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## **Legislative Committee on Bill C-2**

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**Chair**

**Mr. David Tilson**

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## Legislative Committee on Bill C-2

Wednesday, June 7, 2006

• (1530)

[English]

**The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good afternoon. This is the Legislative Committee on Bill C-2, meeting number 20, which is televised. The orders of the day are, pursuant to the order of reference of Thursday, April 27, 2006, Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability.

Monsieur Sauvageau.

[Translation]

**Mr. Benoît Sauvageau (Repentigny, BQ):** Mr. Chairman, I think we should sit from 3:30 to 5:30 p.m. A vote is scheduled after that. I also believe the whips of our respective parties have discussed matters unrelated to this committee and that, following that discussion and the one I had during the question period, it was agreed that we would not come back after the vote was held.

[English]

**The Chair:** Monsieur Poilievre.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Actually, our whip told us of no such agreement to not return after the votes. He told us it was at our discretion. I understand there is an event this evening that is of some importance to some members of the committee and it would not be fair to ask them to miss that particular event. We're lucky on this side of the House to have an event of our own that did not clash with the committee's schedule and we were able to attend it. So in the interest of fairness and goodwill, we think other members should be allowed to attend theirs. So on this side, we would be willing to give our consent to not returning after the vote.

**The Chair:** Mr. Owen.

**Hon. Stephen Owen (Vancouver Quadra, Lib.):** Liberal members are in agreement. I think it's a very gracious statement by Mr. Poilievre, and we would agree.

**The Chair:** There appears to be agreement, so we will sit until the bells start at 5:30. We'll proceed until about that time.

[Translation]

**Mr. Benoît Sauvageau:** Thank you very much to all committee members.

[English]

**The Chair:** Thank you.

The chair would like to read a very brief statement to the members.

I met with the clerk and the staff this morning. It's a very complicated bill, and I'm looking to the committee to help me, as chair, go through this rather complicated procedure. I'd like to read a brief statement to clarify what I believe is the procedure we should follow. If the committee members don't like it, presumably they'll come up with something else. If they like it, we'll proceed.

We're now about to embark on the next stage of our examination of Bill C-2, the detailed clause-by-clause consideration of the text of this legislative initiative. I'm told that there are 208 proposed amendments so far.

In accordance with Standing Order 75(1), clause 1 of the bill, the short title, would be postponed until the end of our examination.

Clause 2, on the other hand, is something that we need to look at. We need to spend some time on it, and I'd like to make a statement as to how the chair intends to proceed.

Clause 2 contains the new Conflict of Interest Act, which has some 66 proposed sections. Other clauses in Bill C-2 also relate directly to clause 2. For example, clause 4 contains a consequential amendment to the Canada Post Corporation Act.

In order for us to proceed in a cogent fashion and consider all amendments that have an impact on one another, I will proceed to propose all such amendments before putting the question on clause 2. This means that the amendments to clause 2, clause 3, subclause 3 (1), clause 28, and clause 38 should be considered and voted on before we vote on clause 2.

I'm proceeding in this fashion so that this very complex bill will be considered in a coherent manner and so that any decisions taken by the committee are being consistently applied throughout those clauses of the bill that are linked together. In this way, we will complete our study with a bill that accurately reflects the committee's decisions.

Once again, I intend to call one by one for debate each amendment in our package that relates to clause 2, clause 3, subclause 3(1), clause 28, and clause 38. Then, once all those amendments are decided, I would put the question on clause 2.

The manner of voting would then proceed as follows: the vote on clause 2 will apply to clauses 4 to 38, subclauses 108(1) and 108(2), and clause 227. If clause 2 is agreed to, a separate vote is needed on clause 3. If clause 2 is negatived, the vote applies to clause 3.

This is a great thing, isn't it? The reason for this voting pattern is that a number of clauses are all dependent on clause 2. That's the reason I'm going through all this.

The chair is proposing this manner of proceeding after consulting the legislative clerks working on this bill. If members wish to have a further explanation on how this process has been elaborated, I'll ask the clerk to provide some more detail. This procedure is being proposed as the most efficient manner of considering all of the amendments, which are inexorably intertwined in a most complex piece of legislation.

• (1535)

Mr. Sauvageau, I think, is first, and then Ms. Jennings.

[Translation]

**Mr. Benoît Sauvageau:** I would be lying if I said I understood your remarks. I'd simply like to propose that we all start with the same document. Generally, when we don't proceed in that manner, we wind up not understanding each other. I propose that we take the big binder and that we proceed page by page. By starting with everyone on the same page, we'll arrive at the same end.

• (1540)

**Ms. Monique Guay (Rivière-du-Nord, BQ):** And that would be the same thing for the bill.

[English]

**The Chair:** We will do that, sir. I'm suggesting we start on page 4.

Madam Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Chair, like other colleagues around the table, I understood clearly what you said; however, as the work goes on, I'm not going to remember anymore how the way I vote on a particular article or amendment is going to affect some other clause that might be 20 down the line. I would ask, if possible, that the statement you just read, which clearly and succinctly pointed out the procedure and the impacts of votes on particular amendments affecting particular clauses, be distributed to each member around this committee.

**The Chair:** I have no problem with that, absolutely. It's currently in English, and it will have to be translated, and I'll be pleased to do that.

**Hon. Marlene Jennings:** That's going to take how long?

**An hon. member:** One week.

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

**The Chair:** Does anybody have any comments on that question? I don't know. We'll do it as soon as possible. In my estimation, unless there's a surprise—which seems to happen in this place—we will be on clause 2 for some time today.

We'll get it to you today. Is that all right?

I'll give you the statement, and it will be quite clear as to—and of course, we've only gone to clause 2. There may be more exciting moments.

Does anyone else have anything to say before we start?

Then we will proceed on page 4, which is a government motion.

(On clause 2)

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** This is a technical amendment: that Bill C-2, in clause 2, be amended by replacing, in the French version, line 2 on page 3, with the following:

[Translation]

Ex-titulaire de charge publique qui, pendant son

[English]

We have some technical experts here, if we want to understand the importance thereof.

**The Chair:** Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** I'm going to surprise my colleague and, in spite of everything, friend, Mr. Poilievre, by suggesting, in order to expedite the process, that we not systematically speak to each amendment. For example, if on page 4 no one has anything to say, then we'll say nothing.

[English]

**The Chair:** Bravo! I need lots of good news from this committee.

(Amendment agreed to)

**The Chair:** We will move to page 5, which is another government amendment.

Is the committee agreed?

**Mr. Pierre Poilievre:** You can assume that I'm the mover of government amendments.

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

**The Chair:** We're going to move to the next amendment, on page 5.1, which is from Mrs. Jennings.

Mrs. Jennings.

**Hon. Marlene Jennings:** I'm sorry, someone was speaking to me, asking a question.

**The Chair:** We're on page 5.1, Mrs. Jennings. It's the third proposed amendment.

[Translation]

**Hon. Marlene Jennings:** I have it. We didn't have the time to make the adjustment.

[English]

**The Chair:** You're going to have to help me on some of these things. This motion is the same as the New Democratic Party motion, and the practice seems to be that we take the one received first, which is yours.

• (1545)

**Hon. Marlene Jennings:** This amendment follows clearly the recommendation that the law clerk and parliamentary counsel made before this committee when he pointed out that Bill C-2, in clause 2, as it was actually set out, impeded and affected parliamentary privilege, and that this committee had two options: either to do it properly, if we agreed that our parliamentary privilege and that of future parliamentarians of the House of Commons should be diminished, that there was a proper way to do it and that wasn't how it was set out in Bill C-2; or if we felt that this tradition, which has existed without impediment, should not be impeded or abrogated, that this amendment should go forth.

Therefore, I brought this amendment to make it clear that nothing in that part of Bill C-2 "abrogates or derogates from any of the privileges, immunities and powers referred to in section 4 of the Parliament of Canada Act."

This is directly from Mr. Walsh's recommendation.

**The Chair:** Are we in agreement that the NDP proposal and the Liberal proposal are the same?

**Some hon. members:** Agreed.

**The Chair:** Okay.

Monsieur Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** You know, Mr. Chairman, that our staff is eminently competent. In view of the staff's recommendations, I'm making the following comment. It would appear—I may be mistaken and I'm speaking precisely to Marlene—that your amendment on page 5.1 states the contrary of your amendment on page 5.3. We prefer to support the one on page 5.3 because, if I understand correctly, the aim of your amendment on page 5.1 is to delete line 12, whereas the purpose of the one on page 5.3 is to correct it.

[English]

**The Chair:** It appears that you're right.

[Translation]

**Mr. Benoît Sauvageau:** We think the content of page 5.3 is better than that of page 5.1.

[English]

**The Chair:** We're going to let Mrs. Jennings speak briefly.

**Hon. Marlene Jennings:** Inadvertently, the amendment that appears on page 5.3, which was submitted under my name, should not have been submitted, so I withdraw it.

**The Chair:** You withdraw the proposal on page 5.3?

We just want to clear this up, Mr. Martin.

Okay, Mr. Martin, while we're talking about this, you go ahead and have your say.

**Mr. Pat Martin (Winnipeg Centre, NDP):** I was going to make a point of order that there's a motion on the floor, even though it has been deemed to be moved by Mr. Poilievre: the motion on amendment L-0.1.

**The Chair:** No, actually it's moved by Ms. Jennings. We're on page 5.1.

**Mr. Pat Martin:** Okay, then there's a motion on the floor, so I don't think we should be leaping forward to page 5.3 and deleting clauses that should be properly dealt with when we get there, or we'll never get through this morass of amendments.

**The Chair:** I'm going to allow it to go, Mr. Martin. It's on the same subject and it's not unusual to group these things. Mr. Sauvageau is correct in his interjection.

Madam Jennings, just so I'm clear on this, you're still moving the motion on page 5.1, but you're withdrawing the one on page 5.3.

**Hon. Marlene Jennings:** That is correct.

**The Chair:** Help us out, Mr. Martin. We've got pages 5.2 and 5.4, which appear to conflict.

**Mr. Pat Martin:** If you accept that they conflict, I don't necessarily accept it.

**The Chair:** You're right. Perhaps I should let you say whether they conflict.

• (1550)

**Mr. Pat Martin:** That's right. When I was waiting for my turn to speak, I was going to make the argument that the motion we have on the floor now is to—

**Hon. Marlene Jennings:** Point of order.

**The Chair:** On a point of order, Ms. Jennings, go ahead.

**Mr. Pat Martin:** What in Sam Hill is going on here? I can't get a word in edgewise. Every time it's my turn, it's no longer my turn.

**The Chair:** We're not going to forget about you, Mr. Martin.

**Hon. Marlene Jennings:** Mr. Martin, I apologize for interrupting while you were speaking, but I believe the chair neglected to call the vote on my amendment, which I had moved.

**The Chair:** No, we haven't forgotten anything, Mr. Martin.

**Hon. Marlene Jennings:** Then why are we skipping around?

**The Chair:** Because they conflict.

**Mr. Pat Martin:** Jesus, we're debating your amendment, Ms. Jennings.

**The Chair:** We're still on page 5.1. We're still there. It's going to take us a while to get on to this folks, so try to be patient and keep cool.

**Mr. Pat Martin:** So the amendment we have on the floor, which is properly on the floor, I see as a very standard non-derogation clause.

**The Chair:** Page 5.1?

**Mr. Pat Martin:** It's 5.1. It deletes lines 12 to 17 on page 6, which we could stop and look at if it is necessary. Then it adds a very clear non-derogation clause, that nothing in this is supposed to abrogate or derogate from any of the privileges, etc.

Now, there's been a motion that we adopt it, and I'm favour of this. I don't agree that my motion following, 5.4, in any way contradicts this.

**The Chair:** Okay. Then we're going to continue on with 5.1. Is there any further discussion on 5.1?

All those in favour of 5.1? All those opposed?

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

**The Chair:** Okay, Mr. Martin, we're on to 5.4.

Mr. Martin, are you proceeding on 5.4?

**Mr. Pat Martin:** No. I intend to withdraw 5.4 when we get there.

**The Chair:** We're there now, sir.

**Mr. Pat Martin:** What happened to 5.2?

**The Chair:** It was identical to 5.1.

**Mr. Pat Martin:** I've got it.

I intend to withdraw 5.4.

**The Chair:** Okay.

Madame Guay, on a point of order.

[*Translation*]

**Ms. Monique Guay:** Mr. Chairman, when two amendments are similar, can you advise us of the fact? That way, we'll know where we stand.

You jump from 5.1 to 5.4 without telling us that 5.2 is moot. Let's proceed one page at a time, even though we know the same amendment is repeated three times. That way, we'll delete what should be deleted, and it'll be done. For the moment, it's not clear.

[*English*]

**The Chair:** That's what I thought we were doing. But thank you, and I'll do my best. The committee will have to bear with me.

We're on to page 6, which is government.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I move amendment G-4.

**The Chair:** So moved.

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

• (1555)

**The Chair:** Page 7, and G-5.

We're going too fast, apparently.

Okay, Mr. Poilievre, the question to you is whether you intend to move only the French, or would you intend to move the English?

**Mr. Pierre Poilievre:** The French and the English. There's G-5 here. It says "ministerial staff shall". G-5 in French says "*ministériel ou à tout personnel*".

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

**The Chair:** Okay, we're moving on to page 9.

Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** Mr. Chairman, I'd like to speak to amendment G-6.

[*English*]

**The Chair:** You want to talk about it?

[*Translation*]

**Mr. Benoît Sauvageau:** Yes, I'd like to speak to amendment G-6.

[*English*]

**The Chair:** We'll have to have it moved first.

**Mr. Pierre Poilievre:** I would like to move G-6.

In my opening remarks, I'd like to ask the expert panel of technical wizards if they wish to share any of their thoughts with us, or allow us to further plunder their minds.

**The Chair:** Mr. Wild.

**Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice):** Mr. Stringham will be pleased to speak to the specifics behind this technical amendment.

**The Chair:** Thank you.

Mr. Stringham.

**Mr. James Stringham (Legal Counsel, Office of the Counsel to the Clerk of the Privy Council, Privy Council Office):** Mr. Chairman, the amendment in the French is to correspond with a phrase that appears in the English provision of proposed section 12, which was omitted in the French. The English being "unless required in his or her capacity as a public office holder". So the additional text is to correspond to that wording in the English provision.

**Mr. Pierre Poilievre:** That concludes my intervention.

**The Chair:** Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** If I understand correctly, we're seeing the English equivalent of the words "sauf si leurs fonctions de titulaire de charge publique l'exigent". That already appears in the bill.

[*English*]

**Mr. James Stringham:** That is correct, Mr. Chairman.

[*Translation*]

**Mr. Benoît Sauvageau:** I'm told that's not the case. In English, it's already written in the bill.

Can you give me 30 seconds?

[*English*]

**The Chair:** Yes, you may, sir.

[*Translation*]

**Mr. Benoît Sauvageau:** There's no problem.

[*English*]

**The Chair:** We're all happy?

We're going to vote, unless there's more debate.

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

**The Chair:** The next one is NDP-1 and it's on page 10.

The chair is going to rule that inadmissible.

I guess, Mr. Martin, you should formally move it.

**Mr. Pat Martin:** So you can turn down?

**The Chair:** Indeed.

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

**Mr. Pat Martin:** It's like asking—

**The Chair:** I'm only trying to be fair.

**Mr. Pat Martin:** All right.

I move amendment NDP-1.

Is that what you want?

**The Chair:** Well done.

**Mr. Pat Martin:** I'm being led to the slaughter here, or something.

**The Chair:** Welcome to the club.

This motion proposes that a minister or parliamentary secretary cannot offer membership in his or her party to a member of the opposition or accept membership in an opposition party.

*House of Commons Procedure and Practice* states, at page 654: “An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.” I therefore rule, Mr. Martin, that this motion is a new concept that is beyond the scope of Bill C-2 and is consequently inadmissible.

So we will proceed to page 11. This is a government amendment.

Who's taking over here? Mr. Poilievre.

● (1600)

**Mr. Pierre Poilievre:** I move, on behalf of myself, amendment G-7.

**The Chair:** Is there any discussion?

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

**The Chair:** We're on page 12.

**Mr. Pierre Poilievre:** I move, on behalf of the citizens of Nepean—Carleton, amendment G-8.

**The Chair:** Is there any discussion?

Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** I don't know why Mr. Poilievre is holding up the process. We could do things a little more quickly.

[*English*]

**The Chair:** Are you okay, Mr. Owen?

**Hon. Stephen Owen:** Yes.

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

**The Chair:** We'll now go to the government amendment on page 13.

Mr. Poilievre.

**Mr. Pierre Poilievre:** On behalf of all that is good and righteous and just, I move amendment G-9.

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

**The Chair:** Page 14 was the French version of amendment G-9. We're now on page 15.

Mr. Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** Mr. Chairman, we'd be inclined to vote against amendment G-10. Perhaps someone could give us an explanation because, for the moment, we feel that adding the word “*personnellement*” makes it possible to do indirectly what can't be done directly, that is to ask the staff to solicit for oneself. We wouldn't want to open the door to that kind of possibility. That said, perhaps I'm mistaken.

[*English*]

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** Maybe we could have some commentary on that from some of the legal experts.

**Mr. Joe Wild:** Okay. Mr. Stringham will speak to it.

**Mr. James Stringham:** Thank you.

The amendment is to make the French and the English text accord with each other. So the introduction of *personnellement* is to accord with the English phrase “shall personally”, in the first sentence.

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** What's the difference, then, between “personally solicit” and “solicit”, between “No public office holder shall solicit” and “No public office holder shall personally solicit”?

**Mr. Joe Wild:** You could solicit on behalf of another person...a person soliciting for your own purposes.

**The Chair:** Sorry, maybe I'm going too fast.

Ms. Jennings?

Mr. Martin?

**Mr. Pat Martin:** No, I wanted to vote.

**The Chair:** I'm glad.

Mr. Owen.

**Hon. Stephen Owen:** I just want to make sure I understand the meaning of this, as we intend—that is, it's the public office holder personally acting that causes it to be a conflict, but it doesn't foreclose on someone else soliciting funds on his or her behalf. Is that correct? It's the personal aspect of it that is the conflict.

**Mr. Joe Wild:** Yes, absolutely.

**Hon. Stephen Owen:** Okay. Thank you.

**The Chair:** Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** Why not correct the English instead of the French? Why not delete the word “personally”?

I understand. The word is already in the English version, but it isn't in the French version. Why wouldn't the latter be the right one?

● (1605)

[*English*]

**The Chair:** Someone is going to have to deal with this.

Mr. Poilievre.

**Mr. Pierre Poilievre:** We have a failure in the law to concord between French and English on this particular point. We've put forward a proposal on how the concordance can be instituted in the law. If Mr. Sauvageau or anyone else has an alternative approach, they can put forward an amendment with 24 hours' notice, and we invite them to do so.

[Translation]

**Mr. Benoît Sauvageau:** No, I'm sorry...

[English]

**Mr. Pierre Poilievre:** It's our amendment, so we've chosen to do it this way. That's the answer to your question.

[Translation]

**Mr. Benoît Sauvageau:** In that case, I'll agree, but on one condition, that all translation changes require an amendment and 24-hour notice. I'm prepared to allow you to request a 24-hour notice from me for clause 16, but provided all the translation problems are corrected with a 24-hour notice.

[English]

**The Chair:** I don't know how we're going to operate with that.

**Mr. Pierre Poilievre:** We have amendments to the law. If the member wants to vote in favour of the amendment, he can do so. If he wants to vote against, he can vote against, but an arcane discussion over whether an amendment should have been introduced in English or French does not serve the purposes of this bill, or of any of the work we're doing here.

**The Chair:** Mr. Sauvageau, as I understand it, there has been 24 hours' notice on every one of the amendments in this book.

[Translation]

**Mr. Benoît Sauvageau:** Yes, but we're told the French text has to be corrected because there was a mistake. Why shouldn't the English text be corrected instead? Why isn't it being suggested that the French version was correct?

Let's try to interpret it. This means that a minister can't solicit funds personally, but that he can ask anyone else to do it for him. That enables him to do indirectly what he isn't allowed to do directly. According to the French version, the office holder can't do it personally.

Even if it's only once in a hundred times, couldn't the French version be correct and the English version not? I simply want to emphasize that fact. Is that possible?

**Mr. Pierre Poilievre:** That could be possible.

**Mr. Benoît Sauvageau:** Could it be possible in this case?

**Mr. Pierre Poilievre:** In this case, there's an amendment...

[English]

**The Chair:** Speak through the chair, please.

Mr. Poilievre.

**Mr. Pierre Poilievre:** We have here an amendment that we put forward—

**An hon. member:** Could we ask—

**The Chair:** Mr. Poilievre has the floor, please.

**Mr. Pierre Poilievre:** We detected that there was a failure to concord between the English and the French version. In this particular case, the drafters prepared the English version correctly and the French version incorrectly. It's perfectly possible that on other occasions they might prepare the English version improperly and vice versa, but in this particular case the amendment seeks to align the French with the English version.

I don't know if Mr. Sauvageau is trying to generate some sort of grand debate over the Official Languages Act here, but our amendment states that the French version is to be altered to match with the English version. It doesn't require a grand debate. If he would like to understand further why we believe this, and why the technical drafters are of the view that the English version in this case was right and the French version needed amendment, then I'd be glad to turn the microphone over to those experts. But I'm very confused as to why Mr. Sauvageau is making a point out of this, and I'm becoming suspicious as well.

**The Chair:** Ms. Jennings.

[Translation]

**Hon. Marlene Jennings:** Mr. Chairman, I understood what the amendment meant, but, after the debate that's just taken place, I'm no longer certain. I'd like to ask the legal counsel to explain the purpose of the clause and why the English version of Bill C-2 achieves the desired objective, but not the unamended French version.

[English]

**Mr. Patrick Hill (Acting Assistant Secretary, Machinery of Government, Privy Council Office):** If I may explain some of the background here, the provision that we have before us is effectively taken from the current Conflict of Interest and Post-Employment Code for Public Officer Holders. The provision that governs personal solicitation was added to the conflict of interest code in June 2004. We've taken that into the act.

I would just point out in partial response to Mr. Sauvageau's question, as I understood it, proposed section 18 of the Conflict of Interest Act that would be established through clause 2 has a general anti-avoidance rule. So if on the facts the commissioner were to determine that indirect fundraising somehow breached the principle in proposed section 16, that could be a matter for the commissioner to consider.

• (1610)

**Hon. Marlene Jennings:** Are you finished? Is that supposed to explain?

I thought I understood why this amendment was being brought forward. The discussion between Monsieur Sauvageau and Monsieur Poilievre muddled the waters for me. My question to you is on the objective of proposed section 16 and why you state that the English version attains that objective and the French version, as it is now written, does not and therefore it is necessary that the French version be amended by the government amendment G-10.

Is that clear? You did not answer my question, so I've now given it again, slowly, clearly, and I'd like an answer.



**Mr. Patrick Hill:** The proposed section that's before you was drafted in two languages. The English version is the version that reflects the policy decision, namely, that personal solicitation be directly governed by the act. There was an omission on the French translation.

The background I've given is simply to say that the origin of the clause itself, and by extension the policy behind the clause, tracks directly from the prior code.

**Hon. Marlene Jennings:** So proposed section 16 in the English version is a trustworthy, *fidèle*, reflection of what exists today in the Conflict of Interest and Post-Employment Code for Public Office Holders, whereas the French version is not.

**Mr. Patrick Hill:** That's correct.

**Hon. Marlene Jennings:** So there was a typo.

**Mr. Patrick Hill:** Yes, that's correct.

**Hon. Marlene Jennings:** It would have been so easy if you could have just said the English is exactly—

**The Chair:** You know what? Anything seems to go in this committee, leading questions, cross-examination, but I think he's answered the question, Ms. Jennings.

**Hon. Marlene Jennings:** Mr. Chair, please, I'm trying to be calm, I'm trying to be polite, and I'm trying to get clarity here. Clearly, if I get clarity, then it's going to be a lot easier for everyone else sitting around the table.

**The Chair:** Okay. Are we all happy? Then we're going to vote.

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

**The Chair:** Okay. We're on to page 16.

**Mr. Pierre Poilievre:** So moved.

**The Chair:** Moved by Mr. Poilievre. Is there any discussion?

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

**The Chair:** We're on to page 18.

**Mr. Pierre Poilievre:** So moved.

**The Chair:** So moved.

I'm skipping over pages, you're absolutely right. The pages I'm skipping over are identical in French, and that's why I'm skipping over them.

[*Translation*]

**Ms. Monique Guay:** You can simply say it, Mr. Chairman.

[*English*]

**The Chair:** Okay.

Mr. Owen, do you have a comment on page 18?

**Hon. Stephen Owen:** I'm just wondering whether that should be qualified as “federal public sector entity”.

**The Chair:** Mr. Stringham.

**Mr. James Stringham:** Mr. Chairman, as a point of information, the term “public sector entity” is defined in the act, and it's a vestige of the code, the reference to the federal public administration. We used the term.

**The Chair:** Okay. Page 19 is the French version. No more discussion.

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

• (1615)

**The Chair:** We're on to page 20. Page 19 is the French.

I indicated that, Mr. Lukiwski.

And just so we're clear, page 20 includes page 21—both French and English. So page 20, it's a government—

Mr. Poilievre.

**Mr. Pierre Poilievre:** Yes, I moved.

**The Chair:** You moved?

Mr. Poilievre or Mr. Sauvageau, I'm getting you two confused. I know that's hard to believe.

**Mr. Benoît Sauvageau:** I want to vote.

**The Chair:** You want to vote.

All those in favour—

Mr. Murphy.

**Mr. Brian Murphy:** Yes, it's a quick draw here, Mr. Chair.

There's a change from 120 days down to 30 days. Why?

**Mr. Pierre Poilievre:** We felt that the timeframe could be set at 30 days, and that was a very reasonable position to be in. We see no reason why that 30-day requirement cannot be met.

So I would offer the floor to the technical experts to share any of their wisdom on the subject, but we stand by our amendment.

**The Chair:** Mr. Wild, Mr. Stringham. Go ahead.

**Mr. James Stringham:** Mr. Chairman, you'll note that for all of the provisions with respect to public declarations, there are timelines for filing, for making the public declarations, save for 25(1). We neglected to put one in, so we're adding the 30-day deadline because there was no deadline provided in 25(1).

**Mr. Brian Murphy:** It's 25(1) of the draft act, right?

**Mr. James Stringham:** t's proposed subsection 25(1) on page 14; I'm speaking of proposed sections of the act.

I beg your pardon, Mr. Chair.

**The Chair:** Are you okay, Mr. Murphy? Thank you. We'll call a vote.

Yes, Ms. Jennings.

**Hon. Marlene Jennings:** I wonder if the conservative members would be in agreement to change the 30 days to 60 days, because 30 days is very short.

**Mr. Brian Murphy:** In support of that, Mr. Chairman, I could refer to proposed section 22, which—

**Mr. Pierre Poilievre:** I think we would accept changing that number to 60 days as a friendly amendment.

**The Chair:** Yes, that seems to be in order.

Questions?

Mr. Martin.

**Mr. Pat Martin:** Are you open for debate on the subamendment?

**The Chair:** Sure. Thirty to sixty, Mr. Martin. Yes.

**Mr. Pierre Poilievre:** May I raise a point of order?

**The Chair:** Point of order, Mr. Poilievre.

**Mr. Pierre Poilievre:** I don't mean to cut off Mr. Martin. I just want to understand the context of this.

With a friendly amendment, is it automatically accepted? If it's accepted by the mover, is it automatically accepted into the amendment, given that it is a friendly amendment?

**The Chair:** I'm told that if it is unanimous, we can do anything in here.

**Mr. Pierre Poilievre:** So is it?

**The Chair:** Before Mr. Martin speaks, is this amendment unanimous?

The subamendment is not unanimous.

**Hon. Marlene Jennings:** You just asked on the amendment, you did not ask on the subamendment. Mr. Martin wishes to speak on the subamendment, then he may have a decision on it. And the subamendment may be unanimous.

**The Chair:** I just want to keep everybody happy.

Mr. Martin, go ahead.

**Mr. Pat Martin:** Thanks.

I would speak against changing this from 30 days to 60 days. From the public's point of view, it's more advantageous to have a shorter timeframe, because going from 30 to 60 days gives the reporting public officer a longer period of time before which that person has to tell the public that he or she finds himself or herself in a conflict and wants to make a public declaration of recusal. I think it's in the public's interest to have as short a period of time as possible.

So I would speak against any effort to change 30 days to 60.

•(1620)

**The Chair:** We're going to vote on the 60 days, the subamendment.

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

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

**The Chair:** We're on to page 22, and that's okay to proceed.

Mr. Sauvageau, you're on the air for page 22.

[Translation]

**Mr. Benoît Sauvageau:** Mr. Chairman, perhaps I'm going to surprise my Conservative friends, but I'd like to make this part of Bill C-2 a little less harsh. Subclause 35(1) 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 [...]

We think there may be exceptional provisions. I used an example the other day. I did it pleasantly, but it was thought that that was not the case. We wouldn't want, for example, a former Minister of Justice with a clean record not to be able to work at a tribunal after his employment. On an exceptional basis, the Commissioner should be able to exempt a former public office holder upon request, but providing the name, conditions of the exemption and the reasons for his decision. That may occur once in 10 years.

I'm going to give you another example, which doesn't apply to Ottawa. Would this mean that a doctor who is a Minister of Health subsequently be unable to practise at a hospital? He wouldn't have been a lobbyist, he wouldn't have been corrupted, or anything like that. We want to ensure that, in some cases, the Commissioner can exempt former public office holders from this restriction, but on certain conditions.

[English]

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** I'd just like to know from our panel of experts if they foresee any instances under the current draft of Bill C-2 where you could have former justice ministers unable to practise law, or former health ministers unable to practise medicine, or any of the examples Mr. Sauvageau gave. Could the panel describe whether or not the law provides for this?

**Mr. Patrick Hill:** Let me address that point. Proposed section 39 of the proposed act in the bill that's before you actually does provide for a discretion in the commissioner to reduce the limitation period referred to in proposed section 36, and proposed section 36 itself refers back to the substantive prohibitions in proposed section 35.

In respect of a minister, if that's the example before us, a minister is governed by proposed section 35 for a two-year period; however, under proposed section 39 that minister may apply to the commissioner. There are criteria in that section to guide the commissioner, who may, in the appropriate case, reduce in part or in whole the limitation period of a government minister. And there is a similar procedure for all public officer-holders.

**Mr. Pierre Poilievre:** So that exists currently within the law? Is that kind of exemption already there to protect against these cases Mr. Sauvageau warns of?

**Mr. Patrick Hill:** That's correct.

**Mr. Pierre Poilievre:** Okay.

**The Chair:** Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** If I understand correctly, you're saying that, even if clause 39 refers to the "applicable period set out in section 36", we are to understand that that includes clause 35.

[English]

**Mr. Patrick Hill:** That's correct.

•(1625)

[Translation]

**Mr. Benoît Sauvageau:** Can you explain to me how I could have known that?

[English]

**Mr. Patrick Hill:** Proposed section 39 gives discretion to the commissioner to waive or reduce the cooling-off period in proposed section 36, and if you turn to proposed section 36 you'll find that it refers to proposed section 35.

[Translation]

**Mr. Benoît Sauvageau:** I understand, thank you.

We can delete it.

[English]

**The Chair:** The amendment is withdrawn.

On the next two, I have a problem I'm going to need some help with. Page 23 has a line conflict with page 24. It has to be one or the other, or you could have a subamendment.

Monsieur Sauvageau, I'm just pointing out to you that we have this problem. I don't know what the government...

Do you understand what I've said?

[Translation]

**Mr. Benoît Sauvageau:** I understand what you're saying.

We'll need the help of our witnesses. We want to ensure that it is no longer possible for an individual to go see his member in order to file a complaint with the Office of the Ethics Commissioner and for the member to be required to swear an oath. If I'm not mistaken, Mr. Walsh, the law clerks and a number of witnesses have emphasized that that caused a problem. I propose that we adopt a model similar to that in effect at the Office of the Commissioner of Official Languages, under which citizens can go and see the Commissioner of Official Languages directly. That's why we're moving the amendment that appears on page 25.

[English]

**The Chair:** Well, I'm dealing with—

[Translation]

**Mr. Benoît Sauvageau:** Pardon me, that's page 23. I went too far.

[English]

**The Chair:** Yes. We're on pages 23 and 24, Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** That's good.

We'd like the Commissioner, not the minister, to be able to exempt certain persons.

[English]

**The Chair:** Mr. Hill.

**Mr. Patrick Hill:** By way of background on the current proposed section 38, this is an exception to the general rule that all public office holders are governed by the cooling-off period insofar as the minister can exempt members of his or her exempt staff from the application of the cooling-off period. Under the current regime, with the present code, in fact all ministerial staff are excluded unless their minister directly or expressly has them included for the purpose of the cooling-off period. In this regime, we've reversed the onus so that all exempt staff are deemed to be subject to the cooling-off period unless the minister expressly excludes them. As you'll see, there are

statutory criteria to govern the minister in determining whether or not to exclude an exempt staff person.

The kinds of scenarios that are envisaged here are people who may have worked on a minister's staff as exempt staff but who either were there for a very short period of time or who had no substantive responsibilities; in other words, they were there to provide secretarial help, that sort of thing.

**The Chair:** Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** That's precisely what we understood. That's why we're tabling the amendment. Since transparency is the underlying principle of the bill, we don't want the minister to decide which individual in his department is to be subject or not subject to clauses 35 and 37. We also want the Integrity Commissioner to decide for all other positions.

So we want to amend subclause 38(1). We want to replace the words "A minister of the Crown or a minister of state may exempt" with "The Commissioner may exempt". We could also write: "may exempt upon consultation with the minister." That wouldn't be a problem at all.

Why would the minister be judge and party with regard to the decision to exempt or not to exempt a particular member of his staff?

I'm sure this is just a minor breach of transparency by the Conservatives that they'll no doubt want to correct immediately.

• (1630)

[English]

**The Chair:** Silence?

**Mr. Pierre Poilievre:** Again, the purpose of this proposed section in the first place is to avoid a situation where someone who has, say, a very short-term temporary role, perhaps they work from out of a temporary agency and they serve in a minister's office for a brief period of time.... Having worked with a minister's office in my role as a public office holder, I've seen this happen already, where people have been in and out of the office on very short-term bases. We do not want someone who comes in and serves as a secretary for a very short term, two or three weeks, from a temp agency to be then covered by the provisions dealing with lobbying and prevent them from ever getting a job working for a lobby firm because they might have been a secretary in a minister's office for a few weeks.

So that's the reason this exists. We just think it would be far better from an administrative standpoint if you allow the minister, who will see up close what kind of work this hypothetical individual will be doing, to make the determination rather than have someone who's detached from the situation make the determination for him.

But the rules are very clear. It's not as though the minister can pick a friend in the office and say, you, you, and you are all excluded; we're not going to apply the law to you. The definitions in the law are very clear, so the room for abuse, which I think is what Mr. Sauvageau is trying to get at, is almost non-existent, and as such, we don't see the purpose of the amendment.

**The Chair:** I have Mr. Sauvageau, Ms. Jennings, and Mr. Owen.

Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** Mr. Chairman, let's start from the premise that the person who is appointed Commissioner is a competent person. If the Commissioner is a competent person, he'll definitely want to understand everything that Mr. Poilievre has told us, that is to say when a person has worked in the minister's office for four hours, the minister could say that person is excluded, period.

In a bill on transparency, why would we allow the minister to decide who in his or her cabinet has or hasn't worked long enough?

I've often heard the party in power tell us that it's a matter of perception, that the public's trust absolutely had to be restored with regard to wrongdoing within government, and so on. Now we would be giving the minister the opportunity and the power to make decisions within his department about people he can exempt and those he cannot exempt based on rules that can be quite complicated.

The Integrity Commissioner, who will be appointed upon consultation, could apply the rules, give the reasons, consult the minister and arrive at a response. We simply want to remove any appearance of conflict of interest and give the bill all the transparency it aims to achieve.

If the Conservatives don't agree on this, let them live with it.

[English]

**The Chair:** I have a speaking order, Mr. Poilievre.

Mrs. Jennings.

**Hon. Marlene Jennings:** Thank you, Chair.

Before I debate the substance of this amendment, I would like to ask a question of the legal staff. I have been unable to find in this legislation any clause or section that states that the commissioner would have the authority to review a decision made by a minister of the Crown or a minister of state under proposed subsection 38(1), where that "minister of the Crown or minister of state may exempt from application of section 35 or 37 a former reporting public office holder" etc.

I would be very pleased if you could point out what section would give the commissioner the authority to review that. The only issue of review that I've been able to find is proposed subsection 38(3), which says:

Every decision to grant an exemption under subsection (1) is final and shall not be questioned or reviewed in any court, except in accordance with the *Federal Courts Act* on the grounds referred to in paragraph 18.1(4)(a), (b) or (c) of that Act.

Under Bill C-2, is there a section that affords the commissioner the authority to review a decision of exemption that a minister of the Crown or minister of state may have taken under proposed subsection 38(1)? Yes or no.

•(1635)

**Mr. Joe Wild:** No, there is not.

**Hon. Marlene Jennings:** Thank you.

Now I will go to the substance of the amendment. I find it surprising, and I'm sure that the government, in good faith, did not

realize that in wishing to provide the authority that they provide the minister of the Crown or minister of state under proposed subsection 38(1), they had neglected to ensure that it would be reviewable by the commissioner. Given that the objectives of Bill C-2 are to ensure (1) transparency, (2) integrity, and (3) proper and effective oversight, I cannot but be in favour of the Bloc amendment, which would rest that authority under the commissioner rather than under a minister of the Crown or a minister of state.

I will be voting in favour of the Bloc amendment.

**The Chair:** We're not there yet.

Mr. Owen and then Mr. Poilievre.

**Hon. Stephen Owen:** Maybe I can begin by asking Mr. Wild a question.

On the reference to not being reviewed by a court, that's outside of the ability under the Federal Courts Act to have a decision of the minister judicially reviewed, I would expect, and that judicial review could go to his jurisdiction under proposed section 38 in terms of the criteria. There is a possibility of judicial review if the minister acts outside of his jurisdiction in terms of the proposed section 38 criteria. Is that right?

**Mr. Joe Wild:** That is correct.

**Hon. Stephen Owen:** Then I would suggest that without potentially overloading the commissioner with a large number of reviews, I'm satisfied there's enough control there to have judicial review. We give ministers all sorts of discretion under statutes to make extremely important decisions, and I'm just afraid of overloading that office. I'm inclined to feel there's enough protection in the way it's drafted.

**Mr. Joe Wild:** I think it's important to note, Mr. Chairman, that certainly a minister would be accountable before the House, as the minister is, for the exercise of any powers or duties that are granted under a statute, and that would be no different with this particular section.

**The Chair:** Mr. Poilievre is next.

**Mr. Pierre Poilievre:** Given what Mr. Owen just said, do you think that leaving this authority with the minister, given that the authority is governed by strict laws, is consistent with powers that ministers are given under statute in other areas?

**Mr. Joe Wild:** Ministers are certainly given a whole host of types of powers, duties, and functions under statute. Some have far more implications for individual Canadians in their daily lives. Whether this is consistent or not, the only point I would make is, again, that it's a power that has been given to a minister. There are parliamentary processes to which ministers account for the exercise of their powers and duties and functions under legislation, and there is, with respect to the jurisdiction of the decision-making of the minister, a judicial review possibility.

**Mr. Pierre Poilievre:** Would there be any legal or administrative complications, in your view, in accepting Mr. Sauvageau's amendment?

**Mr. Joe Wild:** Would there be a legal complication? I don't see a legal complication with Monsieur Sauvageau's amendment. Administrative is a different question, because—

**Mr. Pierre Poilievre:** Administratively it couldn't be that hard, because all you'd have to do is fill out a form and apply to have a given employee recognized as exempt from this particular rule, right?

• (1640)

**Mr. Joe Wild:** From an administrative perspective, what you're doing is putting a burden on a commissioner to go in and ascertain whether the criteria have been met, in order to then grant the exemption. That does involve a certain amount of administrative burden.

**Mr. Pierre Poilievre:** From a practical point of view, there's not a whole lot of difference, but if it would give some strengthened appearance of transparency, I can't see a lot of problems with Mr. Sauvageau's amendment. That's my own point of view.

**The Chair:** We seem to be in agreement, but we're still debating.

We have Ms. Jennings.

**Hon. Marlene Jennings:** I'm fine.

**The Chair:** We have Mr. Tonks.

**Mr. Alan Tonks (York South—Weston, Lib.):** I would like clarification with respect to proposed subsection 39(2), which deals with the commissioner's discretion. It is very clear in that proposed subsection that the public interest is to be the defining purpose with respect to the waiver he or she has. Does that not satisfy the concern raised by Mr. Sauvageau?

**An hon. member:** No, not at all.

**Mr. Alan Tonks:** No?

**Mr. Patrick Hill:** Proposed section 38 is really about whether the exempt staff in question are covered by the cooling-off period at all. If they are covered, then proposed section 39—which gives the commissioner discretion to waive some or all of its provisions for a shorter or longer period of time—would apply. Proposed section 38 is the means by which it's determined whether exempt staff are subject to any of those cooling-off rules.

**Mr. Alan Tonks:** Thank you.

**The Chair:** Monsieur Petit.

[Translation]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** My question is for Mr. Wild.

Let's suppose this concerns the Commissioner, rather than "a minister of the Crown or a minister of state". How then could we combine clauses 38 and 39? Clause 39 grants access to a kind of higher level. It affords the opportunity to have a decision changed. Clause 39 would not permit that. The only possible remedy would be the Federal Court. We would be depriving ourselves of a level.

[English]

**Mr. Patrick Hill:** Again, the purpose of proposed section 38 is to give a minister the discretion, in accordance with the statutory criteria, to determine whether or not his or her exempt staff are to be covered by the substantive cooling-off rules found in proposed section 35. The first order of decision in the case of an exempt staff member would be for the minister decide whether or not that person is to be exempted.

In the event that a person were not exempted, so you have an exempt staff member who has not been exempted, then under proposed section 39—as for all other reporting public office holders—the reporting public office holder may make an application to the commissioner in accordance with a separate set of criteria for a shortening of the cooling-off period, or a waiver of some of its substantive provisions. The commissioner would always have, in respect of any person subject to the cooling off-period, the discretion that you see in proposed section 39.

**The Chair:** You have another comment, Mr. Owen?

**Hon. Stephen Owen:** It's just for all colleagues here to note that proposed paragraphs 38(2)(a) to (d) are not separate; they are cumulative. They have to meet all of those criteria, which define pretty clearly low-level, not engaged....

**The Chair:** We have finished the debate on BQ-3, and there is a line conflict between it and G-14, the next amendment. Both amendments can't be adopted, as a line in a bill may only be adopted once at the committee stage. So G-14, the next amendment, may be moved as a subamendment to BQ-3.

I need help from the committee on this.

• (1645)

**Mr. Pierre Poilievre:** Do you propose then that we vote on the subamendment and then vote on the main amendment?

**The Chair:** G-14 would be a subamendment, if that's what you wish.

**An hon. member:** So moved.

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

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

**The Chair:** We're going to move on to BQ-4 on page 25.

We have more line conflicts. There are line conflicts between BQ-4, G-15, and G-16. Amendments G-15 and G-16 may be moved as subamendments to BQ-4.

BQ-4 also has a line conflict with NDP-1.1.

Isn't this exciting television?

As BQ-4 also has a line conflict with NDP-1.1, the committee will have to choose between BQ-4 and NDP-1.1.

These four amendments will be grouped for debate.

Monsieur Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** If we agree to BQ-4, G-15, NDP-1 and G-16 become moot. That's how we've interpreted the situation.

[English]

**The Chair:** I have an answer—I hope.

If we vote on amendment BQ-4, we can't vote on the other ones. The only way we can do it is through a subamendment; we can vote on the other ones through a subamendment.

[Translation]

**Mr. Benoît Sauvageau:** We were made to get along.

By amendment BQ-4, we want to correct the problems raised by Mr. Walsh and the legislative drafters, that is the problem of parliamentary privilege. When we attended the briefing for the introduction of Bill C-2, I raised this question, saying that it was all well and good in theory, but that it was unfeasible and unthinkable in practice.

I'll give you an example. All the citizens in my electoral district read the bill, and one of them observes that there's been wrongdoing under the terms of the bill. He has to go through the member, who has to determine whether or not his complaint is admissible, then swear an oath and tell it to the Commissioner.

If I remember correctly, none of the witnesses who appeared told us that this way of proceeding made any sense. The law clerk told us the same thing. Furthermore, we have a model that we can follow, that of the Commissioner of Official Languages. If a citizen sees that something isn't right, he can file a complaint with the Commissioner of Official Languages.

First, we have to delete the stage of going through a member. I wonder whether a single member from any of the parties would tell one of his or her constituents that that person's idea makes no sense and that he or she considers it inadmissible.

Second, our population may include a number of pressure groups. Let's suppose pressure group B decides to send three people, five days a week, to the member's office to file a complaint. That may complicate our everyday work.

For all these reasons, I propose that we adopt the tested model of the Commissioner of Official Languages, that we eliminate the stage of going through the member and that we correct the points that troubled the law clerk from the House of Commons.

That's why the Bloc moves amendment BQ-4, which appears on page 25.

• (1650)

[English]

**The Chair:** Madame Guay.

[Translation]

**Ms. Monique Guay:** Mr. Chairman, I would like to add that this is also to depoliticize the process. When we do it, we politicize a system. It shouldn't be that way. We're talking about clarity and transparency. In this case, we're not making the matter more transparent by requiring citizens who want to file a complaint to go and see a member who isn't necessarily a member of their political allegiance. This is a situation that may be highly conflictual and very difficult. It's better that the complaint be filed directly with the Commissioner, without going through any political office.

[English]

**The Chair:** Mr. Owen.

**Hon. Stephen Owen:** I would like to make a general comment, without arguing one point or the other, that this is not an uncommon provision in legislation of the ombudsman type.

In France the *Médiateur de la République* has the same provision. That is the ombudsperson of France. Also, the commissioner for

public administration in the U.K., the U.K. ombudsman, has the same. Both have those provisions.

It stops landslide complaints, perhaps, for those offices. It stops having to constantly deal with very large numbers of complaints and having to turn people down because their complaints are frivolous, vexatious, or apparently without merit.

I'm not offended by this. There is a solid rationale for it. It is quite commonly practised in these types of offices in other countries. That's just for people's information.

**The Chair:** Thank you.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I'll comment on the Bloc amendment and then I'll table a subamendment.

The reason we chose the member of Parliament route is that we want to make this process administratively sound. If you allow 30 million people access to one bureau to submit their complaints, there might be so many complaints and so many of them frivolous that they're not ultimately going to be investigated with any rigour.

For example, I think back to the gun registry. I think you would have found that out of the Prairies in western Canada you probably would have had over 50,000 complaints about the ethics of that program and the people who were involved in administering it. To expect that one commissioner would be able to investigate all of those complaints with any rigour is unrealistic. So what we suggested instead was that they make their complaint through their member of Parliament and that the member of Parliament then move forward with the ones they find have some merit and discard the ones they believe do not and then ultimately be held accountable for their decisions locally at election time.

That is the only way we can do this, I believe, with any administrative sanity. That is why we opted to allow every citizen the right to raise a concern and submit a complaint. That is our approach. We believe that every citizen should have the right to do that, but that a member of Parliament should have the responsibility to take a look at it first and decide whether they believe it has merit.

I should also say that if there is any question about the ethical behaviour of a public office holder, in a House of Commons with 308 members representing four parties, somebody is going to raise the concern. Somebody is going to submit the complaint. Somebody will have a partisan interest to submit the complaint. There's nothing wrong with their doing that. So we think that it's more than sufficient to allow members of Parliament to lead this process, and with that, I'd like to move on to a subamendment I have.

I move that government amendment G-15 be made a subamendment of BQ-4.

• (1655)

**The Chair:** Could we just pause for a moment, please, for Mr. Poilievre to confer with the clerk.

**Mr. Pierre Poilievre:** The clerk has just told me that although she had earlier suggested that this could be appropriately added as a subamendment, she has now said that is not the case. So I will take her advice and allow it to be voted on separately.

I gather then we're still talking about BQ-4, separate from G-15.

**The Chair:** I just want to ask the clerk one question.

Okay, I'm going to say this now, so that everybody is clear. I appear to have been in error. I apologize for what I said before. You'll have to disregard it. We can vote on BQ-4 or NDP-1.1 and G-15 and G-16. If BQ-4 carries, we don't vote on the others. If BQ-4 fails, then we can vote on the others.

Mr. Sauvageau, I have Mr. Martin and then you.

Mr. Martin.

**Mr. Pat Martin:** Yes, that's what I understand now: it's really a contest between NDP-1.1 and BQ-4. You can have one or you can have the other, but you can't have both.

**The Chair:** You can't have both.

**Mr. Pat Martin:** Okay. Well, I'm in favour more of NDP-1.1, the reason being, in all seriousness, that in BQ-4 what the Bloc contemplates is that the conflict commissioner would have to investigate everything brought to that office, because there's no screening contemplated; there's no process whereby you could eliminate frivolous or vexatious complaints. In fact, any reference to "frivolous and vexatious" has been deleted. There's a whole paragraph related to this in Bill C-2 that's been taken out by the Bloc's amendment, as they see it.

To eliminate the member of Parliament as the one to make the reference to the commissioner would, I too think, open the floodgates to bombard the commissioner, making that office virtually dysfunctional.

Our recommendation is quite different. It doesn't deal with the same issues at all. In fact, most of the mandate and powers of the commissioner would remain as contemplated in Bill C-2. The only change we seek to make with NDP-1.1 is that when they're talking about the obligation of the member to identify the alleged contravention and set out reasonable grounds—"under subsection (5)" is the language in Bill C-2—we would suggest it should say:

The member shall identify the alleged contravention and set out the reasons for believing a contravention has occurred.

In other words, the language in Bill C-2 prejudices that the grounds are reasonable, or it leaves it up to the member to make the determination whether the grounds are reasonable or not. We believe they have an obligation to set out their reasons for believing that a contravention has occurred, but this doesn't give additional weight to what they have to say in that way.

Our recommendation in NDP-1.1 is far more modest than the Bloc's. We believe the Bloc's is a substantive amendment that changes the mandate and the powers of the commissioner in such a drastic way that I'm surprised it was in order, in fact, because it really does alter the whole concept of what the office of the commissioner should be.

So I speak strongly in favour of voting against the Bloc amendment and voting for NDP-1.1.

• (1700)

[Translation]

**The Chair:** Mr. Sauvageau.

**Mr. Benoît Sauvageau:** I sense less enthusiasm than there was for my other attempt, but I'm going to continue using Mr. Poilievre's example.

Let's suppose 50,000 complaints are filed in the West with regard to firearms. I did a brief calculation with the help of Mr. Murphy, whom I thank. There are 75 ridings in Quebec, 125 in Ontario and about 30 in the Maritimes. That leaves about 70 ridings in the West. That means that each member of those ridings receives about 8,000 complaints.

That's exactly what I was saying. I would distinctly prefer that complaints be sent to the Integrity Commissioner, who would have a standard letter saying that those complaints are considered vexatious or frivolous. As Mr. Poilievre has just shown, and I completely agree with him, pressure groups shouldn't bog down the members from the West and prevent them from working. Moreover, this is an area where we have no candidates and no members. Consequently, I'm working for them in this case.

Second, this addresses the remarks of the law clerk and the parliamentary advisor of the House, who says this removes a privilege from parliamentarians.

Third, it's also out of respect for Mr. Martin. Unless the Official Languages Act is completely inadequate in this country, I've never heard it said that the Commissioner of Official Languages would be overwhelmed with complaints because there wasn't a member as a barrier. The Office of the Commissioner of Official Languages has regional offices, including one in Montreal and one in the Maritimes, to facilitate citizen access.

Fourth, I would remind you that we all agreed that government officials were fundamentally honest. However, if there are 50 complaints in the first week, that's because there are a fair number of dishonest people, but that's not what we were saying at the start.

So, out of respect for the law clerk and parliamentary counsel, out of respect for public servants, whom we believe are honest, out of respect for what already exists, that is the mechanism of the Office of the Commissioner of Official Languages, and out of respect for Mr. Poilievre, who has told us that the offices of the members from the West, who are, in the majority, Conservatives, should not be obstructed by people who are opposed to the firearms registry, I believe we should support the position of the Bloc québécois.

[English]

**The Chair:** Okay. I have Monsieur Petit, Ms. Jennings, and Mr. Martin.

Monsieur Petit.

[Translation]

**Mr. Daniel Petit:** I have a question and a comment to make. I'm speaking to Mr. Wild, since it appears he's a law clerk who drafted the document.

If agreed to, amendment BQ-4 will amend the proposed section 44 in the act. In proposed subsection 44(1), we want to delete the expression “has reasonable grounds to believe” and replace it with “who believes”. Isn’t there a big difference between the words “has reasonable grounds to believe” and the word “believes”? The person must no longer have reasonable grounds to believe that...

In view of the case law, if we agreed to this amendment, we’d be faced with all kinds of problems. Regardless of who files the complaint, from the moment we replace the words “has reasonable grounds to believe”, an expression we are all familiar with in Canadian law, with the word “believes”, how are we going to make it, since the word “believes” used alone is not the equivalent of “has reasonable grounds to believe”? The case law will overwhelm us and we won’t be able to go any further under this section. We may cause a problem in which an individual, no matter how well intentioned he may be, who does not have “reasonable grounds to believe” may well be prosecuted, precisely because the word “believes” is not the equivalent of “has reasonable grounds to believe”.

I’d like the committee to consider my comments, since the texts on the evidence are diametrically opposed. The word “believes” is being proposed in one case, and “has reasonable grounds to believe” in the other.

[English]

**The Chair:** We have a question for somebody.

Mr. Wild, would you like to answer?

• (1705)

**Mr. James Stringham:** May I, Mr. Chairman?

**The Chair:** Mr. Stringham.

**Mr. James Stringham:** Yes, that is a possible interpretation, and we would also point out that proposed subsection 44(1), which sets out reasonable grounds to believe, actually tracks the existing language in the Parliament of Canada Act, section 72.08, which deals with requests from members. The reasonable grounds to believe that appear in proposed subsection 44(1) actually can be found in the existing act—the predecessor to this, if you will.

**The Chair:** We have Ms. Jennings, and then Mr. Martin.

[Translation]

**Hon. Marlene Jennings:** Thank you, Mr. Chairman.

I want to thank the counsel very much for the explanations they’ve provided to Mr. Petit.

I’ve carefully examined clauses 43, 44 and following, precisely because they concern the accountability of parliamentarians. We’ll see how the clause-by-clause consideration of the bill continues, but I must inform my Bloc québécois colleagues, with some regret, that we think the only problems with clause 44 are those raised by Mr. Walsh, the law clerk and parliamentary counsel. On the other hand, we believe that amendment NDP-1.1 from Mr. Martin corrects these deficiencies in the wording of proposed section 44.

So we can’t support the Bloc’s amendment.

However, I’d like to emphasize that, when the members of the House of Commons considered the possibility of adopting a code of ethics for members, particularly regarding conflicts of interest, and

creating an independent Ethics Commissioner position, they wondered what person should have the power and even duty, in a way, of filing a complaint alleging that the conduct of another parliamentarian violated the code that would eventually be adopted, and that was.

What concerned most parliamentarians was precisely that a member, regardless of political allegiance, might be the subject of numerous frivolous, vexatious and other complaints, whereas the Commissioner had no power to sanction a person other than a parliamentarian.

The House—I don’t remember whether the result of the vote was unanimous, but it was definitely a majority vote—deemed that the only persons in power to file a complaint had to be parliamentarians, who themselves were subject to the code of ethics.

The Liberals therefore will not support the Bloc québécois amendment. We’re going to support the New Democratic Party’s amendment instead.

We are ready to vote.

[English]

**The Chair:** Mr. Martin.

**Mr. Pat Martin:** Thank you very much, Mr. Chair.

I would only reinforce or perhaps clarify one point.

The last time Mr. Sauvageau spoke, he mentioned that we want the commissioner to be the one to determine vexatious or malicious complaints, but his amendment takes out the very section that contemplates giving the commissioner that ability. Under the heading “Mandate and Powers of the Commissioner”, there would be no adjudication as to malicious or vexatious complaints.

That’s a necessary or key component of any office of this nature. In fact, in some offices of this nature there are very stiff penalties associated with making a malicious complaint. For instance, in the whistle-blowing section, if you make a malicious complaint—if you’re really just trying to perform industrial sabotage with your whistle-blowing—and the officer of whistle-blowing determines that, you’re up for stiff sanctions for throwing a wrench into the works. It’s another good reason not to support the Bloc amendment.

(Amendment negated [See *Minutes of Proceedings*])

• (1710)

**The Chair:** We will now proceed to G-15 on page 26.

**Mr. Pierre Poilievre:** I so move.

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

**The Chair:** We’re going to move to NDP-1.1.

You’re right, Mr. Martin, you have to move it first before we can do anything.



**Mr. Pat Martin:** I would just remind you that this is a rather late addition, which is why it isn't in the textbook put together by the clerk for us. This is part of Mr. Walsh's recommendations to deal with some of what he deemed to be shortcomings of Bill C-2. This is not some kind of a pinko fabrication; this actually comes from the law clerk. If that gives anybody any more confidence in it, let's hope it influences your vote.

**The Chair:** We have Mr. Owen, and then Mr. Poilievre.

**Hon. Stephen Owen:** I'm not sure where I'll take this, but perhaps I can ask Mr. Wild to give us some advice on this, or one of the counsel.

The provision in here that we set out the "reasons" as opposed to the "reasonable grounds", does that create a complication with proposed subsection 44(1), in that it may raise the same sort of issue? I'd like your advice as to whether we should use exactly the same language.

**Mr. Joe Wild:** If the amendment to proposed subsection 44(4) is going to be adopted, then proposed subsection 44(1) should be amended to coincide with it.

**Hon. Stephen Owen:** Chair, and to the mover, I would then like to suggest a subamendment, so that the amendment would read, "vention and set out the reasonable grounds for believing", rather than just "the reasons", so we don't have that apparent contradiction. I don't actually believe there's any difference.

**The Chair:** We have an amendment to the amendment.

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

**The Chair:** All those in favour of NDP-1.1 as amended.

**Mr. Pierre Poilievre:** No, the speakers list is not exhausted, so it's impossible to go to a vote on the amendment.

**Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC):** Debate on the motion as amended, is where we are.

**Mr. Pierre Poilievre:** Yes, we are at debate on the motion as amended.

**The Chair:** You're absolutely right, Mr. Poilievre. Is there debate over here, Mr. Poilievre?

**Mr. Pierre Poilievre:** Yes. I'd like to get some input from the legal experts on the impact of this amendment. Could they give some commentary on how it would affect the administration of the law?

**Mr. Patrick Hill:** As an overview, three provisions would be removed from the current proposed section 44.

The first is the question that the member of Parliament must have reasonable grounds, as set out in proposed subsection 44(5), and there's been some discussion about that.

Proposed subsection 44(6) is a duty on a member of Parliament to refer a matter to the commissioner when there are such reasonable grounds, and there has been some discussion about the floodgate concern.

What this provision is designed to do is strike a balance. In other words, once an MP has come to the view that the threshold has been met, there's a duty to refer. Why the need to balance? Just by way of background, under the current regime members of Parliament may bring complaints forward only in respect of ministers and

parliamentary secretaries. In other words, at any given point in time there are only about 60 people who may be the subject of a complaint. Under this new regime proposed in the bill, all 3,600 public office holders are the potential subjects of complaints under the regime, so a much larger population of people may be subjects of a complaint.

Obviously the reasonable grounds are mentioned there to give the MP a gatekeeper function like the one MPs have currently in respect of complaints brought against ministers.

The duty to refer is a bit of a countervailing principle; namely, if an MP does have the view that there are reasonable grounds, then he or she must bring the matter forward.

The attestation is there simply to confirm that the reasonable grounds exist. Again, that's part of the balance; it is to ensure that frivolous complaints aren't brought, especially with the much larger group of people who may be subject to these complaints.

• (1715)

**Mr. Pierre Poilievre:** If this amendment goes through, does the member of Parliament then have any obligation to forward a complaint that he receives, or does it depend on that member's preference?

**Mr. Patrick Hill:** There would be no duty to refer, even if reasonable grounds existed on the facts; that's right.

**Mr. Pierre Poilievre:** They would just decide for themselves what criteria were acceptable to them for forwarding a complaint.

**Mr. Patrick Hill:** That's correct.

**The Chair:** Mr. Owen.

**Hon. Stephen Owen:** It seems to me that what's being set up under these subsections is this. If the amendment doesn't go through, it leaves the member in the position of having to actually swear or attest to something that's very subjective, and it seems to me that puts someone at risk of criminal offence if it is determined that the grounds aren't actually reasonable.

That's a very subjective thing. I understand the reason for a screen, but I think that could put quite a chill on someone's willingness to attest that something's reasonable. The reasonable man on the Clapham omnibus is pretty hard to define sometimes.

Is that what is happening here? Could someone be liable for a criminal charge for attesting to something that somebody else didn't think was reasonable, but that person did believe was reasonable?

**Mr. Patrick Hill:** I'll defer to the lawyers on the question of consequence, but certainly the policy behind the attestation is to signify the importance of coming to the view that there are reasonable grounds in any set of circumstances—in other words, to ensure that no frivolous complaints are brought, especially in light of the larger population that may be subject to them.

**Hon. Stephen Owen:** Being frivolous is not a criminal offence; swearing a false oath is. I'm worried about that chill factor. I think this was one of the issues Mr. Walsh had some difficulty with, in terms of affecting the autonomy and privileges of MPs and the House of Commons, so I'm looking for some comment from the legal staff on the consequences.

**Mr. Joe Wild:** In terms of consequences, I find it very difficult, to be quite frank, to envision a consequence, unless we're talking about perjury—in other words, if the member is actually deliberately, wilfully lying about the matter. An honest mistaken belief wouldn't be sufficient to meet a perjury charge, so it is difficult to see exactly what a sanction would be here, unless the member was actually, to be vulgar about it, lying.

● (1720)

**Hon. Stephen Owen:** Well, I think many Canadians who watch question period will have noticed from time to time honourable members from all parties who might have actually lied under parliamentary privilege.

**Some hon. members:** No.

**Hon. Stephen Owen:** Back to my question on parliamentary privilege—which I'm not a great fan of in some cases, such as when people are being defamatory or misleading—does that not get to Mr. Walsh's point of breaking that privilege, because the person is acting in the capacity of a member of Parliament?

**Mr. Joe Wild:** Just to help a little bit again on the sanctions side, and then I may ask one of my colleagues here to speak on the privilege side a bit more, it is to point out that proposed section 63 does note that section 126 of the Criminal Code, which is the generic offence for a contravention of a federal statute, doesn't apply to the obligations in the Conflict of Interest Act. That's why I was saying we're really strictly looking at, at most, the possibility of some criminal act that would be perjury of some kind.

Perhaps my colleague Mr. Newman would like to speak to parliamentary privilege.

**Hon. Stephen Owen:** Sorry, before we finish that point, Mr. Wild, section 126 of the Criminal Code is what?

**Mr. Joe Wild:** Section 126 of the Criminal Code is an indictable offence that applies to any federal statute that creates a sufficient obligation at law that otherwise doesn't provide for a sanction if you breach that obligation. So it's a generic sanction that creates an indictable offence for the breach of any federal statute.

**Hon. Stephen Owen:** But it wouldn't preclude a perjury charge, though?

**Mr. Joe Wild:** No, because it's a specific offence on its own front. It's not saying that the Criminal Code doesn't apply. The question would be whether or not you go so far in making some attestation that you have, in essence, perjured yourself because you're supplying a document that's under oath. And again, that threshold is generally viewed as one of actually lying.

**The Chair:** Mr. Newman is going to comment on privilege, I think.

Before you begin, just to remind members, we have about eight or nine minutes, and then we'll have to adjourn.

**Mr. Warren Newman (General Counsel, Constitutional and Administrative Law, Department of Justice):** I'm going to keep this brief, then.

You have just voted an amendment to the bill. It contains a blanket clause in relation to a privilege and, on its face, preserves all the privileges and immunities of parliamentarians in relation to the

operation of this act. That's a policy decision entirely, and it was put forward, clearly, with the best of motives on the basis of the discussion that occurred before the committee the other day.

It's entirely within the purview of Parliament, acting under section 18 of the Constitution Act, 1867, to determine, and in so determining, limit the scope of parliamentary privilege in relation to any of the activities of members of Parliament or, in this case, ministers of the Crown, parliamentary secretaries, other public office holders. You've had a series of amendments and you've chosen to go one route in this regard.

You already have in the Parliament of Canada Act a provision dealing with perjury in relation to the examination of witnesses, so it's not unheard of to have that in these types of provisions. But by and large, it's hard to see how you would go behind the standard rule, which is set out here, the standard words of reasonable grounds, and come to some conclusion that would be beyond the purview of this act and would reach into the Criminal Code and apply it in these circumstances.

But Parliament can make itself as clear as it wants in relation to the extent to which these privileges and immunities apply to members.

**Hon. Stephen Owen:** Right.

To finish this point then, thank you for reminding us of the clause that we approved earlier, because it seems to me that nullifies the impact of attestation. It's like having people attest in question period that all of the statements being made are true, or you have reasonable grounds to believe so, but if you didn't, you wouldn't be liable in any event under the privilege. It seems to me that Mr. Martin's amendment simply follows naturally from the earlier amendment that we passed. Why attest to something if your false attestation can't be acted on?

● (1725)

**The Chair:** Ms. Cartwright.

**Mrs. Susan Cartwright (Assistant Secretary, Accountability in Government, Treasury Board of Canada Secretariat):** I need to point out with respect to the attestation provision that you would also lose the other subsections that are covered by the amendment.

**Hon. Stephen Owen:** Right. Thank you.

**The Chair:** Is that it, Mr. Owen?

**Hon. Stephen Owen:** Yes.

**The Chair:** You have about five minutes, Mr. Martin. If you want a vote on that, we'll have to make sure we—

**Mr. Pat Martin:** Yes. I won't go beyond that.

I just want to reinforce, in case there is any misunderstanding, that we are not only changing the language around reasonable grounds—although with Mr. Owen's subamendment we've put it back to reasonable grounds; we've come full circle on that—but it also seeks to delete the next three subsections. Proposed subsection 44(5), dealing with reasonable grounds, will no longer be in effect under this amendment. The act will be silent on the duty to refer, because currently the language is quite binding in Bill C-2, that "the member shall draw that information to the attention of the Commissioner". It's not optional: "the member shall". And the attestation, as Mr. Owen pointed out, would be deleted. There will be no reference to the attestation any longer.

I think this is in keeping with the theme of the suite of amendments that Mr. Walsh introduced when he was talking about the fish not seeing the water that they swim in, etc. That's the elusive, esoteric thing that we're trying to shield and protect here, that in our zeal to make this act better we don't want to inadvertently or subsequently affect this greater atmosphere in which we operate.

**The Chair:** We're going to vote on the amendment as amended.

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

**The Chair:** We're now moving along.

I don't know whether we have time.... Is there much discussion on G-16? Give me a hint. Otherwise we're going to adjourn.

**Mr. Pierre Poilievre:** Moved. Call the question.

**The Chair:** No, no, I just want some hint. I'm not trying to slow it down or speed it up. I don't want to get into this and then find out we have to adjourn in the middle of a discussion.

G-16 is moved.

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

**The Chair:** Ladies and gentlemen, I'm going to adjourn.

Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** Mr. Chairman, would it be possible for us to sit in camera for just 30 seconds?

[*English*]

**The Chair:** Yes, we can.

Mr. Martin.

**Mr. Pat Martin:** Could I ask what hours we're sitting tomorrow? When will you reconvene?

**The Chair:** I'm going to get to that.

Tomorrow we are sitting from 8 o'clock in the morning until 12 o'clock in this room. We're going to adjourn now to in camera proceedings.

I will ask the public to vacate so we can have a brief business meeting.

This meeting is adjourned.

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