)

(Pause)

● (1615)

The Chair: We'll reconvene, ladies and gentlemen.

Our second witness this afternoon is Robert Marleau. Most of you know Mr. Marleau. He's chair of the board of directors of the Parliamentary Centre and the former Clerk of the House of Commons.

Good afternoon.

Could you make some introductory comments, Mr. Marleau?

Mr. Robert Marleau (Chair of the Board of Directors, Parliamentary Centre, and Former Clerk of the House of Commons, As an Individual): Thank you, Mr. Chair.

I am grateful to the committee for remembering my name and my association with the institution.

The Chair: The people who are sitting on either side of me remember you well.

Mr. Robert Marleau: I must say that I have some difficulty in commenting on the substance and the content of a bill, since I spent 32 years of my professional life avoiding doing so. I hope you'll be generous with me if you sense any hesitation; however, I'll endeavour to answer your questions as well as I can.

[*Translation*]

My preliminary comments will focus on two aspects of the bill. My first remark is of minor importance in terms of accountability, but fairly important in terms of parliamentary procedure.

My second point will focus on the process for studying the estimates, and on the way in which I think the scope of the bill could be broadened to include the estimates.

[*English*]

You may initially, as I comment on this, find the first point, the procedural point, somewhat minor, but in my view it has potential for difficulty in the House from a procedural standpoint. That's the issue of the secret ballot. The bill does provide for a secret ballot for the appointment of most of the parliamentary officers or agents or *mandataires du Parlement*, whatever term you want to use, except for the...no, it includes the Auditor General.

In my career as a committee clerk advising on bills, and as table officer and Clerk of the House, I have consistently advised parliamentarians to avoid enshrining parliamentary procedure in legislation. The reason is that parliamentary procedure is designed to be somewhat flexible, allowing the House to advance its business against a set of standing orders. Although they are standing—and somewhat permanent—they can very easily be altered according to the wishes or mood of the House that day. If you enshrine the secret ballot in legislation, both houses will be bound, and the Speaker will be bound. There will be no choice but to hold a secret ballot, even if there's unanimous consent on the candidate. Even if there is the will to proceed quickly, the House will have to hold a secret ballot.

We've had difficulties in the past with procedure enshrined in legislation, prescribing certain debates at certain times within certain timeframes, and the House wasn't quite ready to deal with that. There was a political agreement not to deal with that, yet the House was bound to proceed.

I'm not disputing the issue of a secret ballot. What I would recommend to you is, if you wish a secret ballot, then enshrine it in the standing orders of both houses, not in legislation.

I spotted a small discrepancy—or maybe it's not a discrepancy; it may be a matter of policy. It's not for me to judge. The nomination process is subject to secret ballot, but the removal process is not, or at least it's implied that the removal process is not. In every case, the nomination process must be a secret ballot, but it appears that the removal process for most of these officers is a simple resolution adopted by a majority and, I assume—according to what's written in the bill—a public vote. On the one hand, you have nominations by a secret ballot; then you have a removal process by public vote. It's up to the committee to decide whether that's what it wants. To me, it appears to be an inconsistency, but it may not be.

I want to make another point, and here, Mr. Chairman, I will beg your indulgence a little bit because it may sound a little irrelevant, but I will make it quite relevant.

● (1620)

[*Translation*]

It is an unfortunate truth that the interest that members and parliamentary committees take in the estimates has waned over the past 40 years. I am not the first to make this observation. I think that those who have followed the evolution of the process for dealing with estimates in the House of Commons would agree with me.

[*English*]

There is very little incentive for MPs to spend a lot of time on estimates. It doesn't bring a lot of votes in your ridings, and sometimes it can be somewhat daunting, looking at the volume of information that comes from the government. By and large these committee reports don't get debated in the House, and as a consequence little interest is devoted to them.

You have today in the Auditor General's report a graphic example of violation, if you like, of the constitutional supply authority of the House, at least alleged by the Auditor General, that might have been picked up through a study of the supplementary estimates. I'm referring to the gun control issue. In the period that the Auditor General is commenting on, 2003-04, the justice committee was preoccupied with a major piece of legislation, and that was same-sex marriage. The committee held not even a single hearing on the gun control supplementary estimates.

I'm not criticizing the committee; please, don't get me wrong.

[*Translation*]

However, it does highlight a fundamental problem in terms of accountability that is not addressed in the bill.

[*English*]

Parliament is outside the loop of accountability in this bill. And I've just said to you, please don't put procedure in the bill, so I'm not arguing that you put the supply process in the bill. What I want to link it to is the parliamentary budget office.

I commend to you a research paper of the Gomery inquiry, in *Research Studies: Volume 1*, called “Parliament and Financial Accountability”, prepared by the Parliamentary Centre, and an article in *The Hill Times* of last week, signed by Peter Dobell and Bob Miller, the executive director of the centre, on that very subject.

It would be very easy to extend the mandate of the parliamentary budget office to include estimates. It would be my strong recommendation that you consider that as part of this bill, adding a second mandate of that office within the library, to capture the estimates process. The committees, I believe, as I've advocated publicly and privately, require substantive support by a financial analysis office in order to help the committees do a proper job on the study of estimates. Of course, with that would come a series of standing order changes, which would be irrelevant to your discussion today. This amendment to the bill has the potential to bring Parliament back into the accountability loop.

Mr. Chairman, I'll leave it at that. Those were my two major comments, one minor and I think one more substantive.

The Chair: Thank you, Mr. Marleau.

I think for committee members it's a challenge to have someone appear before them who used to advise Speakers and clerks of committee. It's a pleasure to have you here.

Mr. Owen.

Hon. Stephen Owen: Thank you, Chair.

Welcome, Mr. Marleau. You've spoken about the parliamentary budget officer. That's one more of a growing list, as this bill expands it further, of parliamentary officers. Of course, 30 years ago we just had the Auditor General, then the information and privacy commissioners, and now we have a number of further ones.

This relates to your very useful suggestion of extending the parliamentary budget officer's mandate to cover estimates. A tension exists between these parliamentary officers, whose role is fundamentally to—as they're called—"assist" members of Parliament in doing their job. They extend the reach of an individual member of Parliament. The concern is that it becomes self-limiting, that at some stage we have so many independent parliamentary officers that we're creating a parallel universe between the executive and the members of Parliament. What is intended, properly, to be an assistance becomes a buffer.

I don't know the answer to this. I used to be one, and I highly value the role they can play in assisting members of Parliament and the public in holding the executive to account, but I am concerned about the proliferation. At some point, the public, and perhaps the public administration and the news media and everyone else, will be a little confused about who's responsible for what in these independent roles, which really aren't to be independent; they're supposed to be subordinate to Parliament.

It's this relationship that I'm interested in your reflections on.

● (1625)

Mr. Robert Marleau: First, as the legislation is drafted, I don't equate the parliamentary budget office with a full-fledged parliamentary officer. I see it much more as an internal support and resource—to parliamentarians, to committees, to individual MPs, to senators—than as an alternative accountability structure.

As for the other officers, I've read articles about the proliferation of these positions. It is true, I think, that over the years, in creating parliamentary agents, Parliament's intention was to delegate a certain accountability exercise, but in many cases it has diminished the authority of Parliament.

Take the Access to Information Act. Don't take this as criticism of the act and the value it adds to our political culture, but questions on the order paper and notices of motions for the production of papers had real value, real impact, before the Access to Information Act. A department, when it got a question on the order paper, took it quite seriously. Indirectly, what has happened now is that you're better off, as an MP, using ATI to get a document than using a notice of motion for the production of papers. I don't think it was Parliament's intention to diminish one of its own procedures by delegating this to an agent outside, but that's what has happened, in my view.

That's not to say that the system can't be strengthened and reined in, but along the lines of what you just outlined, that would be my comment.

Hon. Stephen Owen: Mr. Tonks has a question.

The Chair: Yes, Mr. Tonks.

Mr. Alan Tonks: Mr. Marleau, just with respect to closing the accountability loop and reinforcing the oversight provisions of committees, the congressional system has a similar entrenching of a financial officer. We have the Library of Parliament, and you've already said that it's not so much an accountability as it is an additional resource to be accountable. I think that's very important.

If we're going to create a parliamentary budget officer, keeping in mind that this act also creates the deputy minister as the accountable financial officer in every department, why would we not as a committee strengthen the resource capability by entrenching that and locating the parliamentary budget capacity in the Library of Parliament, for example?

Mr. Robert Marleau: I think that's what I was trying to advocate, that having that resource within the Library of Parliament makes it a resource of Parliament as compared to a stand-alone officer with somewhat of an arm's-length relationship in the exercise of his or her duties.

I am one who resists congressional creep. I don't think all our solutions are in a system very different from ours. Therefore, I think locating that function within the Library of Parliament, within the control of Parliament, as a servant of Parliament, is a more effective way of strengthening the accountability role of the House.

● (1630)

Mr. Alan Tonks: I hadn't heard that, but that clarifies it. Thank you, Mr. Marleau.

Thank you very much, Mr. Chair.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Thank you, Mr. Marleau. As I said to Mr. Shapiro before asking my questions, I am very sorry for the cavalier fashion in which the committee has treated you. The Conservatives and the NDP decided to impose a time limit on your intervention. I am sure that you had more to say on Bill C-2.

If C-2, believe by the Conservatives to be the 11th commandment, were adopted without amendment, do you think that it would be problematic in terms of interpretation and implementation?

Mr. Robert Marleau: Mr. Sauvageau, I am not trying to avoid answering your question, but several aspects of this bill are outside of my area of expertise and my experience. I would go no further than what I already said. To my mind, one of the problems with the bill is the decision to enshrine the secret ballot in law. Such a decision would restrict the House and would bind the Speaker to following the procedure set out in the statutes, even if it were not the will of the House.

Secondly, whenever you include procedural matters in a bill, you are asking for the courts to get involved. It could give rise to all sorts of situations. Let us say, for example, that somebody was unhappy with the secret ballot, be it in terms of the process, the results, or something else. The individual in question could ask the courts to change or annul the result. While it is possible that the courts would respect parliamentary privilege and independence, there are no guarantees. In an ideal world, everybody would be reasonable and a reasonable question would be brought before a reasonable judge. But that is not always the case, and whenever you blur the distinction between parliamentary process and the courts, you run the risk of there being court interventions in the future.

Mr. Benoît Sauvageau: I would like to think that any other amendments that you may wish to make would be accepted by the committee and the clerk. If you have time to study the bill, we would be delighted to receive any further suggestions for amendments that you may have.

I have a question for you, but I do not know whether you will be able to answer it. It concerns the possibility of broadening the role of the Parliamentary Budget Officer.

However, Bill C-2 overlooks another matter, which requires clarification. I am referring to decisions handed down by the Canadian International Trade Tribunal. Were a claimant to take legal action against two government departments, Bill C-2 would not cover all the decisions.

Let us say, for example, that a citizen, or a group of citizens, filed a complaint against the Department of Public Works and Government Services Canada on the grounds that an invitation to tender had been organized in such a way that only one tender could meet the criteria. Were the Canadian International Trade Tribunal to rule in favour of the complainant and determine that there had indeed been misconduct, Bill C-2 would not apply to the decision. This is something that has already happened.

Do you think that Bill C-2 ought to be amended to include Canadian International Trade Tribunal decisions?

Mr. Robert Marleau: When beginning my presentation, I begged the indulgence of the committee. This is an example of a question that is way beyond my field of expertise.

Is it desirable for the bill to cover such matters? I believe that is a matter of government policy. It is a question of scope. I am not prepared to say whether it is desirable or not. I think that is a decision for members of Parliament to make.

Mr. Benoît Sauvageau: I am going to share my time with Ms. Lavallée.

Do you have any questions, Carole?

Mrs. Carole Lavallée: I do not know whether I have time to ask my question and get an answer.

I would like to ask you about the estimates. I am a newcomer, and I am not familiar with all the nuances of parliamentary procedure. However, I know that I am sitting opposite the undisputed authority on parliamentary procedure.

Firstly, I understand that there are no estimates for private members' bills. There are, however, estimates for government bills, including Bill C-2. If I understand you correctly, you are suggesting that we should turn our attention to the cost of implementing Bill C-2, and ask somebody to help the committee prepare the budgetary estimates. You are suggesting that this person should be the Parliamentary Budget Officer.

I need some clarification, and I think you see what it is that I am not understanding.

● (1635)

Mr. Robert Marleau: According to my reading of the bill, the Parliamentary Budget Officer could analyze private members' bills. I did not see his role going as far as assessing the costs or conducting financial analyses of government bills. Having read that, I have a better understanding as to why there are requests for analysis of private members' bills.

Personally, and even as a practitioner of parliamentary procedures, I question the merit of such a provision. After all, the ultimate decision to adopt a bill or not and whether there will be financial implications lies with the Speaker of the House. A situation could arise where an entity of Parliament might decide that a bill contains no pecuniary measures, whereas the Speaker could decide that there were. There could be an internal conflict.

In my opinion, the resources devoted to that would be better used if they served to support members in analyzing the estimates.

[*English*]

The Chair: Thank you.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chairman.

And thank you, Mr. Marleau. I want to say how often we think of you. Even though you may feel you are distant now, many of us carry around your book, Marleau and Montpetit, like a Bible and use it very well. So you're often in our thoughts, even if you're not here physically.

I want to thank you for this very helpful recommendation. Coming from the province of Manitoba, since I've been here, I have often found it odd how little time we spend on estimates. We dedicate all our time after the fact at the public accounts committee, scrutinizing every nickel that was spent and often criticizing how it was spent, but almost no time at the front end in reviewing the estimates.

Where I come from, it is not unusual to bring the minister in to a committee in the legislature in Manitoba and stay there all night. They will spend 50 to 60 hours of committee time on the Minister of Health's budget, going line by line and grilling that minister on everything he proposes to spend in the coming year. That has two positive effects: first of all, that's the correct time to give it that level of scrutiny, and second, the minister or his deputy or his technical people have to become an absolute authority on everything that's being spent.

I think this is an excellent idea. It's a graphic illustration of the benefit of giving all this time to hearing so many witnesses for this important bill. This is the type of thing we are getting here. I certainly hope we can agree to expand the role of the budget officer. Perhaps we can ask you for even further detail as to how you see that fleshing out. I won't dwell on that.

I do have a question, though. There are enemies of Bill C-2. There are people who don't want to see it go ahead. I won't say if some are political. Some, I think, are entrenched in the bureaucracy. But first of all, what is your view on omnibus bills? Do you think some of these bills get so big and so massive that they collapse under their own weight? Do you see it a viable option sometimes to hive off some of the less controversial components and deal with them separately?

Could you speak to that briefly?

Mr. Robert Marleau: Yes, I can, very briefly, and I will give you the same response I would give to the Speaker asking for my advice.

Procedurally, omnibus bills have been part of our parliamentary culture for a long time. Many arguments are made as to why they should be split, and sometimes they're made to the Speaker. In my entire 10 years as Clerk of the House, I only remember the Speaker splitting one bill.

● (1640)

Mr. Pat Martin: Which one was that?

Mr. Robert Marleau: It was an immigration bill under Speaker Fraser, I believe, in 1988.

First, splitting an omnibus bill is the decision of the government. It's a political and policy decision as to how it's packaged, and it remains a political decision as to whether it will be split. The House may agree to split a bill or send two parts to different committees. That's possible, but it has to be a decision of the House.

I won't comment on the substantive part of your question as to whether it is desirable. It can be a very efficient way of proceeding, but it can make it difficult for a member to cast a single vote on the principle of the bill or on third reading.

Mr. Pat Martin: Wasn't the cruelty to animals bill split? Do you remember that bill, Mr. Marleau?

Mr. Robert Marleau: I recall something about the cruelty to animals bill. I think that was a multi-party decision; it certainly wasn't a decision by the Speaker.

Mr. Pat Martin: On the secret ballot for election of officers, the Auditor General pointed out that she would feel uncomfortable if a public vote were held on her appointment and she only had a 51% mandate. Do you think that's a valid reason to keep this secret?

Mr. Robert Marleau: I think the decision of having a secret ballot is a matter of policy, and I can understand the reasons behind it in terms of trying to maybe take out the party leadership influence—diminish the party discipline—allowing the member to make a more individual choice than a party choice. It has its advantages. Having run a few of those secret ballots myself, I can say it certainly has proven its worth in a speakership of a House of Commons process. But whether an officer of Parliament gets a semblance of unanimity to a secret ballot, I think the original round of consultations on the candidates will determine the outcome more than a secret ballot. I'm not sure.

What I'm saying is, what does the secret ballot substantially add to the selection? You're only voting for one person at one point. It's not as if you're going for a slate of candidates.

Mr. Pat Martin: Yes, that's a good point. But even a yea or a nay can be a pretty difficult choice sometimes.

One of the things the Reform Party did when they got here, which I thought was an excellent move, was change the private members' business vote so that the back row votes first, so you don't see how the front bench is voting when you cast your vote. That makes a big difference—watching how your leadership is voting.

Mr. Robert Marleau: The best vote for a parliamentary officer is no vote at all. I think that's what needs to be achieved through the consultations, where there is massive support for an officer, confidence expressed.

I had the privilege of serving not only as Clerk of the House but as Privacy Commissioner at a time of crisis in the privacy commission, and it was unanimous decisions of the party. I did say to the Governor in Council at the time that if it was not unanimous, I would not serve.

The Chair: Thank you, Mr. Marleau.

Monsieur Petit, and if we have time, Mr. Rob Moore—or the other way around.

Mr. Rob Moore (Fundy Royal, CPC): Yes thanks, Mr.Chair. I'm splitting my time with Mr. Petit.

I thank you, Mr. Marleau, for being here.

I think today, with the report of the Auditor General, illustrates how effective independent officers can be, the value they bring to our work as parliamentarians, and some of the things that we as parliamentarians are unable to do. When we have these independent officers, they're certainly tasked with working in the best interests of Parliament and, in doing so, working in the best interests of all Canadians to get a job done. That's why I'm taking a great deal of interest in what you've said on maybe some value-added for the parliamentary budget officer.

I want to clarify one thing. There might be some confusion, but my understanding under Bill C-2 is that the parliamentary budget officer is indeed an officer of the Library of Parliament and is, therefore, probably physically and organizationally part of the Library of Parliament. So that may address some of my colleagues' concerns as to duplication or so on.

I know for a new member of Parliament there are so many things we have to do. The estimates are very daunting for a new member—and it's been mentioned here—when you see these numbers coming out. So I see the value to what you're saying on perhaps expanding the role of the parliamentary budget officer to look at estimates.

Can you comment a bit further on how that added role could be of assistance to us in our day-to-day work when it comes to analyzing what the government spends on behalf of Canadian taxpayers?

● (1645)

Mr. Robert Marleau: I'd be glad to do that, Mr. Moore.

Beyond just expanding the mandate of the parliamentary budget officer, you would have to do some tinkering with the Standing Orders in terms of powers of committees, particularly the government operations committee, and I'll get back to that in a moment.

The parliamentary budget officer would have the same authority and powers on estimates that the bill is providing for on the budget; that is, access to Treasury Board documents and access in a timely fashion to departmental planning papers, in order come up with an analysis of the proposed estimates and provide that advice to a committee or to members of Parliament taking interest in a particular program or issue.

So it's a question of having the same kind of access, if I can say that. Right now, the poor researchers at the Library of Parliament, with whom I sympathize, can only deal with public information in advising you on what's going on. Whatever they can pull off the website is what they can use to advise you on departmental programs. They would have more privileged access under this legislation, as it is proposed, for the budget side of the operation.

If I may bootleg in one small point about the government operations committee, it has an estimates mandate and it has yet to fully exercise that mandate. It's had it now for seven or eight years. I think we need to return to a time way past—the seventies and early eighties—where there existed a committee called the miscellaneous estimates committee. The supplementary estimates that come out in the fall went as a package to this committee. They weren't split among 23 committees. The President of Treasury Board and the Secretary of Treasury Board came before that committee to explain the supplementary context of the government and why all this extra money was required, and it fit in a more global analysis or review of the estimates.

Right now they're hived off here and there, with vote 1 over here and vote 5 over there. That's what happened on the gun control thing. The justice committee was busy that year on the same-sex legislation. It was travelling, under great pressure to get through the bill, and it didn't look at supplementary estimates.

If the supplementary estimates go as a package to government operations and are analyzed by an office in support of Parliament, I think you've got a better accountability dialogue with the government, with the executive. I like to call it a kind of sustained accountability dialogue, and not so much an adversarial one. The more you ask for information, the more information you get, and the better you can judge the efficiency of programs and their delivery.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chairman.

Thank you for being here, Mr. Marleau.

For some time, we have known that the various people who would be appointed, such as the Auditor General, would prefer to be appointed using what we call an open ballot instead of a secret ballot.

You are aware that a secret ballot has the advantage of providing freedom to the people who are voting. For example, in unions, voting by a show of hands has been replaced by a secret ballot in order to enable union members to vote more freely for a proposed agreement.

In this case, would a secret ballot not give all members more freedom?

Secondly, I would also like to understand the link you make with removal. It is quite uncommon—at least I have not seen it very often—for removal to be by way of a secret ballot. The removal procedure is generally as follows. For example, a problem is raised with the members of a committee, and the board of directors removes the person involved after having heard from him, in accordance with certain procedures.

I am trying to understand how you would be able to remove someone by way of a secret ballot. I know that it can be done, but that is quite a rare procedure. I have rarely seen that kind of a procedure in the organizations I have belonged to. Perhaps you have examples to give us. I would like to hear you on that.

Thank you.

● (1650)

Mr. Robert Marleau: Thank you, Mr. Petit.

Regarding your last question, I agree with you about removal by way of a secret ballot. It is almost equally as uncommon to see nominations by secret ballot. I would say that there are two aspects. First of all, it is true that a secret ballot gives some freedom of action to the person voting. Others will say that people must have the courage to vote openly according to their convictions.

I am not speaking in favour or against either option, I am simply explaining both. In the case of a removal, I think it is above all important to know who, what faction, wants to see a person removed. It is perhaps more difficult to be removed by way of a secret ballot, without knowing where it has come from, than it is to be appointed by way of a secret ballot, assuming that it came from everyone. So I would say that is a lack of consistency that I identified in the bill.

Our political system, generally speaking, advocates transparency in votes by members. You are elected individually as members of Parliament, and citizens expect to know what your positions are and to see how you carry out the responsibilities they have given you.

So there are pros and cons to a secret ballot. In some cases, such as the election of the Speaker of the House of Commons, I think it is a success. The Speaker of the House of Commons would be removed, if necessary, by way of an open ballot.

[*English*]

The Chair: Thank you.

Madame Lavallée, you have four minutes.

[*Translation*]

Mrs. Carole Lavallée: Thank you very much, you are too kind. How generous of you!

I want to go back to what we were talking about earlier. You have talked a little bit about the budgetary estimates.

I want to ask my question again so as to truly understand the answer. Would this mean, for example in the case of Bill C-2 currently before us, that from the time the committee meets, this bill would be sent to a government agent or a parliamentary budget officer who would examine it carefully and see the financial repercussions and their cost given internal government information?

Mr. Robert Marleau: It is not my job to interpret this aspect of the role of the Parliamentary Budget Officer. As members, you may always ask the Library of Parliament Parliamentary Information and Research Service to provide you with an approximate cost assessment of any bill. This service is already available to you up to a certain point.

This bill contains a royal recommendation. As a result, the government has the power to introduce a bill appropriating public funds. Sometimes, the expenditures associated with a bill are quite clear: the number of agencies that will be created, the staff required, salaries, etc. Sometimes, it is extremely complex, and given the delays that are inherent in government operations, the full amount of expenditures associated with passing the bill will not be known until latter stages of the process. Sometimes, these expenditures are not known until the government tables in the House the budgetary estimates associated with a bill that has already been passed.

I have noted in this bill that for private members' business, a member or a committee could request a cost assessment. Generally speaking, MPs do not have the authority to introduce bills for the appropriation of public funds.

Mrs. Carole Lavallée: Exactly.

Mr. Robert Marleau: If a private members' bill involves the spending of public money, that bill can survive until third reading, but if, after that stage, the bill fails to obtain the support of a minister in order to obtain a royal recommendation, that is it. The Speaker will then rule the bill out of order because it violates the Constitution and the Standing Orders.

So, I wonder why energy, time and money would be invested to examine the expenditures associated with the adoption of private members' bills, when the Speaker will ultimately decide.

Mrs. Carole Lavallée: You came here to provide us with some recommendations. Am I to understand that you are recommending that evaluations and budgetary estimates be provided for government bills? Have I understood correctly?

Mr. Robert Marleau: No. Perhaps I was not clear.

Mrs. Carole Lavallée: Perhaps I misunderstood.

Mr. Robert Marleau: I'm sure you understood correctly.

I am proposing to expand the mandate of the Parliamentary Budget Officer to include the systematic long-term analysis of government estimates, which are tabled before March 1st of every year. I am talking about all the estimates for a given year, including supplementary estimates which are tabled in the fall. The latter are the result of various bills that have already passed, legislation supporting new programs and initiatives that the government may have announced in the previous budget.

Therefore, my suggestion is not with regard to bills as such, but rather the analysis of the budgetary estimates themselves.

● (1655)

[*English*]

The Chair: I'm sorry, we're out of time. There goes the bell—perfect timing.

Mr. Marleau, thank you very much, sir.

Mr. Robert Marleau: Thank you, Mr. Chairman, and I wish the committee all the best in the exercises you've begun.

The Chair: We appreciate your comments.

The documentation is being distributed to you for the next witness. We have two guests for the final session: from the Public Service Commission of Canada, Maria Barrados, the president; and the general counsel, Gaston Arseneault.

Good afternoon to both of you.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chair, it being 5 p.m. and not 4:50 p.m., will we have the decency of giving Ms. Barrados at least 40 minutes, or will we be so impolite as to reduce her time by 10 minutes?

[*English*]

The Chair: I'm in the hands of the committee, sir—

[*Translation*]

Mr. Benoît Sauvageau: I am suggesting that she be given at least 40 minutes, unless the Conservatives disagree.

[*English*]

The Chair: —if you're asking for unanimous consent that 40 minutes be given to these witnesses.

[*Translation*]

Mr. Benoît Sauvageau: I ask for unanimous consent in order to extend this courtesy.

[*English*]

The Chair: I also hope there will be politeness in this committee.

Mr. Martin.

Mr. Pat Martin: I don't think that was a necessary shot at all. I'm starting to take offence to you prefacing every comment with an insult to this committee. So it's you who is showing a lack of respect, with your persistence in being so insulting.

The Chair: You have to remember I'm the chairman up here, and you can address your insults here.

Mr. Sauvageau and Mr. Martin, please direct your comments to the chair.

There is unanimous consent, so we will proceed for 40 minutes with these witnesses.

I'm sorry for the interruption. You may proceed with a few introductory comments.

● (1700)

[*Translation*]

Ms. Maria Barrados (President, Public Service Commission of Canada): Mr. Chairman, thank you for the invitation to appear before your committee on Bill C-2.

I'm accompanied by Mr. Gaston Arseneault, General Counsel for the Public Service Commission.

The Commission is a unique organization. Independent of ministerial direction, we report to Parliament. We safeguard the integrity of the public service staffing system and the political neutrality of the public service through monitoring, and conducting audits and investigations. We also provide staffing and assessment services to government departments.

More detail is available in the information kit you have before you.

The new Public Service Employment Act which came into force on December 31st reconfirms the PSC's independence, stating in its preamble that merit and non-partisanship are values to be independently safeguarded. It also further enhances the PSC's unique status by emphasizing the PSC's audit authorities on behalf of Parliament; bestowing upon the PSC the power to make special reports to Parliament; and providing for the President's appointment by the Governor in Council only after approval by resolutions of both the Senate and the House of Commons.

Our work, which is to report on staffing and non-partisanship to the government, supports the proposals in Bill C-2 to enhance accountability in government.

Today I would like to propose, for your consideration, amendments to Bill C-2 which would make improvements in two areas: first, how we do our work and relate to Parliament, and the scope of our responsibilities.

[*English*]

First, with respect to ministerial exempt staff, clause 103 removes the priority entitlement for ministerial exempt staff to enter into the public service, but clause 101 provides access to more ministerial staff to internal staffing processes for one year. We support this change, since the appointments would be made on merit.

Next, regarding the appointment of the president, Bill C-2 proposes to standardize the method of appointment for positions supporting Parliament. To make the president's appointment process the same as that of other positions supporting Parliament, I recommend that Bill C-2 amend the PSEA to add the elements of consultation and secret ballot.

Regarding the protection for auditors and investigators, individuals working for organizations that carry out audits and investigations that are reported to Parliament are already designated or will be designated through clauses 2 and 308 as not competent or compellable witnesses, and are immune from criminal and civil proceedings for actions taken in good faith while performing their duties. The PSC also conducts investigations and audits, the results of which we table in Parliament. In fact, we will be tabling two reports on Thursday. Such reports involve personal and often contentious issues that could give rise to subsequent legal action. In order for us to do our work and protect our auditors and investigators, I recommend that Bill C-2 amend the PSEA to provide the same protection for PSC auditors and investigators.

On a similar issue, the heads of a number of organizations supporting Parliament and conducting investigations and audits will be required under clause 146 to refuse to disclose under the Access to Information Act records obtained or created in the course of investigations, examinations or audits. While final audit and investigation reports should be publicly accessible, records obtained or created by auditors and investigators in the course of carrying out their work may contain misleading and unsubstantiated comments and observations. The PSC and those being audited or investigated need to be assured that only substantiated findings appropriately explained are released. As the Auditor General said when she appeared before you, auditors need protection of their working papers to do their work. Since the PSC is mandated by the PSEA to conduct investigations and audits, I recommend that clause 146 of Bill C-2 be amended to provide the same protection to our audit and investigation records.

I have also noticed that Bill C-2 does not contain a mechanism for the Commissioner of Lobbying to transmit his or her special reports to Parliament. The PSC has a similar problem. Amendments to the PSEA that added a clause enabling the PSC to make special reports to Parliament were assumed at the time to mean that we could transmit these reports directly to the Speaker of both houses. However, in the absence of specific wording in the act, we were advised that this was not possible. Modelling the tabling mechanism on that in place for the Information Commissioner, I am recommending that Bill C-2 amend the PSEA to provide the PSC with the ability to transmit its special reports directly to the Speakers of both houses for tabling. Your committee may also want to provide the Commissioner of Lobbying with the same provision in clause 78.

The next proposed amendment relates to clause 106 regarding some GIC appointments, for example, deputy ministers. Currently, most appointments to these positions are provided for by specific legislation. A small number are not; for example, when there is a restructuring of government and legislation is not yet in place. The mechanism traditionally used when the GIC wishes to make an appointment for which no legislative provision exists has been to exempt the person from the application of the PSEA, with the exception of the provisions for political activities. The approval of both the Governor in Council, and the PSC is required for this mechanism. The use of this exclusion order is reported in the PSC's annual report. With the new merit-based regime in force under the recently enacted PSEA, I am uncomfortable with the PSC excluding these appointments from merit, and I am supportive of an alternative proposal.

● (1705)

Clause 106 formalizes the current process; however, it includes a greater range of positions than is the traditional practice. The exclusion of appointments to these additional positions from the application of the PSEA could pose a threat to a meritorious public service. I recommend this clause be amended, first, to narrow the positions in question by removing associate deputy head and positions of equivalent rank, and special adviser to a deputy in English to make it the same as in the French; and second, to ensure part 7 of the PSEA on political activities applies, thus protecting the political impartiality of these appointments.

Finally, clause 119 establishes the position of parliamentary budget officer within the Library of Parliament. Currently, staff of the library, the Senate, and the House of Commons are able to apply to internal appointment processes in the public service only due to an instrument still in place under the old PSEA. With the new PSEA in place, we have been advised that we cannot do this without a legislative change. After consultations with the heads of these organizations, I am proposing Bill C-2 amend the PSEA to allow these employees, who have much to offer the public service, to participate in these meritorious processes.

[*Translation*]

Mr. Chairman, the PSC is an important part of the accountability framework that underlies our system of responsible government. Our work, which is to report to the government on staffing and non-partisanship, is consistent with the spirit of this bill. Our recommendations seek to improve it by enhancing our ability to conduct audits and investigations, and strengthening our ties to Parliament.

I would like to table with the committee these proposed amendments along with those related to a small number of Governor in Council appointments and the mobility of parliamentary staff.

Thank you for your attention. I would be pleased to answer any questions you may have.

[*English*]

The Chair: Thank you for your presentation, Ms. Barrados. The committee will have some questions for you.

Mr. Murphy.

[*Translation*]

Mr. Brian Murphy: Thank you, Mr. Chair.

I have two questions. The first concerns ministers' exempt staff, which you mention on page 2 of your presentation.

I know that clause 103 vacates the priority of ministers' exempt staff to be hired within the public service. Does this mean that these people will no longer benefit from favouritism? My question is simple, because I am a new MP. Is this common practice? Is this a moral problem of partisanship?

● (1710)

Ms. Maria Barrados: Our goal is to have an impartial public service. We conducted a study in order to identify how many individuals had used this priority of appointment. The number is not very high: approximately 25 to 40 individuals per year at most.

The ministers' offices provided this information. We believe that these individuals have a good understanding of what the ministers do. People were hired when there was a change in government, for example 12 years ago, and, more recently, when the leadership of the Liberal Party changed. We are not talking about a large number of people. Rather, it is a question of perception.

This issue falls under the purview of the commission, which ensures that everyone hired in the public service has the necessary qualifications.

Mr. Brian Murphy: I have a question or comment to make about the protection of working documents. I agree in this regard. Not only have we heard comments from the Auditor General about this, but, today, the Society of Management Accountants of Canada sent us a letter in this regard.

I understand that accountants' working documents must be protected. However, the legislation and your presentation both mention that there would not only be audits, but also investigations.

[*English*]

We also have investigations—more than just audits, more than just searches prepared by auditors or accountants—but it reads as if these would be investigations done by non-auditors and non-accountants. I mean, Mr. Vieweg is speaking for the CMA, and you're speaking for a wider group, I think, who are not all accountants—or auditors, for that matter.

Keeping these papers private for a time protects your group, in fact the government, from preliminary opinions that need to be fleshed out. I gather it would apply then to non-auditor or non-accountant employees. Do you agree with that?

Ms. Maria Barrados: Yes. The wording we're proposing is the same wording as is in the bill. When the Auditor General was here, she clearly was speaking about audits. But the investigators have the same issue. The application of this provision to the Privacy Commissioner, the Information Commissioner, the Commissioner of Official Languages.... They are doing investigations, so they tend to be done by people who follow due process. They have the same obligations, in terms of gathering information, to go through a process of verifying the facts.

They tend to be different disciplines. Those who are doing my audits are trained as auditors. Those who are doing my investigations are trained as investigators and tend to be lawyers.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Ms. Barrados, Mr. Arseneault, thank you and welcome. I want to thank you in particular for the proposed amendments that you have provided to us. This is very important. Some people are saying, as reported in the papers, that hearing witnesses is not very useful. In fact, some members, be they New Democrats or Conservatives, are saying that witnesses will not help us improve Bill C-2. However, your presence, and the list of amendments that you are proposing, contradicts that statement.

● (1715)

[*English*]

The Chair: Mr. Sauvageau, earlier you asked that the members of the committee be courteous and polite. We are all ladies and gentlemen, and I would rather that you not provoke other members of this committee.

[*Translation*]

Mr. Benoît Sauvageau: I respect your decision Mr. Chairman. I didn't think it was impolite to quote statements made by members of this committee, statements that appeared in *The Hill Times* newspaper. I will be careful. In any case, I have already said it.

Ms. Barrados, you were directly involved in consideration of Bill C-11 in the previous session. At one point, you were even supposed to become the famous commissioner, under a provision of the former Bill C-11. This has been amended in order to create an independent commissioner.

Since you have been with us throughout the entire process and the consideration of Bill C-11, do you believe this bill can be immediately passed, in order to ensure a minimum safety net, or would that be too complicated?

Ms. Maria Barrados: That's a difficult question for me. It's true that I was involved in preparing the first bill, but now, I am not involved in any way. I think that it is a matter of opinion. Parliamentarians will have to make this decision. In my opinion, there is a real problem because there is already a proposal. There is, however, another motion before us and there will obviously be questions regarding the transition and the implementation. We had one model and we will have another. It depends on the risks that people are willing to take.

Mr. Benoît Sauvageau: Mr. Shapiro, the first witness we heard today proposed an amendment that corresponds to a provision in Bill C-11. In fact, when we considered Bill C-11, the committee members were honest enough to say that the bill wasn't perfect and that it needed to be reviewed every five years. I see that this amendment is not something that is in your list of amendments. However, I'd like to hear your comments in this regard.

In your opinion, could we add an amendment to your amendments, to ensure that Bill C-2 would be reviewed every five years as we had planned to do with Bill C-11?

Ms. Maria Barrados: This is included in current legislation, as far as the commission goes. In my opinion, this is a good idea because this would give people doing the work the opportunity to speak to parliamentarians and see if things are operating the way they want them to.

Mr. Benoît Sauvageau: Could you tell us what impact Bill C-2 will have on the role of the Public Service Commission of Canada? Could your position — not you, but rather your position — and the Public Service Commission as an institution lose their shine and their importance if we implement Bill C-2?

Ms. Maria Barrados: No. In my opinion, there is a change regarding people coming from a minister's office, and I agree with that. My suggestions are improvements. I am suggesting that a parallel approach be adopted for all offices providing support to Parliament.

The other changes are somewhat technical and may have an impact, but I cannot say that it would be an important impact. It would greatly affect the commission and me.

Mr. Benoît Sauvageau: Thank you. I have no other questions.

[*English*]

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you, Chair.

Thank you, Ms. Barrados. It's nice to see you again. I want to thank you for these very helpful recommendations.

To date, virtually all of the witnesses have come with well-crafted and thoughtful amendments, many of which I think will find their way into the bill. It's good that we've made an adequate amount of time to hear from so many witnesses who wanted to come speak to the committee, since we have benefited greatly from them.

I would like to start with some specifics that I want to understand clearly. Are you saying that currently with the parliamentary budget officer within the Library of Parliament, the staff of the library, the Senate, or the House of Commons may not be able to apply to fill that very job without the amendment you're recommending as necessary?

● (1720)

Ms. Maria Barrados: It is with respect to the manner of working and the ability for staff to move. So it's the ability for public servants to move into these offices and be able to return to the public service. So we have used provisions under the old Pubic Service Employment Act to allow this. We wanted to move that forward under the new regime, and I was advised that I couldn't do it without legislative change. Given the opportunity that we're discussing—the budget office—I thought I would put the element forward because it will impact on this budget office as well.

Mr. Pat Martin: I'm certainly glad you did. That's sort of an unforeseen consequence. I'm glad you stumbled across it, however you did, or whoever advised you of it, That in itself is very helpful.

As for the protection or production of working papers and draft audits, etc., I don't fully understand the arguments made by you and the Auditor General that those shouldn't be available, especially after the final audit is complete. Why should we not have access to the draft or the process that got them to the final audit? If it's a little like a mathematical equation—you get one mark for getting the right answer and another mark for the equation, or the steps you took on the way. What's the rationale for not wanting that divulged?

Ms. Maria Barrados: The process of doing an audit, and the way we do the investigations, is very different from a judicial kind of proceeding in which you have rules of evidence and you have an open process and you have ways to assess that evidence.

What you do in an audit and in these investigations is collect as much information as you possibly can. So you have a lot of conversations with a lot of people. Some of it is right, some of it is not right, some of it is misleading, and some of it is on the mark. The whole audit process is to take that information and focus on what it is you want. So you'll say, I heard all these things, but they're not really relevant to my inquiry. You focus on what you want, and then you go through a process of confirmation.

So if you release all that paper and all that process, what you're doing is putting out a lot of information that may not be true and that doesn't give any protection to the people who might be named or the systems or the organizations that might be named. They would have no recourse to that; it would just be out there. The auditors and investigators would have a problem continuing their work, because people are going to be very careful—they now think of a world in which everything they say to the auditor might just end up out there—when in fact what you want is full disclosure and openness to the auditors. Then I would have a problem as the head of an organization, because it would mean that I would have to explain and stand behind all the papers. And of course, my whole process is set up to only stand behind the final results.

Mr. Pat Martin: Well, that's very well argued. I see your point, anyway.

The third point is about the ministerial exempt staff. I'm pleased to see that Bill C-2 will be taking steps to address that. I know that a lot of people in the public service are probably disappointed when they work their whole careers to get to the EX level, and then there's an opportunity about to open and it is filled by some lateral transfer from a minister's office. So I'm glad to see that end.

Can you give us an indication, first of all, of the origin of that practice? When did it come into effect, and roughly how many people might there be out there who are occupying existing positions that they may have gotten through that process? Is there any way of knowing?

Ms. Maria Barrados: The numbers are not that large. We did a study and looked at the last 11 years, and about 243 had come in over 11 years.

● (1725)

Mr. Pat Martin: I didn't think you'd be able to answer with that degree of accuracy. Wow.

Ms. Maria Barrados: Well, we're building up our statistical capacity.

The other part of that is that there's a very small number who come into the EXs. They tend to be coming into the senior program, the senior professional ranks. They tend to stay; half of them tend to stay in the same departments.

We can ensure that they are qualified, but there is a perception that it compromises non-partisanship. It's a perception, and I think it's an important perception. I have no problem with the alternative proposition.

Mr. Pat Martin: Which is?

Ms. Maria Barrados: Which is to allow staff from minister's offices to compete in internal competitions.

Mr. Pat Martin: Right, so it would be merit based and they would compete in open—

Ms. Maria Barrados: Merit-based competitions.

Mr. Pat Martin: And what's the process for one year?

Ms. Maria Barrados: They'd have the right to compete in internal competitions for one year.

Mr. Pat Martin: After they leave the minister's office.

Ms. Maria Barrados: That's right.

Now, your other question was what is the origin of this. I had the lawyers look at that, and it goes back quite a way.

Mr. Arseneault, maybe you can explain. It goes back to the 1920s.

Mr. Pat Martin: No kidding? I was hoping we could blame the old Tories. Were they Tories in the 1920s?

Ms. Maria Barrados: It goes back to the 1920s, when there was some kind of privilege given for coming into the public service. I'm not sure who was in the government at that time, but the actual wording of priority entitlements came in the 1960s.

The Chair: We're out of time, and there goes the bell.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chair.

Thank you, Ms. Barrados. I have three very simple questions to ask you.

First, you are asking us to adopt an amendment so that clause 146 of the bill will state that the President of the Public Service Commission of Canada is on a par with the Auditor General of Canada, the Official Languages Commissioner, etc. You are asking us to add the President of the Public Service Commission to the list. I want to know your reasons so I will ask you why.

Second, you mentioned from the outset that you try to ensure that the public service is impartial. As far as I know, in any public service, many public servants are members of political parties and unions. But, I don't think that they shed their partisanship when they go to work in the morning. They live with it; it's part of their reality. So, I am trying to understand how you could say that the system must be impartial. I know that you are talking only about work, since many people, during the course of the day, are both members of a union and a political party, work in the evening or in the day as the case may be, and are perhaps more partisan than political supporters themselves.

How do you reconcile your job with what is being proposed in Bill C-2? How could this bill resolve this problem? Given what you've seen in the bill, can you prove that it is strong enough to do away with the partisanship that we carry with us every morning when we go to work because we belong to a union or a political party, etc., and we work eight hours for the government, hours that don't really belong to us as such?

Ms. Maria Barrados: Thank you for the question.

The amendment sought to the appointment process is not a request to put our position on the same level as others. Currently, under the PSEA, the Public Service Employment Act, and the legislation which regulates my organization, you need the approval of both Houses to appoint a president. There are two parts to the process outlined in Bill C-2, the PSEA and the proposals: consultations, which were conducted in my case, and the voting procedure.

I would suggest that the process be the same. That wouldn't involve putting the president of the PSC at the same level as others, but it would ensure that the appointment process is the same.

Second, as far as partisanship is concerned, the PSEA deals with that. It's one of our responsibilities. You're right to say that it isn't absolute. Obviously, people may have partisan ideas, but they have to conduct their work in a non-partisan fashion. Under the PSEA, it's our job to manage the system.

Perhaps Mr. Arseneault may want to add something about the current system.

● (1730)

Mr. Gaston Arseneault (General Counsel, Public Service Commission of Canada): Perhaps I could simply add that the new Public Service Employment Act, which came into effect in December 2005, includes new provisions pertaining to political activities. So there is a whole system which has been set up for which the commission is responsible and which comes as a result of this new legislation. That's why it's probably not necessary to deal with that aspect in Bill C-2.

Mr. Daniel Petit: Okay. Thank you.

[*English*]

The Chair: Mr. Martin, you can ask some more questions. You have five minutes.

Mr. Pat Martin: What a luxury of time.

Well, I might not use it all, but I am interested in the Access to Information Act provisions and your recommendation in clause 146. There's ample reason why the other officers of Parliament and commissioners are excluded from the duty to disclose.

Do you see yourself in the exact same role, or are you using the same arguments, for instance, that the Auditor General would use? If it's information that you obtained in the process of an investigation, is it the same sensitivity that causes you to seek this amendment?

Ms. Maria Barrados: It's the same sensitivity, but I'm only asking for it for the audits and investigations. The access to information applies to the rest of my organization, and I have absolutely no problem with that. It really is just for the audit and investigation portions of the organization.

The proposal as it's currently written leaves the Public Service Commission in a very anomalous position, and that's why we're asking for it. There is protection for internal audit with one regime. There's protection for the external auditors named. There is none for the Public Service Commission, because we're not internal auditors either. That's why I think it's important for us to have that protection, because we don't get covered, yet there seems to be an intent to provide the protection in the bill.

Mr. Pat Martin: That's actually all I have, Mr. Chair. If you'd like, I could share some of the time.

The Chair: No.

Are there any comments?

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Ms. Barrados, you referred briefly earlier to the appointments of former public office holders. I'm just trying to understand. In subsection 35(1), it states:

> 35.(1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

According to this wording, a federal justice minister, once elected, is not entitled to argue before any court for one year?

● (1735)

Ms. Maria Barrados: I haven't taken a good look at that section. I don't know if Mr. Arseneault could clarify that. I didn't give a lot of attention to that part of the act.

Mr. Benoît Sauvageau: In fact, it states that no public office holder shall accept employment with an entity with which he or she has had official dealings. And yet, the Minister of Justice has official or indirect dealings with the courts when he drafts legislation. Should he be defeated at election time, as he is a lawyer, he can go and argue cases before the courts. However, since he has had official dealings with the courts, this actually would not be possible.

Is my reading of this subsection accurate, or am I mistaken?

Mr. Gaston Arseneault: First, Mr. Sauvageau, I haven't had an opportunity to look closely at the matter.

Mr. Benoît Sauvageau: That's fine. Thank you. I'd heard about appointments for public office holders and I thought that... That's fine, we'll try and get clarification. Thank you very much.

[*English*]

The Chair: That appears to be the end of questions. You've been very thorough.

Ms. Barrados, Mr. Arseneault, thank you very much for coming.

Thank you very much, ladies and gentlemen.

This meeting is adjourned until tomorrow at 3:30 in this room, 253-D.

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