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Chair

Mr. David Tilson

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● (0800)

[*English*]

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

This is the Legislative Committee on Bill C-2, meeting 21. The orders of the day, 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.

When we left off yesterday, we had completed page 27. So we're now on page 27.1, which is a Liberal amendment that's the same as the New Democratic Party's amendment on page 27.2.

We will start with Ms. Jennings, if you could move the motion.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I move the motion.

I simply want to explain that this adds a new proposed subsection, which is proposed subsection (8.1), that provides the commissioner with the discretionary authority to refer to the Speaker, whichever Speaker is involved, in a case where the commissioner believes or thinks that a parliamentarian may have violated proposed subsection (8), which is the proposed confidentiality subsection.

This amendment flows directly from Mr. Walsh's recommendations.

The Chair: Discussion? All those in favour?

I'm sorry, I jumped the gun.

Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I'm wondering if the panel of legal experts would have anything to add on this.

● (0805)

Mr. Patrick Hill (Acting Assistant Secretary, Machinery of Government, Privy Council Office): The only point I would make is that under the members' own code, the commissioner's function, upon making a finding or report, is to report that matter to the House of Commons itself. In other words, under the House regime, there is no provision for referring any matter to the Speaker of the House. So I would state that it's not apparent to me—presumably it would be a matter for the Speaker to determine—what he would do with the information once it's referred, as set out in the amendment.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: This may have been an oversight in the existing code, because normally in order to table something in the House, you have to do it through the Speaker. So this is simply correcting an error that already existed.

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

The Chair: We move to the Bloc, which is—

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Mr. Chairman, when a motion or an amendment becomes moot, please tell us.

[*English*]

The Chair: Sorry, I didn't hear that. You'll have to—

[*Translation*]

Ms. Monique Guay: When a motion...

[*English*]

The Chair: You have to let me finish. When I start a sentence, I have to finish the sentence, then you can interject. It may be because I'm a slow talker, I don't know.

We're now on page 28, which is a Bloc amendment that is identical to the government's amendment on page 29.

Madame Guay, could you please make the motion?

A point of order, Mr. Poilievre.

Mr. Pierre Poilievre: I'm sorry, I must have missed something here. We have NDP-1.2. Is it the same as the previous?

The Chair: It is.

Mr. Pierre Poilievre: Okay, thank you.

The Chair: Mr. Martin, are you okay with that? We skipped it because it was identical.

I want the motion to be made.

You have a point of order? Okay, Ms. Jennings.

Hon. Marlene Jennings: The point of order is that even from your instructions, when an amendment has been proposed, and a subsequent amendment is proposed that is either identical or would automatically be deleted or rejected because the first amendment is adopted, we would like you to clearly state that for the transcripts.

So for instance, we just adopted a Liberal motion for an amendment. There was a subsequent NDP amendment that was identical. Madame Guay is simply requesting that before you move on to another amendment, you clearly state for the record that the NDP amendment falls because of the adoption of the previous one. That's all.

The Chair: Madame Guay.

[*Translation*]

Ms. Monique Guay: Thank you, Mr. Chairman.

[*English*]

The Chair: I'll do my best. I did explain at the outset, but I'll try to do it at both occasions, if that's what you wish. That's fine.

Hon. Marlene Jennings: Thank you.

The Chair: Whatever the committee wishes I will do.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): As the government suggests in its amendment on page 9, this is a correction to the English and French texts.

[*English*]

The Chair: All those in favour?

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

The Chair: Page 29, which is the government amendment G-17, is identical to the Bloc amendment BQ-5.

So we now move to page 30, which is a government motion.

Mr. Poilievre.

Mr. Pierre Poilievre: I so move.

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

The Chair: We now move to page 31, which is the government's motion.

Mr. Poilievre.

Mr. Pierre Poilievre: I so move.

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

● (0810)

The Chair: We now move to page 33, which is BQ-6, and page 32, of course, is the French version.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'm going to ask our experts to confirm the matter for us, but from what I understand, a person who violates this part of the act would be liable to a penalty of up to $500. For example, an individual who accepted a job that was supposed to pay him $200,000 a year and who violated the code would be liable to a maximum penalty of $500.

In our opinion, the maximum amounts of the penalties are ineffective and inapplicable; in short, they're not serious. It's as though we were imposing maximum finds of $5 under the Highway Safety Code. If you want to enforce the code, we think you have to have significant penalties. The maximum, which would not apply every time a person violated the code, should be $50,000, rather than $500.

[*English*]

The Chair: Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): I'm not sure, Mr. Chair—maybe we can get some legal advice on this—if any monetary penalties for administrative offences would get to this high level. I would suggest perhaps, if $500 seems insufficient or not really a penalty, that we might go as high as $2,000, or even $5,000, but the $50,000 range, I think, for an administrative penalty really is inconsistent with that type of practice.

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I was going to ask the panel—

The Chair: Excuse me. Is that an amendment to the amendment that you're suggesting?

Hon. Stephen Owen: That would amend the $50,000 to $5,000.

The Chair: Mr. Murphy.

Mr. Brian Murphy: I was going to ask about the range of maximum penalties. Obviously a judge or somebody would have discretion on that, a commissioner, whoever.

What are the ranges for administrative penalties in all of the acts—and I don't mean littering, I mean white collar administrative breaches. Do you have anything offhand?

The Chair: Mr. Wild.

Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice): There are certainly a variety; as to how low they go and how high they go, I don't know. The Competition Act certainly has an administrative monetary penalty regime. The only point I would make is that usually the amount prescribed in an administrative monetary penalty scheme takes into account the nature of the potential regulatory offences that one is talking about, as well as all the facts and context.

For example, in the Competition Act you may be dealing with millions and millions of dollars, so the administrative monetary penalty scheme may reflect the amounts you are actually dealing with. So it may be a larger amount than you might see in another administrative monetary penalty scheme where you're dealing with things like a failure to file a report and you're talking about people who make $100,000 a year.

It's going to vary. There's a point where, once you get to...and what that point is is difficult to say, because it's contextual and the courts will determine on a fact-by-fact basis. There's a point where, if you're trying to create an administrative monetary penalty scheme, if you set the threshold of your monetary penalty too high, it then transforms. In a sense, it can be viewed as more akin to a fine and bring with it a whole host of procedural fairness, natural justice safeguards. If they are not in the act, the court will strike down your regime as being not sufficient under the charter. So there are issues.

The one point I would make is that the amendment as has been proposed does not simply raise the $500 threshold under proposed section 52 of the Conflict of Interest Act; it is setting out that there would be a $50,000 administrative monetary penalty for violations that are not set out in proposed section 52. So it's actually hitting on violations that are not the ones we have prescribed in clause 52, which are the ones around filing of reports and so on; it would actually be violations of the substantive parts of the code.

● (0815)

The Chair: Mr. Martin.

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

That was my observation too, a concern that it isn't really clear, or it wasn't clear to me what would be caught up by this in proposed section 52, because proposed section 52 as it stands refers to subsection 22(1), proposed sections 23, 24, 25, 26; it doesn't talk about proposed subsection 52(1). Or is it referring to...?

Would it be your understanding that if we passed BQ-6, proposed section 52 would then have proposed subsections 52(1) and (2), and the proposed subsection that Mr. Sauvageau is putting forward is referring to proposed subsection 52(1)?

Mr. Joe Wild: Certainly when I read the motion that was my assumption of what was happening. What if proposed section 52 currently in the act becomes proposed subsection 52(1), and then this is proposed subsection 52(2). So what it is saying is that for the other provisions in the proposed act, the actual conflict of interest obligations, it is with those things that there would be an administrative monetary penalty of $50,000; it would not be for the failure to file the reports on time and so on, which is what the current section 52 was actually addressing, the $500 monetary penalty.

Mr. Pat Martin: Administrative in nature, breaches of administrative rules.

Mr. Joe Wild: Correct.

Mr. Pat Martin: I understand. Thank you.

[*Translation*]

The Chair: Mr. Sauvageau.

Mr. Benoît Sauvageau: It's indeed an addition. We're keeping the $500 as it stands. I have two examples to give you. If I'm mistaken, I'll be pleased to make an adjustment.

Under section 21, if ministers do not recuse themselves in any matter that concerns them, they won't even be subject to the $500 fine, or any other fine, by the way.

According to clauses 33 to 37, every post-employment offence, particularly in the case of a former minister who shares with his associates information obtained during his employment and that is not available to the public, would not be liable to any fine, not even $500. In our view, the maximum fine should not be systematically imposed. In the case of information not of crucial financial importance, the fine could be set at $5,000. However, if it concerned a $4 billion submarine, the fine could then total $50,000.

Decisions makers could determine the amount of the penalty, to a maximum of $50,000. However, we're told that a person violating clause 21 and clauses 33 to 37, as currently worded, would not even be subject to the $500 penalty, as minor as it is. Am I mistaken?

[*English*]

Mr. Patrick Hill: It's quite correct that the current section 52 does not provide for a monetary penalty at all in respect of the substantive obligations that are imposed today, the obligations that obtain during one's time as a public office holder or afterwards, when one is governed by the post-employment obligations, a cooling-off period and the like. That is not in the nature of an omission.

The current provision in proposed section 52 is designed to assist the Ethics Commissioner in ensuring compliance with the various filing requirements, which can be quite burdensome. The Ethics Commissioner had raised this at one point, that he would like some administrative tools to ensure that public office holders across the board are filing and giving him the information as required. So these tailored provisions are designed to assist in that.

In respect of breaches of the substantive provisions, the act, as did the code before it, has as the major compliance mechanism the public report. We have a commissioner who has powers to compel evidence, powers to compel persons to give testimony before him. He issues a report. The report is made public. The report is filed with the Prime Minister, the complainant, and the public office holder complained against. At that point, the matter of sanction, if any, becomes a matter for the Prime Minister. In some cases the Prime Minister would have to act, of course, through the Governor in Council.

All of that is consistent with and doesn't derogate from the Prime Minister's role and accountability for the comportment of his ministry, the comportment of public office holders. That's a feature of this system and of any Westminster system.

● (0820)

The Chair: Ms. Jennings, then Monsieur Petit, and then Monsieur Sauvageau.

[*Translation*]

Hon. Marlene Jennings: The Bloc québécois amendment raises a single problem. They want the maximum penalty to be $50,000, but I see nowhere in the act any criteria on which a decision can be made on the amount of the penalty or when it will be imposed. Perhaps it's me who's not seeing it.

For example, we're talking about a maximum penalty of $50,000. However, a public office holder must have been found “guilty” of violating a provision that is not contemplated in subclause 1. However, no mention is made of the manner in which the amount of the penalty will be determined. I find this serious.

So I ask my colleagues if we can examine this again.

I'm told that subclause 53(3) states, and I quote:

> (3) The amount of a proposed penalty is, in each case, to be determined taking into account the following matters:
>
> (a) the fact that penalties have as their purpose to encourage compliance with this Act rather than to punish;
>
> (b) the public office holder's history of prior violations under this Act during the five-year period immediately before the violation; and
>
> (c) any other relevant matter.

Perfect, that answers my question.

[*English*]

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): My question is for the experts. I'd like to make sure I've properly understood the amendment.

When you refer to a maximum penalty of $50,000...

[*English*]

The Chair: Just on a point, sir, there's also an amendment of $5,000. There's $50,000 in the amendment, and the subamendment is $5,000.

[*Translation*]

Mr. Daniel Petit: Let's take the $5,000 amount. That's equal to the same thing when you work in this area. If you work in the legal field and a judge is allowed to assess a $5,000 penalty, you have to think that he can go up to $5,000. If someone is sentenced to pay $5,000, but doesn't pay it, he has two choices: either he goes to prison for a period of time calculated based on the amount of the penalty, because that's provided for, or he declares bankruptcy and, in that case, will go to prison all the same.

If the person doesn't pay the penalty, I'd like to know how many days in prison the sum of $5,000 proposed by Mr. Owen corresponds to. If the government can't seize any property in order to pay the fine, the person will go into detention or will perform community service. One day in prison usually corresponds to an amount of $200. I'd like to know how many days' detention correspond to an amount of $50,000.

[*English*]

Mr. Joe Wild: Mr. Chairman, I think it might be helpful if I took a moment to clarify what an administrative monetary penalty is and what it is not. It is not a fine, and it's not meant to be in the criminal realm. So there are no judges here, and there is no sense of guilt, fine, and penalty. The idea of a administrative monetary penalty is that you have a certain amount of procedural fairness that is attracted around it, but it is not the same amount as there would be if you had in fact a fine, which is a criminal matter.

With criminal matters, you're going to bring in the Charter of Rights, and the amount of procedural fairness goes up considerably. Administrative monetary penalties are supposed to be little sticks, in essence, that allow the person overseeing the regulatory regime to make sure there is compliance with things like reporting, and so on.

You would also have—and this is important to remember with the Conflict of Interest and Ethics Commissioner—the commissioner advising all public office holders on how to interpret the act and how to meet their obligations under the act. In that capacity, you have the commissioner providing advice. If you had a penalty regime, where the commissioner is also administering penalties with respect to breaches of the fundamental or substantive provisions of the act, then you would have the person who is providing advice, later on, also having to investigate and look at whether or not a person should be penalized for having breached a provision of the act.

So the idea of the administrative monetary penalty scheme is to provide the commissioner with a bit of a stick, if you will, or a carrot —however you want to look at it—to ensure that there is compliance with the reporting requirements.

If you start to go up in the level of money, if you start to take it into substantive parts of the code, you're going to have to increase the procedural fairness safeguards in the act, which currently do not exist, or at least are not sufficient to enable some kind of a penalty scheme to be brought in. There are not the procedural safeguards there with respect to breaches of the substantive provisions—if you were going to go down the path of a $50,000 or more, whatever the amount is, fine for those breaches.

The point, I think, that Mr. Hill made before is the salient one, which is that the whole scheme of this act is that the commissioner's role is to try to make sure these reports are filed on time, and that he has an administrative penalty scheme to allow him to do that. As far as the breaches of the substantive provisions of conflict of interest are concerned, those are matters for the Prime Minister, for which the Prime Minister is accountable to members and Parliament.

● (0825)

The Chair: Monsieur Sauvageau, and then Mr. Owen.

[*Translation*]

Mr. Benoît Sauvageau: I'd like to ask the experts a question.

I sat on the Standing Committee on Official Languages for three years. We fought for 25 years to determine whether Part VII was declaratory or mandatory. Can we draw a parallel here, that is to say that, if there is no penalty, it will be a declaratory part and we'll be faced with the same problems that afflict the Official Languages Act, that is to say that we'll simply tell someone who isn't complying with this act to comply with it?

[*English*]

Mr. Joe Wild: Again, I think we should go back to the point that the penalty for a breach of the substantive provisions of the act would be a matter between the Prime Minister and the particular public office holder, and the Prime Minister is accountable to Parliament for what actions are taken.

So to use an extreme example, if there is a minister who has violated a provision of the Conflict of Interest Act, and the commissioner gives a recommendation to the Prime Minister saying that the minister should not sit in the House and vote on those matters, and the minister refuses to follow that and tries to sit in the House and vote on those matters, I suspect that person would not be a minister for very long. And if he or she continued to engage in that behaviour, I suspect the Prime Minister would have a pretty interesting time in the House.

Just to draw the point, that is the mechanism intended here.

[*Translation*]

Mr. Benoît Sauvageau: So if we take the sponsorship scandal as an example, the Prime Minister himself should have decided whether one of his ministers, the Minister of Public Works and Government Services, for example, had violated the conflict of interest code.

Second, as regards the post-employment clauses, since a minister is responsible for his department only during the term of his employment, I suppose that the Prime Minister doesn't have a lot of power over someone who is no longer a minister or a member.

[*English*]

Mr. Patrick Hill: If I might reply to the latter part of the last question, in a post-employment situation, there is one remedy—

● (0830)

[*Translation*]

Mr. Benoît Sauvageau: Clauses 33 to 37.

[*English*]

Mr. Patrick Hill: —available, which is that the Conflict of Interest and Ethics Commissioner may order incumbent public office holders not to have dealings with the former public office holder who is found to have violated the post-employment obligation. Otherwise, you're correct that there is no effective sanction on the part of the Prime Minister. In that event, the commissioner would have, in the appropriate case, the ability to order an incumbent public office holder not to have dealings with the person in breach of post-employment obligations.

The Chair: Now, Mr. Owen, and then Ms. Jennings.

Hon. Stephen Owen: I think it might be helpful for us all to reflect on what the role of parliamentary officers is.

On reflection, I'm going to withdraw my amendment to change it to $5,000, actually, and just vote against the $50,000. Parliamentary officers are not elected, they're not surrounded by any due process. They have a great deal of independence, including pretty strong security of tenure, and they are there with investigative powers to shine light on a situation. I think if we introduced a severe penalty regime, even to $5,000, beyond just the administrative wrist slapping, we would set up the commissioner to all sorts of challenges on due process, for really overseeing a criminal-type sanction regime, which is not the intended purpose of that office. While it's fine to think that we're just looking for wrongdoers, and who cares, I think the system would be under severe challenge very quickly.

Just to give you the other side of a potential scenario, we could have a person as a commissioner who is totally unreasonable, who could start handing out large fines without any due process around it, and I think the whole scheme would crumble in front of us as being unconstitutional.

So I withdraw my $5,000.

The Chair: Thank you, sir.

Ms. Jennings? No, you're fine.

Mr. Martin.

Mr. Pat Martin: I found that very useful, Mr. Wild's intervention and Mr. Owen's, because my thought process is coming around to very much the same thing, that with either one of these figures—the $50,000 or the $5,000—it's almost as if we're trying to replace the courts. If we are going to apply this large...whether you call it a levy, or a penalty, or a fine to other aspects of the commissioner's activities, other due process, and natural justice, and rules of evidence, all of this would have to kick in or it would be vulnerable to huge challenges. Even before we left this room, we'd be getting challenged on it.

So I'm going to vote against the Bloc motion, the $50,000.

The Chair: The subamendment is withdrawn, so we will vote on the amendment, which is on page 33.

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

The Chair: We now move to page 34, which is a Bloc Québécois amendment, BQ-7.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Unless I'm mistaken, it's the amendment concerning the review of the act after five years.

[*English*]

The Chair: It's your amendment, sir, if you'd like to move it, please.

[*Translation*]

Mr. Benoît Sauvageau: The idea is to review the act after five years. There are two philosophies: if you think that this bill is perfect, you vote against this amendment, and if you think this bill is like all other acts of Parliament, that is to say that it can be improved, you vote for it.

[*English*]

The Chair: Is there any discussion?

[*Translation*]

Mr. Pierre Poilievre: I think the bill is perfect, but I'm nevertheless going to support the amendment.

[*English*]

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

The Chair: As I indicated yesterday, we now move to clause 3 amendments, and specifically amendment G-20, which is on page 35.

Mr. Poilievre.

● (0835)

Mr. Pierre Poilievre: I so move.

The Chair: Is there any discussion?

Ms. Jennings.

Hon. Marlene Jennings: Could it be explained? I have not had time to—

The Chair: Sure.

Mr. Poilievre.

Mr. Pierre Poilievre: I would defer to the technical experts.

The Chair: Mr. Stringham.

Mr. James Stringham (Legal Counsel, Office of the Counsel to the Clerk of the Privy Council, Privy Council Office): Mr. Chairman, these are simply technical amendments to correct errors in the text.

Concerning the reference in the present text to the Ethics Officer, there was no such person. It was intended to refer to the ethics counsellor, the predecessor to the current commissioner.

Likewise, “person or obligation” is intended to replace the word “conduct” to more accurately capture what we're trying to deal with in that transitional provision.

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

The Chair: We move to page 36, amendment G-21.

Mr. Poilievre.

Mr. Pierre Poilievre: I so move.

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

The Chair: We will now go to clause 28, the amendment for which is on page 39 in the book, I believe.

So we do new clause 3.1 later.

Ms. Susan Baldwin (Procedural Clerk): Yes, because it's a clause and not an amendment. It's proposing a new clause. The way it works out is that whether we adopt clauses 3 and 3.1 is dependent on what we do with clause 2 after we have all the amendments sorted out.

The Chair: You'll have to repeat that.

Madame Guay, did you have a point of order?

[*Translation*]

Ms. Monique Guay: No. We'll get back to it later, once we've completed the study of clause 28.

[*English*]

The Chair: Yes.

[*Translation*]

Ms. Monique Guay: It's only to get a clear understanding, Mr. Chairman.

[*English*]

Ms. Susan Baldwin: It's very complicated.

The Chair: Do you think?

We're now into an even more complicated time. We're on page 39 in the book, amendment G-23.

Mr. Pierre Poilievre: I so move.

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

● (0840)

The Chair: Now we're on page 40. We're starting with clause 28, and there are a number of duplicate amendments, starting on page 40 in your binder of amendments. So we're not going to consider L-1.1 or NDP-1.3, because they're both identical to BQ-9, which was received first.

We're also not going to consider NDP-1.4, NDP-1.5, or NDP-1.6, because they're the same as L-1.2, L-1.3, and L-1.4.

Why don't we stop here before we get completely confused? Do you want us to go the rest of the way?

I'm going to continue. Excuse me, ladies and gentlemen.

There are line conflicts between L-1, BQ-9, L-1.2, L-1.3, and L-1.4. So the committee must choose between these amendments, as follows: L-1 or BQ-9; L-1.2 or L-1.3; L-1 or L-1.4. BQ-8 lies between L-1 and BQ-9, but has no line conflicts with any—

An hon. member: Just pick a number.

The Chair: Yes, I know. This is a jigsaw puzzle.

I'd like to start up here. This is going to drive everybody crazy. I'm going to try to explain this.

If you look at L-1, which is on page 40, we have to deal with that or with BQ-9. If that carries, it excludes L-1.2, or L-1.3, and L-1.4. Clear as mud? Any questions?

Mr. Owen.

Hon. Stephen Owen: It might be helpful to us all as we work our way through this to reflect on what we're trying to achieve with these amendments. It is to prevent the Ethics Officer from being combined with the Ethics Commissioner on the basis that it would be....

It flows from a couple of directions. First, the Senate, both Conservative and Liberal members, worked for about a year on ensuring that they had their own Ethics Officer so that the two houses did not seem to conflict, or that one did not have authority over the other, or even worse—and I think this is Mr. Walsh's concern—that the executive did not infringe upon Parliament.

So this is simply to preserve the Ethics Officer in the Senate's own system.

The Chair: And I appreciate your trying to translate all this. The difficulty is, as chair, I have to point out these line conflicts.

Hon. Stephen Owen: No, no, I appreciate that too.

The Chair: That's what I'm trying to do, and it's difficult to explain. We're going to have to move slowly on it.

Mr. Martin, do you have some suggestion for the quagmire that we seem to be in?

Mr. Pat Martin: It's not so much that as a point of clarification. I was trying to write down the line conflicts.

Is it my understanding that amendment L-2 is in line conflict with L-1.2?

The Chair: Yes. So we have to choose between L-1.2 or BQ-9.

Okay, let's try some speakers and see how that goes. But we have to have a motion.

I have a suggestion that's been given to me. We're going to group amendments L-1, BQ-8, BQ-9, L-1.2, L-1.3, and L-1.4. We're going to debate all those right now, and then the vote on each of those amendments would be separate. How does that sound?

So let's have a debate on all of those right now—except everyone is looking at me with blank looks on their faces.

Monsieur Sauvageau.

● (0845)

[*Translation*]

Mr. Benoît Sauvageau: I'd like to have clarification of amendment L-1.1, which concerns a secret ballot. I'm going to express our position as simply as possible. First, we don't want the Commissioner necessarily to be a former judge. Second, we're opposed to a secret ballot.

I've just summarized our position on amendments L-1.1, L-1.2, L-1.3 and L-1.8.

Do you want to know why?

[*English*]

The Chair: I'm just the chairman.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Just on a point of clarification, unless I'm missing something, Mr. Chair, are amendments BQ-9 and L-1.1 not identical?

The Chair: Yes, they are, sir.

Mr. Tom Lukiwski: So why do we have to vote on both of them? One first, and then the other one's redundant.

Mr. Brian Murphy: We're getting rid of secret ballots.

Mr. Tom Lukiwski: Right, exactly. So we should vote on amendment BQ-9, because L-1.1 is the same as BQ-9.

The Chair: So we take off amendment L-1.1.

Ms. Jennings.

Hon. Marlene Jennings: The amendments I've put through, L-1.2, which is found on page 43.3; L-1.3, found on page 43.5; and L-1.4, found on page 43.7, are all consequential to the recommendations of Mr. Walsh.

Now, I would just like to point out that amendments L-1.2 and L-1.3 touch the exact same line and propose replacing line 29 on page 46 of Bill C-2 with different wording. To facilitate, although it may end up complicating, I will withdraw L-1.2, because I prefer the wording of L-1.3.

That leaves one less to deal with.

The Chair: Well, thank you. The chair feels a lot better about that.

Hon. Marlene Jennings: I thought you would, Chair.

Now, the objective of these amendments is to bring clarity to the particular section that they propose to amend, and as I said, it's consequential to Mr. Walsh's recommendations to this committee.

I will leave it at that for now.

The Chair: Okay, we're making a little progress.

Is there any further debate on these amendments I've referred to? We're going to vote on L-1, right? L-1.2 and NDP-1.4, which Ms. Jennings has just withdrawn, are the same.

● (0850)

Mr. Pat Martin: Yes. I had it on my 1.4 to withdraw, but I didn't know we were there yet. I withdraw amendment 1.4.

The Chair: We seem to be there. So you're prepared to withdraw that?

Mr. Pat Martin: I intended to withdraw NDP-1.4.

The Chair: Thank you.

Monsieur Sauvageau, go ahead, please.

[*Translation*]

Mr. Benoît Sauvageau: Based on the staff's judicious professional advice, I'd like to make a suggestion that would simplify everything. I submit it to you quite humbly. If we voted to know who's in favour of a secret ballot and who's against, then you could sort out all your amendments.

[*English*]

The Chair: Mr. Owen, I need your help. Your amendment is in conflict with everyone else's, so you're going to have to solve this.

Hon. Stephen Owen: I would put the question on L-1, because I think it deals with a lot of these issues. But I do take the point that we should deal with the secret ballot issue, because we probably all have a similar view on that since we've been advised pretty clearly that it's unconstitutional.

The Chair: Before we get to that, we're going to go to Mr. Moore and then Mr. Poilievre.

Mr. Rob Moore (Fundy Royal, CPC): Can we hear what our expert panel has to say about some of these? They may have something to add.

The Chair: Sure.

Mr. Wild, go ahead, please.

Mr. Joe Wild: Mr. Stringham, I believe, would like to perhaps make a couple of points about L-1.3 and L-1.4.

Mr. James Stringham: Yes, Mr. Chairman, I would, if I may.

These amendments address sections 86 and 87 as proposed in the Parliament of Canada Act. Proposed sections 86 and 87 are patterned exactly on existing provisions in the Parliament of Canada Act with respect to the role of the Senate Ethics Officer and the role of the Ethics Commissioner. You can find those in sections 20.5 of the Parliament of Canada Act and sections 72.05 of the Parliament of Canada Act. Proposed sections 86, 87 and 88 set out, in essence, three discrete roles for the Conflict of Interest and Ethics Commissioner. Proposed section 86 speaks to his or her role with respect to the Senate. Proposed section 87 deals with his or her role with respect to the House. Proposed section 88 deals with his or her role with respect to administering the Conflict of Interest Act.

The provisions that would be amended, proposed subsections (4) and (5) of both proposed sections 86 and 87, are there for greater certainty. In changing and adding language, it may be that inadvertently you might be suggesting something that you didn't intend. For example, let me take proposed subsections (5) of both proposed sections 86 and 87, which both say "For greater certainty"—just in case anybody has any questions—this scheme that we set out in proposed section 86, for example, is meant to be a self-contained unit and is not meant to affect the privileges of the Senate. By adding the words "except with respect to ministers", the interpreter would be forced to grapple with the question of whether then he intends, for greater certainty, to tell me that in fact section 86 does affect privileges with respect to ministers.

Is that what you intend? Likewise, with respect to proposed section 87, the proposed amendment with respect to proposed subsection (5) would perhaps drive the interpreter to the conclusion that you're intending to suggest there is some effect with respect to their privileges.

The Chair: Mr. Poilievre, I'm sorry to delay things.

Mr. Pierre Poilievre: I pass.

The Chair: Mr. Owen, proposed paragraph (b) in L-1 is in conflict with BQ-9.

Hon. Stephen Owen: I would suggest, then, simply deleting (b) from L-1 to remove the conflict.

● (0855)

The Chair: Okay, we need to turn to the Liberal Party again. We need to resolve L-1.3 and L-1.4.

Ms. Jennings.

Hon. Marlene Jennings: I would ask the indulgence of the members of the committee. Perhaps if you could suspend for five minutes to provide an opportunity for Mr. Owen and me to actually look at it and decide which.... Will I remove my amendments to facilitate the proceeding of the work of this committee? Or will he delete...?

Perhaps you would give us that indulgence.

The Chair: I'm going to do that, because we'll probably chat for five minutes.

Mr. Pierre Poilievre: On a point of order, Chair, as I understand it, if we as a committee vote in favour of BQ-9, the others fall off.

The Chair: No.

Yes, go ahead.

Ms. Susan Baldwin: The major problem is with L-1. Mr. Owen has removed the problem with the line conflict between BQ-9 and L-1. So that conflict is now gone. We could vote on L-1, BQ-8, and BQ-9 with no trouble.

There remains, however, a line conflict between the two amendments of Ms. Jennings and the one of Mr. Owen. L-1 is still in conflict with L-1.3 and L-1.4. So the request by Ms. Jennings was to have the two of them discuss it for a bit.

The Chair: I'm going to recess for five minutes.

● (0855)

(Pause)

● (0905)

The Chair: We'll reconvene.

Ms. Jennings.

Hon. Marlene Jennings: I'm sure all members of this committee will be pleased to know that per the discussion I had with my colleague, the Honourable Stephen Owen, I will be withdrawing my amendments L-1.3, and L-1.4.

The Chair: I feel better every time you speak, Ms. Jennings.

Hon. Marlene Jennings: Do you want me to continue speaking?

The Chair: Well, no. I don't want to get on a high here.

Mr. Owen.

Hon. Stephen Owen: Thank you.

Thank you, to my colleague.

I would like to withdraw paragraph (b) in L-1, because that will be handled by BQ-9.

And with that, at this point I'd like to make the observation that on page 43, clause 26 would consequentially need to be deleted. Whether we can do that now or when we go through the clauses....

The Chair: Sure, why not?

Excuse me. Ms. Baldwin

Ms. Susan Baldwin: If the amendment L-1 is adopted, it would be a consequential matter that clause 26 would also be negatived in the bill. The two are one scheme and must be voted on together.

Hon. Stephen Owen: Excuse me, I didn't use the proper word "negatived", because I still don't believe it's a word.

Ms. Susan Baldwin: It is a very ugly word.

Hon. Stephen Owen: I move L-1, with that amendment and that consequential negativation.

The Chair: Okay. The chair is going to try to explain what we're going to do next.

Mr. Martin, a point of order?

Mr. Pat Martin: I didn't realize that you could modify your own amendment. Is that a rule of our orders? That would create a subamendment, so you're creating subamendments to your own amendment.

● (0910)

The Chair: Well, we can vote on these things. You're absolutely right, we could have a vote, but—

Mr. Pat Martin: Wouldn't that take a 24-hour notice?

I'm not trying to throw a spanner into the works here. I'm not trying to be difficult, but I mean—

The Chair: I understand.

Mr. Pat Martin: —this is going to be a difficult couple of weeks and we need concrete rules of order.

The Chair: We have to be consistent. You're absolutely right.

It's a subamendment. The notice is not needed with respect to a subamendment.

Mr. Pat Martin: We can move a subamendment to our own amendments during the process?

The Chair: Yes.

Okay, this is what I understand we're doing. We're going to vote on L-1 without paragraph (b). Once we finish that, we're going to vote on BQ-8. And once we finish that, we're going to vote on BQ-9. Then we'll be back in the saddle.

So you've moved that.

Hon. Stephen Owen: Yes.

The Chair: That's L-1, minus paragraph (b).

Discussion?

Mr. Moore.

Mr. Rob Moore: L-1 changes a lot of things. I'd like to hear from our experts about what it would mean if we adopted it.

Mr. Patrick Hill: The effect of L-1 would be to remove the Senate from the appointment of the Conflict of Interest and Ethics Commissioner.

As members know, one of the results of Bill C-2 is to create a new Conflict of Interest and Ethics Commissioner, who will, as Mr. Stringham has said, have three distinct functions. The first will be to assume the function of the current Ethics Commissioner in respect of the House code. In that respect, the commissioner is truly a servant of the House of Commons. The second function is the function of the current Senate Ethics Officer, who, similar to the Ethics Commissioner, is a servant of that chamber. And the third function, of course, is the administration of the Conflict of Interest Act, which you're considering this morning.

The effect of the amendments in L-1 would be to remove any role for the Senate in the appointment of this unified officer.

The Chair: Are there any further questions or comments?

Mr. Rob Moore: Okay, sure. We're going to do L-1, BQ-8, BQ-9?

The Chair: Yes, we are.

L-1 minus paragraph (b).

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

The Chair: We're going to move to BQ-8.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I believe that, by agreeing to amendment BQ-8 and deleting lines 5 to 20 on page 44, we'd simply eliminate the secret ballot. That's our objective, and that of Mr. Walsh, Mr. Marleau and Ms. Adam.

Ms. Adam made an interesting comment on the subject. With your permission, I'll read it to you: “I must say, the secret ballot amazes me a bit. I do not understand the reason, because this is a bill about transparency.”

For all these reasons, the Bloc québécois moves to delete lines 5 to 20 on page 44 in order to eliminate the secret ballot.

[*English*]

The Chair: Monsieur Poilievre.

Mr. Pierre Poilievre: Yes, that is actually not—

The Chair: Mr. Poilievre, just hold on for a moment.

Monsieur Sauvageau, we're on BQ-8. I think you're talking about BQ-9.

[*Translation*]

Mr. Benoît Sauvageau: I was talking about judges. You're right. There's a pagination error in my document. That's the second time, and I hope it will be the last.

[*English*]

The Chair: I'm sorry. I need a motion.

[*Translation*]

Mr. Benoît Sauvageau: We're now on BQ-8, which concerns judges.

As Mr. Shapiro proposed, the idea would be to stop requiring that a candidate for the position of Ethics Commission be a former judge. Some people who have been judges are nevertheless highly qualified.

[*English*]

The Chair: Amendment BQ-8 on judges, Mr. Poilievre, then Mr. Martin.

Mr. Pierre Poilievre: The reason the Accountability Act proposes that we have qualified judges serve in this role is that this role requires a commissioner to make findings, to make unenforceable, but still very important rulings. We need someone in that position who has experience with judicial procedure.

The Ethics Commissioner does not exist to just tell us what's right and wrong in the world; the Ethics Commissioner is not just a moral guru who wakes up in the morning and helps guide us through the moral challenges of the day. Each and every one of us has the capacity to do that on our own. The Ethics Commissioner's job is to read the conflict of interest code and apply it verbatim. That is the role, to interpret the rules and guidelines outlined in the conflict of interest code, which will now be part of statutory law.

The best qualification for the interpretation of statutory law is that of a judge. That's what judges do: they interpret law. We need someone with judicial experience and a judicial background to interpret what will now be statutory law. In the past maybe it wasn't necessary, because we were dealing merely with a code. In the future we'll be dealing with statutory law, and it is the view of this side that it should be a judge who interprets statutory law, someone who is qualified for doing that. That is why we have specified certain qualifications for that role.

I'd invite any of our technical experts to share any of their thoughts on the point.

● (0915)

Mr. Patrick Hill: I would just follow up by highlighting a few of the changes to the current regime, which, as Mr. Poilievre has suggested, would tend to suggest that judicial experience is required. There are a number of substantive changes to the regime that build on the current Parliament of Canada Act framework.

For example, in the new Conflict of Interest Act you have proposed section 30, which provides, for the first time, a binding compliance power, so there is a power now expressly vested in the commissioner to make binding orders in respect of the substantive obligations. That wasn't in the prior regime.

As you know, the new commissioner will have the power to self-initiate examinations. That's not a power that Dr. Shapiro has presently. That's laid out expressly in the regime. The population of public office holders who are going to be subject to the direction and orders of the commissioner has expanded from about 60, namely those ministers and parliamentary secretaries, to about 3,600.

So those powers, coupled with the points Mr. Poilievre has raised, would tend to suggest someone with experience in fact-finding, making findings of credibility, applying the law, in particular applying the new AMP provisions, which themselves engage findings of fact and application of the law.

The Chair: Okay, are we finished?

Mr. Martin and then Mr. Owen.

Mr. Pat Martin: I think I answered my own question by doing my own research here. I was wondering why there was reference to section 28, but I understand now that it's section 28 of the Parliament of Canada Act. So proposed section 81 of Bill C-2 is actually changing section 28 of the Parliament of Canada Act. Is that correct? Is it the other way around?

Mr. Joe Wild: I'm sorry, the reference to 28 is actually to clause 28 of Bill C-2.

Mr. Pat Martin: So clause 28 of Bill C-2 is changing section 81 of the Parliament of Canada Act.

Mr. Joe Wild: That's right.

Mr. Pat Martin: All right. Thank you.

The Chair: Mr. Owen and then Monsieur Sauvageau.

Hon. Stephen Owen: Thank you, Chair.

In looking at these types of offices, frankly, in different parts of the world—ombudsman offices, information and privacy commissioners, ethics commissioners, there is a great number of them, and the general ombudsman's role, of course, is very similar as well—I'm not aware of any that require a person to be a judge or a former judge, or to have legal training. What happens in effect in these offices is that if a person isn't a lawyer, then he or she always has commission counsel and relies on all sorts of advice. They have professional investigators to assist with investigative matters.

The typical qualification for this type of role is good judgment. While there are some aspects of executive powers put in here.... I'm not necessarily against this provision, but I feel it's necessary to point out that it's an unusual provision in these types of offices, and I'm familiar with ombudsman and commission-type offices in about 90 different countries. I used to be president of the International Ombudsman Institute. Some countries require judges, but very few.

So I'm not sure, given the type of assistance that office will necessarily have, in any event, that the role should require a person to be a former judge or have quasi-judicial training.

This may be clouding my thinking on this and I just want to get it on the table here. What really worries me is that this provision may not have been intended for this purpose but will give the impression of being intended to specifically eliminate Dr. Shapiro from consideration for this role. In passing this proposed act, we would effectively terminate his role. I'm worried that this would be a dishonourable role for this committee to play,

Perhaps I could suggest, therefore, an amendment to this section that would satisfy me, and that would be to grandfather—we'd have to get the right language—to in fact provide that this would not lead to the termination of Dr. Shapiro's employment as Ethics Commissioner.

● (0920)

Mr. Pierre Poilievre: On a point of clarification, Mr. Owen, are you indicating that you would support this amendment if it included a grandfathering clause for Mr. Shapiro?

Hon. Stephen Owen: Yes. He would continue throughout his term. He can be terminated under the current terms of his employment, given certain conditions, but I think for this committee to in effect terminate his role and therefore terminate his employment would be improper.

The Chair: Mr. Owen, I have a problem with what you're proposing. I don't think what you're proposing is a subamendment; I think it's a new amendment. It's quite different from what the paragraph says. Because it's a new amendment, you're going to have to give 24 hours' notice.

Hon. Stephen Owen: I will withdraw the amendment.

The Chair: I have a list. Next is Ms. Jennings, then Mr. Murphy and Mr. Martin.

[*Translation*]

Hon. Marlene Jennings: Mr. Hill gave us an explanation about the quasi-judicial powers of the new conflict of interest and ethics commissioner. In addition, Mr. Owen told us about his experience as an ombudsman. He said that, in the rest of the world, no one required that a candidate for the position of ombudsman be a judge. In that regard, I could talk about the situation in Quebec.

Some 10 years ago, by means of a bill, Quebec carried out a reform of all its administrative agencies and tribunals with quasi-judicial powers. Everything was brought together, all of those organizations were reformed and eligibility criteria were established for positions in the various agencies and tribunals. It was quite clear: at most, it could be asked that the person be a member of the Barreau. Depending on the nature of the agency's powers, the requirement could be five years' experience as a member of the Barreau, or 10 years in cases where powers were somewhat greater.

I'll cite the example of Quebec's police ethics system, which was introduced in September 1990. That system included a position of Commissioner of Police Ethics, which required 10 years' experience as a member of the Barreau, a police ethics tribunal with exclusive powers, executive powers and power to compel persons to testify and to file documentary evidence, as well as the power to impose disciplinary penalties ranging up to dismissal of a police officer, including the police chiefs of all police departments under Quebec's jurisdiction. I believe they showed they were very serious. And yet they didn't require that candidates for the position of commissioner of police ethics or that of deputy commissioner be judges. They simply required that they be members of the Barreau.

So, as regards clause 28 of Bill C-2, I can't support the government's idea that a candidate for the position of conflict of interest and ethics commissioner be required to be a former judge.

● (0925)

[*English*]

The Chair: I'm sorry, I skipped Mr. Sauvageau inadvertently. I apologize.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'm speechless after Ms. Jennings' remarks.

[*English*]

The Chair: Unbelievable.

Mr. Murphy.

Mr. Brian Murphy: It's very nice to hear words from the government supporting judges in a period when I think they're very much under attack from this government in terms of pay scales and so on. But let's talk about the legislation, and not motives.

Well, I'll talk about motives for a moment, to say that this is clearly targeted against Mr. Shapiro. It's more important from the legislative point of view. It narrows the field from which a perfect candidate might be found, because it talks about former judges and former members of tribunals who have fairly arcane and specific experience. The pool would be very narrow.

I think it would be best to delineate what we would be looking for—maybe another amendment might come forward—but not preclude it to a former judge or a former member of a tribunal.

So in that instance, I very much support the Bloc amendment and look forward to something that's a little more small “c” catholic, if you like, in terms of getting the right appointee.

Thank you.

The Chair: Mr. Martin.

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

This is one I've wrestled with quite a bit.

In reading it carefully, I see that the government is calling for a former judge or a former member of a federal or provincial board, commission, or tribunal. I would argue, Mr. Murphy, that actually opens up quite a broad range to draw from. I'm thinking of public utilities boards, or actually anybody who has a demonstrated expertise in conflict of interest, financial arrangements. That actually makes it quite broad.

So the Bloc amendment—which is what we're actually debating; we're not really debating the merits of the government's Bill C-2 so much—seeks to delete all of the qualifications, lines 5 through 20. There would be no reference to qualifications at all. You would simply have the Governor in Council choosing a person, and then consultation with all the political parties and a vote in the House of Commons.

That leaves it wide open so that a majority government could choose the Prime Minister's nephew who couldn't get a job anywhere else; do that consultation process; listen to all of the opposition parties say no, we don't like that person; put it to a vote in the House; and win the vote in the House because they're the majority. We would then wind up with a person who wasn't qualified or suitable in any way. It would be patronage personified. It would be institutionalizing the very patronage that we're trying to avoid here.

I don't mind having the government's language in Bill C-2. I would rather there weren't specific reference to a former judge. I am comfortable with proposed paragraph 81(2)(b) in the clause, which says, “a former member of a federal or provincial board, commission or tribunal....” I'm going to propose, as a compromise, a subamendment that would delete only proposed paragraph 81(2)(a), and leave the rest. In other words, we would be deleting lines 7 through 10, rather than lines 5 through 20.

● (0930)

The Chair: Does everyone understand that? Are we clear on the subamendment?

Are you finished, Mr. Martin?

I have Mr. Poilievre, and then Mr. Petit.

Mr. Pierre Poilievre: What I'd first like to do is pose a question to our technical experts, and then I'd like to make my intervention.

I'll pose this to Mr. Wild.

First, if Mr. Martin's amendment is accepted.... I'm reading the clause here. It says, “in order to be appointed under subsection (1), a person must be”. Then we'd go straight to “a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following:” Then it lists some.

Are we then excluding former judges?

Mr. Pat Martin: That wasn't my intent.

Mr. Pierre Poilievre: Is that the effect, though?

Mr. Joe Wild: With the subamendment that was proposed, you would be excluding judges, as they would not be members of a board, commission, or tribunal. A court is something distinct from that list.

Mr. Pierre Poilievre: It's my understanding as well. I gather that wasn't the intention Mr. Martin had in putting forward the amendment.

The Chair: Do you have a point of order, Mr. Martin?

Mr. Pat Martin: I was going to ask if the committee would allow me to qualify that subamendment if we added the word "court" after the words "tribunal"? That would give the full range. That would give the option still.

The Chair: "Court" after "tribunal". Is that what you're suggesting?

Mr. Pat Martin: Delete paragraph (a) and add "court" after "tribunal".

The Chair: Yes, sir, go ahead, please.

Mr. Pierre Poilievre: I would like to ask Mr. Wild what would be the effect of Mr. Martin's amendment.

Mr. Joe Wild: From our view, that would be the same as (a). By adding "court" under (b) you're still going to be capturing what's in (a). So it doesn't actually change anything.

Mr. Pat Martin: I withdraw my subamendment then.

Mr. Pierre Poilievre: I think what we're ultimately getting at here is the same thing. This section leaves a very broad range of options to a government and ultimately to Parliament in the selection of a future Ethics Commissioner. But it merely lays out a specific list of qualifications that individual must have to assume such an important position.

If we were to accept the Bloc amendment, there would be absolutely no criteria whatsoever to determine who qualifies and who does not. In other words, the Bloc amendment actually opens the door to more patronage because it removes any qualifying criteria necessary to win the position. We have put in place here some very clear criteria with the goal of taking the discretion out of the hands of the government to appoint whoever they please and replacing that discretion with an obligation to find someone who has proven experience in the execution of the job.

I note that some members of the Liberal side have already supported the concept. Mr. Owen said he would support the amendment in principle; he just doesn't want it to apply to one particular individual. But if we're going to have a rule, presumably, especially if we're talking about a rule that pertains to ethics, it ought to apply equally and across the board. We cannot have a special favour for one particular individual, whether we like that individual or not.

In the interest of consistency, it is my view that we need first to have clear criteria to determine who can be our Ethics Commissioner, and that the criteria must lay out an experience with judicial procedure, an experience with making decisions and rulings, and an experience that will give this individual the intellectual equipment to interpret statutory law. This new office is being given new executive powers that must be met with serious qualifications.

You will note that in other parts of the bill we have done the exact same thing in requiring judges to be involved, for example, in the whistle-blower protection component, because there are serious new powers that we are extending to these offices. If we give these offices new powers those powers must be accompanied strictly by qualifications that are clearly laid out. If they are not laid out over time, they will be abused.

So I am proud to say that I will be voting against the Bloc's amendment, and I would open the floor to Mr. Wild to add any technical advice that might be of interest to the committee.

● (0935)

Mr. Joe Wild: One thing that may be of interest to the committee is to point out that within the scheme of the Conflict of Interest Act the level of judicial review is to the Federal Court of Appeal. That's in recognition of the fact that the person holding the office of commissioner would be someone who has experience either as a judge, or performing quasi-judicial functions on a board tribunal, and so on. If an amendment were made to remove that completely so that it would be any individual with whatever other set of qualifications, but not those of a judge or the experience on an administrative tribunal, it would be unusual, to say the least, that the Federal Court of Appeal would remain the level where a judicial review would be brought. The norm for that type of decision-maker is that it would be the trial division of the Federal Court.

I just make the point that the scheme of this act is written with the notion that it is in essence a quasi-judicial function that's being carried out, and that the appropriate level of judicial review for those decisions is at the Federal Court of Appeal. If we were to amend that function so that it was no longer a quasi-judicial one, one would also normally want to amend then the level of judicial review from being the Federal Court of Appeal to the Federal Court trial division.

Mr. Pierre Poilievre: Just to finish on that point, you're saying that without these qualifications you would almost alter the legal stature of the conflict of interest commissioner. Is that what you're telling us?

Mr. Joe Wild: Within the Conflict of Interest Act, it has been set up specifically—because you have to do this through legislation. The conflict of interest commissioner is being included under the Federal Courts Act as being a quasi-judicial body, triggering, then, the Federal Court of Appeal as the level of judicial review.

If you were to pull out these qualifications, there is an amendment that would also be required in this other part of the act in order to take it down to the Federal Court trial division instead of the Federal Court of Appeal.

Mr. Pierre Poilievre: Just to try to put this in language that people like me can understand, if you take away the required qualifications, you are actually changing the legal status of the conflict of interest commissioner's decisions.

● (0940)

Mr. Joe Wild: Yes. The commissioner would no longer be performing what we would consider a quasi-judicial function. From the perspective of where the level of judicial review should be, you'd be taking it down a step lower so that it would be, as with most other administrative decisions, the Federal Court trial division rather than the Federal Court of Appeal.

Mr. Pierre Poilievre: So to conclude, then, what we're saying here is that the Federal Accountability Act gives quasi-judicial status to the Ethics Commissioner, and in order to have that quasi-judicial status, you must have someone who is qualified to carry out the responsibilities associated with it.

Mr. Joe Wild: It's saying that the decisions of the Ethics Commissioner are quasi-judicial in nature, because the nature of the person holding the position is that they have the characteristics of a judge.

Mr. Pierre Poilievre: So if you take away those characteristics, which is contemplated in amendment BQ-8, you then take away the quasi-judicial status of that commissioner's decisions. In other words, his decisions would not have the same legal weight.

The Bloc amendment takes away power from the ethics commissioner and opens up the job to patronage and political insidership in a way that this act was meant to avoid. So we need these qualifications here in order to defend the very legal status of the quasi-judicial decisions that this Ethics Commissioner is being empowered with. We need these qualifications here to avoid the kind of cronyism and patronage that this bill is specifically designed to avoid.

I'll conclude on that point.

The Chair: Okay. We're on amendment BQ-8, and we have a long list, starting with Monsieur Petit and then Ms. Jennings.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: It is suggested in some circles that any reference to former judges, council members and so on be deleted. However, even though we're talking about a quasi-judicial body here, you'll see that the judgments, once rendered, will be entirely judicial in nature. We'll all be subject to this act, I believe. In the event of a problem, we would want to ensure that the person responsible for making the judgment has clearly understood the situation in legal terms.

Then it is suggested that a former judge or former member of a board be asked. I believe that what Mr. Martin explained before his amendment was correct: we shouldn't eliminate candidates. But we are eliminating everyone. Then we'll have to call on anyone. In some cases, that could cause a problem. So I suggest, since this is a very important act, that we appoint highly qualified people so that you will have full confidence in their decisions.

[*English*]

The Chair: Ms. Jennings, and then Monsieur Sauvageau.

Hon. Marlene Jennings: Mr. Chair, I would request that Mr. Martin speak. You can put me back on the list, at the bottom, but I would cede my place to Mr. Martin at this time.

The Chair: There are a few people ahead of him.

Hon. Marlene Jennings: No. I'm ceding my time, my slot, to Mr. Martin.

The Chair: Mr. Martin.

Mr. Pat Martin: Do I have the floor?

● (0945)

The Chair: Apparently.

Mr. Pat Martin: Well, that's nice. Okay.

I do have a subamendment. First of all, I share the concern raised by Mr. Owen and by the Bloc, but I don't want to be a part of any lynch mob to execute the current Ethics Commissioner. That's not what this committee should be seen as. If that's the reality or the perception, I think we have to nip that in the bud right at the get-go.

I do have what I think is a subamendment that would satisfy everyone, and it's very simple. In line 14, remove the words “has demonstrated” and replace them with the words “or a person who has demonstrated.” Let me explain what I'm seeking to achieve. That way you could have the qualification that a person must be (a) a former judge, or—as the current language—a former member of X, Y, Z, and now further, “or a person who has demonstrated expertise in one or more of the following,” and as it reads, “conflict of interest”, etc.

So by simply adding the words “or a person who has demonstrated expertise”, we will be putting strict qualification rules in place, and there is still the option of having a judge, or a former judge, if that's the most qualified person. I believe it satisfies everybody's concerns. That's the subamendment I would seek to move with some possible codicil here.

I'm not quite finished that subamendment. I would like to add another simple qualifier in paragraph (b): “a current or former member of a federal provincial board”, etc. to open the door even further. Would you like me to summarize?

The Chair: I want to make sure we understand what you're doing.

Mr. Pat Martin: All right. Perhaps I could summarize, then.

The changes I am proposing as a subamendment are to add the word “current” in line 11—“a current or former member of a federal”, etc.—and replace the word “has” in line 13 with “or” and add “a person who has demonstrated expertise”, etc.

Is that clear?

The Chair: It is clear, I think.

If the committee can bear with me for a moment. I just want to....

Mr. Martin, I understand what you're trying to do. It's quite clear, and you've said what you're trying to do in translation and in words. The problem the chair has is the same problem as the chairman had with Mr. Owen's proposed amendment, in that it's a completely different amendment, and because of that, it's not a subamendment, and because it's a new amendment, you would have to give 24 hours' notice. In other words, the same ruling I gave with respect to Mr. Owen, I do with you.

Mr. Pat Martin: What options or what avenue of recourse does a member have if I disagree with your statement?

The Chair: Unanimous consent. It's very simple. With unanimous consent we can do anything in this place.

Mr. Pat Martin: Without going that far, sir, I would like to say that I don't see how this could be viewed as a whole new concept.

The Chair: I'm sorry, that's my ruling.

Because of my ruling, you only have one option, and that's to give 24 hours' notice.

Mr. Pat Martin: Well, I have another option, which is to challenge the chair, sir.

The Chair: You do indeed, sir.

On a point of order, Mr. Owen.

Hon. Stephen Owen: A point of order might assist in us achieving unanimous consent, and that is that the condition of current or former should also apply to the judge in (a), because we don't want to have the only people who are qualified for this job to be over 75, which is the retirement age. A person could come straight from the bench, and often is appointed straight from the bench, to these positions, which is even more appropriate. So if we were to change both, perhaps we could get unanimous consent for that.

Hon. Marlene Jennings: I have a point of order, Chair.

The Chair: Go ahead on a point of order, Ms. Jennings.

Hon. Marlene Jennings: If Mr. Martin were to give 24-hour notice of an entirely new amendment, which he wishes to bring, which would touch on the very section of clause 2 we're dealing with now, would that mean that we would put aside all our dealings with that and move on to a completely different section?

The Chair: Yes.

Hon. Marlene Jennings: Thank you.

The Chair: Yes, Mr. Martin

Mr. Pat Martin: Am I to understand that if I serve 24 hours' notice for the amendment as stated, this clause will be tabled until such time as we can deal with my proposed amendment?

I can't believe that this is the rule. That would be advantageous to me, but I am concerned that the rest of dealing with this bill is going to be chaos, because every time anybody is not satisfied with the way it's going to go, they're going to start using this practice, and we'll never get a clause completed.

● (0950)

The Chair: Well, we set some rulings. The committee agreed to the 24-hour rule. I'm saying that it's not a subamendment; it's an amendment. I'm only following the rules the committee gave me to direct. That's what I'm trying to do.

I have ruled that it's not a subamendment. It is an amendment. So you're right, you have four choices: you could not proceed with it, you could ask for unanimous consent, you could give 24 hours' notice, and finally, you could challenge the chair.

Mr. Pat Martin: In order of that sequence, I would seek unanimous consent for the subamendment, which you deemed to be an amendment, sir, as I put it forward.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Do we have debate on that?

An hon. member: Yes.

Mr. Pierre Poilievre: Okay, perfect.

I haven't developed an opinion on whether this is a subamendment or an amendment, and I'd like to get some advice from our technical experts on how substantive the change actually is.

[*Translation*]

The Chair: Mr. Sauvageau.

Mr. Benoît Sauvageau: Are you the chairman of the committee's procedures, and are they experts in the interpretation of the act and our clauses? I find it very hard to understand why Mr. Poilievre is asking these people if you're right. Explain that to me. I'm here to learn.

[*English*]

The Chair: You may proceed.

In answer, yes, I am the chair, and we're into debate, and I've made a ruling. The question is whether there's unanimous consent or not. I suppose we can have debate on that, and that's what we're in the midst of.

Mr. Pierre Poilievre: I just want to inform Mr. Sauvageau that he does not give unanimous consent. We, as members, give unanimous consent, and we have the right to seek all the information we want to seek when we decide whether we're giving unanimous consent. So I will decide what information I need in order to give that agreement.

Thank you.

The Chair: On a point of order, Mr. Murphy.

Mr. Brian Murphy: Maybe it wasn't understood, but I thought I understood, Mr. Chairman, what Mr. Sauvageau said. To make it clearer, you have ruled that this is not a subamendment; it is an amendment. It is totally inappropriate for a member of this committee to ask the experts whether you're wrong about whether it's an amendment or a subamendment, and that's what the question was.

Mr. Pierre Poilievre: No, I'm not. I'm asking how substantively—

Mr. Brian Murphy: Excuse me. Mr. Chairman, please rule on my point of order. Thank you.

The Chair: Mr. Poilievre, Mr. Murphy has the floor.

Mr. Pierre Poilievre: As I understand, Mr. Chair, we are in debate—

The Chair: What I do up here is make rulings on my own. I ask for counsel from the clerk and the other staff up here, and I can assure you that the ruling I made was based on their advice. So it's not just me pulling this out of the air, and I don't want to have this end of the table being challenged by that end of the table.

Mr. Murphy is correct.

Mr. Pierre Poilievre: No. Mr. Chair, are we not debating whether we're going to give Mr. Martin his unanimous consent?

The Chair: We are indeed. What I don't want to happen here is to have that end of the table saying that the other end of the table is wrong, and that's what you're trying to do.

Mr. Pierre Poilievre: I understand that. But no, it's not. What I am trying to do is ascertain the nature of his amendment before we can determine whether we will give unanimous consent to include it. That's exactly what I'm trying to do.

The Chair: I'll allow that. But I don't want that end of the table saying that this end of the table is wrong. If you want clarification, you can ask the legal people.

Mr. Pierre Poilievre: Right. Obviously there are some people who want to delay this process. I'm going to go straight to my question.

What would be the actual effect of the amendment that's being proposed?

Mr. Joe Wild: I guess there are a couple of different aspects to the proposed language.

The first thing is the issue of what's meant by "former judge" and so on. Just to be clear, it is not meant to imply that the person has to be a former judge before going through the selection process. It's meant to state that you can't hold two jobs. You can't be sitting on the bench and at the same time be the Conflict of Interest and Ethics Commissioner; it's meant to be one job.

With respect to splitting out what is really, I guess, proposed paragraph 81(2)(b) into two statements, to say "a former member of a federal or a provincial board, commission or tribunal or a person who has demonstrated expertise", in the way paragraph (b) was crafted, it was intended that those criteria be used to help determine whether or not a member of a particular federal or provincial board, commission, or tribunal is sufficiently qualified.

The proposed amendment would change that by basically allowing any member of a federal or provincial board or commission, without any further qualification, whereas the intent in the bill was that the member would still have to demonstrate having met one of those following criteria.

I'm not sure what the intention is in the amendment. It certainly could be fixed to make sure those criteria apply to both former members of federal or provincial boards, commissions, or tribunals as well as to the proposed any "person who has demonstrated expertise" in those areas.

● (0955)

Mr. Pierre Poilievre: What would be the effect of the amendment? That's what I'm trying to get at.

Mr. Joe Wild: The effect of the amendment would be that it would open up the potential of candidates.... There are two steps, I guess.

First, if you said "current", then the effect of the amendment would be that someone would in essence be holding two jobs that are both supposed to be full-time. That creates a bit of a technical problem, certainly.

But for the other part of it, to say "or a person who has demonstrated expertise in any of the following", Mr. Chair, would certainly be broadening the scope of candidates. You could in essence be looking at, in addition to the former judges, any Canadian who has any expertise in conflict of interest, financial arrangements, professional regulation and discipline, or ethics. So it would broaden substantially the number of candidates.

Just to go back to the point about the "current" and "former" and only holding one job, proposed subsection 83(2) of the Conflict of Interest Act specifically states that the commissioner has to engage exclusively in the functions of the commissioner. That's again the reason why you're seeing "former", because once you're in the job of commissioner you are going to be in effect a former judge; you can't be holding both positions.

The only other aspect to this, which I guess is a bit of a wrinkle, is that when you open to other persons who are not judges or former members performing quasi-judicial functions, it has the impact I mentioned earlier about the review level. Having a person without a quasi-judicial background, if you will—who doesn't have the background of being a judge or the background of participating in a board, commission, or tribunal—would raise that issue of the level of judicial review. Currently under the proposed act it's the Federal Court of Appeal. For that particular type of person, it would be inappropriate that the Federal Court of Appeal be the level of review. The level of review for that particular type of a person should be the trial division of the Federal Court, because they don't have that quasi-judicial background.

The Chair: Mr. Poilievre, you still have the floor.

Mr. Pierre Poilievre: I want to make the observation that everyone seems to support in principle all of the criteria laid out in the existing Accountability Act. I haven't seen anyone particularly disagree with the requirement that someone have judicial experience or experience on a tribunal or a commission. Everybody agrees in theory; they just don't agree in practice. They don't want this one individual, with whom they have some particular attachment, to have to live up to those requirements.

If we agree that the job must be held by someone who has this experience, then presumably that means that any person who holds the job must have that experience. It should not be that everybody except one guy has to meet the requirements. So I do find that contradictory. Either the members agree that the person who occupies this post should have that experience, or they don't agree. They have to decide which it is. It can't be that everybody in the country who applies for the job has to have all the qualifications except for one guy, who we prefer to believe can go around those obligations.

In the interests of consistency, we stand in favour of the existing wording of the bill.

● (1000)

The Chair: I want to be clear about what you have said. We're in the process of debating unanimous consent. Are you saying you will not give unanimous consent?

Mr. Pierre Poilievre: Yes, that's right.

The Chair: On the amendment, you want to speak on BQ-8.

Mr. Owen on BQ-8 and Mr. Sauvageau... Sorry, I have Mr. Hawn. We have lists, Mr. Sauvageau.

Mr. Owen, then Mr. Hawn.

Hon. Stephen Owen: Thank you very much. I would like to speak generally—

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

Hon. Marlene Jennings: My understanding is that you laid out a number of options for Mr. Martin. The first was unanimous consent. If that was refused, then I believe he had the option of giving a 24-hour notice. If he gives the 24-hour notice, then all debate on this issue ceases until we come back.

The Chair: Mr. Martin hasn't jumped in at this stage. If he wants to jump in, he's quite free, but we're having a debate on the amendment.

Mr. Martin.

Mr. Pat Martin: I thought you had a speaking list. I certainly would have intervened, but—

The Chair: I have a long list, Mr. Martin, on the debate on BQ-8. Ms. Jennings is right, to a point. You asked for unanimous consent, and then I do recall you kept it open that you might raise other issues. I didn't hear from you so I didn't go to you.

Mr. Pat Martin: Well, unless you would be willing to recognize me, I would follow through.

The Chair: Okay sir, you go ahead.

Mr. Pat Martin: First of all, I still can't quite believe that all a person has to do is give 24 hours' notice and that's going to table the motion you're debating. Even though it's contrary to my own best interests in this case, I think we're going to have pandemonium if that's the way we go through these 317 clauses.

The Chair: Give me a moment, sir, on that.

If we're going to stand this down until tomorrow, we'd have to have a majority vote on that. We won't be here tomorrow, so until Monday. Ms. Jennings has corrected me, again.

Mr. Martin, you still have the floor.

Mr. Pat Martin: Thank you, sir. I think what we were all trying to get at was this. This might not even be the right clause, but there should be some transitional provisions when these rules come into effect, as it affects the existing office holder. We will have that with the newly—

The Chair: Mr. Martin, I understand what you and Mr. Owen are trying to do. I'm given these rules by the House and by the committee, and that's all I'm trying to do.

Mr. Pat Martin: All right, so perhaps you could accept what I tried to move as a subamendment as a proposed amendment instead, and with due notice, I'd like to table that as a proposed amendment, to be dealt with at a later date.

Is that clear?

The Chair: I need approval from the committee on whether we can stand down these.... I have no problem with your doing that, Mr. Martin, but I need approval from the committee by way of a vote as to whether we can stand down BQ-8 and its clause.

In other words, we would have to stand down your proposal and BQ-8. You could give me notice, but to stand it down I need approval from the committee, with a majority vote.

Is that what you wish, sir?

● (1005)

Mr. Pat Martin: Yes.

Mr. Laurie Hawn (Edmonton Centre, CPC): I've got a point that I think might clarify this.

The Chair: I'd love to hear that.

Mr. Laurie Hawn: It might assuage the concerns.

It seems to me that Mr. Shapiro is protected under proposed paragraph 81(2)(b) where it says, or "a former member of a federal or provincial board, commission or tribunal". Isn't he already covered as one of those in his current position? Isn't he then protected from the automatic lynching you're concerned about?

The Chair: We have some people here at the end of the table. Why don't we ask that question of Mr. Wild and his legal people?

Mr. Joe Wild: The Federal Courts Act specifically states that:

> the expression "federal board, commission or other tribunal"...does not include the Senate, the House of Commons, any committee or member of either House, the Senate Ethics Officer or the Ethics Commissioner.

So the current commissioner is not a member of a federal board, commission, or tribunal.

The Chair: Nice try.

We've got to have a vote.

Excuse me, you have a point of order, Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: First, I'd like us to correct the French version because, in French, proposed paragraph 81(2)(b) on page 44 of the bill refers to an opinion of the Commissioner demonstrating that he has expertise in the field, whereas, in English, it states...

[*English*]

The Chair: I'm going to ask you to start again, sir.

[*Translation*]

Mr. Benoît Sauvageau: In English, it states that the Governor in Council must give his opinion on the Commissioner's experience, whereas, in French, it states that it's the Commissioner that must give his opinion on his experience. In my opinion, we should replace the word "commissaire" in French with "gouverneur en conseil".

[*English*]

Hon. Marlene Jennings: Another typo?

The Chair: Mr. Wild, there may be an error. Maybe you could talk about this.

Oh, I'm sorry, Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I haven't finished.

My convictions have been shaken by the remarks of Mr. Poilievre, who said that criteria absolutely had to be included because, otherwise, primary substitute teachers, or I don't know who would be hired to occupy these offices.

I'd like to ask our experts to give us the hiring criteria for the Auditor General, the Commissioner of Official Languages, the Chief Electoral Officer, the Privacy Commissioner, the Information Commissioner and the Chairman of the Public Service Commission.

I believe there are no criteria, except common sense, and that that must be accepted, upon consultation with the party leaders. To date, we've never had any duds occupying those offices.

Am I wrong? That might inform the debate.

Mr. Joe Wild: Mr. Chairman, in response to the first question, in proposed paragraph 81(2)(b), we should in fact have said “du gouverneur en conseil”, not “du commissaire”.

I would ask you to wait a moment for the answer to your other question.

[*English*]

The Chair: You know what, Mr. Wild, it appears we're acknowledging an error. At the risk of the committee accusing the chairman of influencing a vote, it's probably yet another reason why BQ-8 should be put over until the next sitting of the committee. We have an error, and we have a motion that.... So if we're acknowledging that there's an error, maybe we can clean up the whole mess —that's an improper word—or rather, clear up the problem at the next meeting.

Mr. Wild.

Mr. Joe Wild: On the second part of the question, Mr. Chairman, it's quite correct that the statutes establishing the positions of those various commissioners—the official languages commissioner and so on—do not set out any qualifications, but those functions are not quasi-judicial in nature. They are in essence ombudsman functions, and that is a distinction between this particular commissioner and those.

● (1010)

The Chair: Mr. Owen.

Hon. Stephen Owen: Mr. Wild, there's a circular problem here. To say that commissioners who don't have quasi-judicial functions don't have that requirement because they're not performing quasi-judicial functions would suggest that any appointment to any quasi-judicial tribunal would have to have that experience beforehand, but as we all know, the appointments come to any number of boards, commissions, and tribunals without even legal experience, let alone judicial experience. The way you've explained that suggests that to do a quasi-judicial function, you must have had quasi-judicial experience, and you don't.

Let me just say a couple of other things on this whole section. As part of this act, we're going to be creating, we hope, an appointments commission. It is going to deal with all order in council appointments and is going to set out criteria of merit, transparency, and fairness. The concern that not having such qualifications here will simply open it up to patronage, I think, avoids one of our main intentions, which is to create an appointments process that eliminates the possibility of that type of patronage.

I'm very much in favour of this amendment.

I think it's almost meaningless in many ways.... Lots of commissions don't perform quasi-judicial functions. They simply don't. You've got human rights commissions and you've got human rights tribunals, and one does the quasi-judicial and one deals much more broadly. For an ethics and conflict of interest commissioner, perhaps the person most skilled in this country in ethical issues, Dr. Margaret Somerville, would not qualify for this. I think we have to put real faith in the appointments process that we also hope to set up through this act; it would obviate the need for this type of section.

It seems to me from all this discussion that it creates more confusion and harm and restriction than perhaps we are wanting to achieve. I will be voting in favour of the—

The Chair: Okay, what we're going to do here is this. I first of all want to thank the committee for helping the chair get through a very difficult time. We're not there yet, but I do appreciate all the assistance that committee members have been giving me.

I want to remind you that Mr. Martin has served a notice of motion. We're going to vote on whether we can table amendment BQ-8 over until the next sitting of the committee. We're going to have a break; then we're going to come back and, we hope, vote on that.

We will break for four or five minutes.

● (1010)

(Pause)

● (1030)

The Chair: We're going to call the meeting back to order. Perhaps you could all take your seats, please; if not we'll start without you.

Just to remind you again, we have a request.

Mr. Sauvageau, a point of order.

[*Translation*]

Mr. Benoît Sauvageau: No, but I'd like to say something.

[*English*]

The Chair: Well, you'll have to wait until I finish what I have to say.

Just to remind committee members, we have a request, a notice of motion by Mr. Martin to table an amendment. We now are about to vote on whether BQ-8 would be put over to that time, which would be the next meeting, which would be on Monday.

Is there any further debate on what I've just said?

Mr. Sauvageau?

Are we okay, are we ready to vote?

Mr. Martin.

Mr. Pat Martin: If Mr. Sauvageau has the floor, then he should make his comment.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, I'd like us to be given some time to draft an amendment, but I don't know whether unanimous consent is necessary for that. I'm going to speak, and you'll tell me whether it's admissible or not and what I should do.

In the context of the transitional measures, we'd like the present Ethics Commissioner to automatically keep his position and to ensure the transition until the end of his term. We would also like the Public Appointments Commissioner, since Bill C-2 creates that position, to define the hiring conditions of the next public sector Integrity Commissioner.

We don't want the government to duplicate the bodies it wants to put in place. We're convinced that the Public Appointments Commissioner will be a qualified person and will determine proper appointment criteria. We want to give him all possible leeway. That way, we could pass the amendment, eliminate that, and everything would be in order.

[*English*]

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: On a point of order, Mr. Chair, are we addressing this Bloc amendment 8? I don't detect any discussion on Bloc amendment 8. We're now talking about a totally different section of the bill that's completely unrelated. If the member across wants to introduce an amendment on that, he would have to give proper notice. I would ask that you bring the member back to the subject, and let's get on with voting on this and stop delaying.

The Chair: On that point, Mr. Poilievre is correct, that's a substantive amendment. Whatever section it's under, unless we go through the same procedure as we're doing with Mr. Martin, you'd have to give us a notice of motion on that.

Mr. Martin.

Mr. Pat Martin: As I understand it, we're about to vote on whether or not we will table BQ-8—to give me time, the 24 hours I need to amend it. Could we have that vote?

Mr. Pierre Poilievre: But his amendment does not amend BQ-8?

Mr. Pat Martin: No, it doesn't.

Mr. Pierre Poilievre: So there's no linkage between the two. We do not need to table BQ-8 in order to await another amendment from Mr. Martin, because the amendment that Mr. Martin is putting forward is entirely separate.

The Chair: The problem is, Mr. Poilievre, the amendment and BQ-8 contravene each other. You have to decide on one or the other. With due respect, I think if the committee wishes to do it, we'd have to stand it down. But there's a conflict.

I have people wanting a vote. Is that what we're going to do?

Mr. Martin, are you ready to vote on this?

● (1035)

Mr. Pat Martin: I'm in about the same position as you are, Mr. Chair; I haven't a clue. I think I have an idea of what I'm trying to achieve. If what you're trying to do is help me achieve what I'm seeking to achieve, then I trust you and—

The Chair: I know exactly what you're trying to do. As I said before, I'm bound by the rules, and unless I get unanimous consent—

A voice: No, a majority vote on this one.

The Chair: Yes, I understand that. We've passed that.

We're now on a majority vote as to whether or not amendment BQ-8 will be put over and dealt with at the same time as your amendment.

Does everyone understand what we are doing?

Mr. Pat Martin: I understand what you're trying to do.

The Chair: I just woke everybody up. We're going to vote on whether we're going to put amendment BQ-8 over to the next session.

(Motion negatived)

The Chair: We're now going to vote on amendment BQ-8.

It's tied. The chair votes against the amendment.

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

The Chair: We're moving right along, to amendment BQ-9, on page 43. We're going to require Monsieur Sauvageau to move that.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, I said a little earlier why I was moving the motion. I could repeat my comments. By this amendment, we aim to solve the secret ballot problem, which was raised by, among others, Mr. Walsh, Mr. Marleau, Ms. Adam, and others. In agreeing to amendment BQ-9, we eliminate the secret ballot process and retain the status quo. I know you're very sensitive to respect for and maintenance of the status quo, so this concerns that.

[*English*]

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

The Chair: We've dealt with all these others indirectly, so we're going to move to page 43.9 in your books, amendment L-1.5.

Mr. Owen.

Hon. Stephen Owen: I think this is Ms. Jennings' amendment.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: I would like a point of clarification.

Amendments L-1.5 and NDP-1.7 are identical, are they not?

The Chair: Yes, amendment L-1.5 is the same as amendment NDP-1.7.

Hon. Marlene Jennings: Yes. And my amendment L-1.6—

The Chair: I'm sorry, I have to draw to your attention that we must choose between amendment L-1.5 or amendment L-1.6 due to line conflicts.

Hon. Marlene Jennings: That's exactly the point I was going to raise, so I'm glad you pre-empted me.

The Chair: I'm very sorry, Ms. Jennings.

Hon. Marlene Jennings: I would simply ask my colleague Mr. Martin, if I withdraw amendment L-1.5, would he withdraw amendment NDP-1.7?

And given that amendment NDP-1.8 is identical to amendment L-1.6, I would withdraw amendment L-1.6 so that in fact we would be dealing with amendment NDP-1.8. But that's conditional on Mr. Martin withdrawing amendment NDP-1.7.

● (1040)

The Chair: Mr. Martin.

Mr. Pat Martin: Well, thank you for the opportunity, Ms. Jennings, but we went through the same issue, and it was our view that due to the line conflict, we should withdraw amendments L-1.6 and NDP-1.8, and we should actually proceed with L-1.5 and NDP-1.7, which are identical. It doesn't matter which of us moves them.

Perhaps we need to get some advice as to the effect, but from research we did last night, I've marked on my NDP-1.8 to withdraw.

I'm wondering, Madam Jennings, why you prefer to stay with your amendment L-1.6 and lose L-1.5.

The Chair: Through the chair, Ms. Jennings.

Hon. Marlene Jennings: Yes, through the chair.

Because once I realized that I had two amendments that dealt with the exact same line, I re-consulted with the clerk, Mr. Walsh's office, and I was informed that they believe amendment L-1.6 brings more clarity and precision than L-1.5.

Mr. Pat Martin: Mr. Chairman, having heard that, I'm willing to agree with Madam Jennings' first proposal and to withdraw NDP-1.7.

Hon. Marlene Jennings: And I will withdraw L-1.5 and L-1.6.

The Chair: Good.

Let's turn to page 43.12, which is amendment NDP-1.8.

Mr. Martin, you have to move that.

Mr. Pat Martin: Yes, I'd be happy, then, to move amendment NDP-1.8, dealing with page 47 of the bill, clause 28.

The Chair: Do you have a question, Mr. Moore?

Mr. Rob Moore: Can we get some comment from the experts on what the effect of this amendment would be?

The Chair: Mr. Stringham.

Mr. James Stringham: Mr. Chairman, this goes back to the earlier explanation I was giving with respect to proposed sections 86, 87, and 88. Just as a factual matter I'd point out that the amendment being proposed here would be to proposed subsection 87(4), which is with respect to the general direction of the committee being given to the Conflict of Interest and Ethics Commissioner with respect to his role involving the House.

Now, earlier we had an amendment proposed—I believe it was L-1.3—that would have added the identical language to proposed subsection 86(4), but I believe the proponent decided to drop that proposal. So you would now have the situation where in subsection 86(4) you would not have that language added, but you will have it added to subsection 87(4.

The effect, if you will, though, is to change the nature of the greater certainty that's added here. The greater certainty added here is to say to the committee that is giving direction to the Conflict of Interest and Ethics Commissioner in his or her capacity with respect to the House members, just in case there's any confusion here, this committee is not going to be giving you direction with respect to the Conflict of Interest Act when you're applying it to ministers, parliamentary secretaries, and ministers of state.

The current wording would have that effect. Adding on the qualifier would suggest that it would have that effect only when they are acting in their capacity as ministers of the Crown, ministers of state, or parliamentary secretaries. The concern that might arise is that the interpreter, again faced with the differing language in proposed subsections 86(4) and 87(4), would say, so I suppose the committee must then have something to say to the Conflict of Interest and Ethics Commissioner with respect to the Conflict of Interest Act and its application to ministers and parliamentary secretaries when they are not acting in their capacity.

And if I may, it's quite possible that under the act, the Conflict of Interest and Ethics Commissioner would be making determinations with respect to ministers and parliamentary secretaries when they're not exactly acting in their capacity. For example, with respect to travel, the obligations with respect to travel don't apply just when they're acting in their capacity as such; they apply at all times.

● (1045)

The Chair: Mr. Moore, are you finished?

Mr. Rob Moore: Yes. Thank you.

The Chair: We're prepared to vote on amendment NDP-1.8.

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

The Chair: Do you have a point of order, Madame Guay?

[*Translation*]

Ms. Monique Guay: I'd simply like to have some information, Mr. Chairman. What are we doing about amendments NDP-1.5 and NDP-1.6, which we were to consider before amendment NDP-1.8? They haven't been withdrawn, as far as I know.

[*English*]

The Chair: I think it was decided not to proceed with those. Have I misunderstood that?

Mr. Pat Martin: I've never withdrawn them. These are part of the suite of recommendations put forward by Mr. Walsh, and they're systematically outlined so that we don't have slip-ups like what was just pointed out to us. The Liberal amendment should have introduced similar language to proposed subsection 86(4). The idea was that everywhere that situation occurs, these qualifying additions would be put into effect.

I don't know how this happened, but it has something to do with the order in which we're dealing with things.

The Chair: Just give us a moment, please.

Mr. Pat Martin: Mr. Chair, we have arrived at...unless you're in the processing of arriving at the same conclusion.

The Chair: Okay, Mr. Martin, I'm going to try to understand what's happening. As I understand it, you were not proceeding with NDP-1.4.

● (1050)

Mr. Pat Martin: Right.

The Chair: Madam Guay, I thank you for your assistance.

We have overlooked NDP-1.5 and NDP-1.6. Is that correct? That's on page 43.6. If you could turn to that, ladies and gentlemen, and Mr. Martin, if you could move that—

Mr. Pat Martin: Would you like me to move that now?

The Chair: I would, sir, yes.

Mr. Pat Martin: All right. I'd be happy to move NDP-1.5. It is found on page 43.6 of our work book, but it's actually found on page 46 of Bill C-2.

I'm going to say that it's dealing with clause 28, but everyone seems to be confused about the numbering here. We're dealing with proposed subsection 86(4), which was made reference to earlier.

While I have the floor, could I ask for clarification? Is proposed section 86, which we're dealing with, of the Parliament of Canada Act? I see, then, we're seeking to amend proposed subsection 86(4) of the Parliament of Canada Act in exactly the same way as we have just dealt with proposed subsection 87(4) of the Parliament of Canada Act. That would resolve the inconsistency that was just pointed out.

The Chair: I think you have moved NDP-1.5. Is that what you have done?

Mr. Pat Martin: That sort of sums it up, yes.

The Chair: We're going to vote on that.

Page 43.6, NDP-1.5, is where we are. That's been moved, and I'm looking for debate, questions, or comments.

Sir.

Mr. Pierre Poilievre: I'd like to get some clarification from our panel of experts on the ramifications of the clause.

Mr. James Stringham: Yes, Mr. Chairman, it would make consistent the scheme with respect to the Conflict of Interest and Ethics Commissioner's role with respect to the Senate, make it consistent with the House scheme by making proposed subsections 86(4) and 87(4) track the same language.

But again, perhaps it adds an element of uncertainty that isn't in the present provision with respect to the role of the committee—this would be the Senate committee—giving direction to the Conflict of Interest and Ethics Commissioner with respect to his or her role vis-à-vis the Senate, to say, with respect to your administration of the Conflict of Interest Act, Commissioner, we're not going to give you any direction—although maybe they will.

That's the confusion that arises, potentially, from this amendment, as it did from the previous one.

● (1055)

Mr. Pierre Poilievre: That's all for me.

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

The Chair: We move on to amendment NDP-1.6, which is page 43.8.

Mr. Martin, you'll have to move that, please.

Mr. Pat Martin: I'll move amendment NDP-1.6.

What we're seeking to achieve on pages 46 and 47 of Bill C-2 and amending subsections 86 and 87 of the Parliament of Canada Act is, first, to replace line 33 with the following:

> the Senate or its members, except ministers of the Crown, ministers of state or parliamentary secretaries.

and then use the same language on page 47 to replace line 15.

The Chair: Are there any comments or questions?

Mr. Tom Lukiwski: Mr. Chairman, once again, could we get an assessment from our technical experts on the impact of this change?

The Chair: Mr. Stringham.

Mr. James Stringham: Thank you, Mr. Chairman.

The provision would add the amended phrase to the end of subsection (5) in section 86 of the Parliament of Canada Act and to subsection 87(5) of the Parliament of Canada Act.

Both of these provisions are "for greater certainty" clauses. They're a guide to the person who's interpreting all of section 86 and all of section 87. Just in case there's any doubt in the person's mind, they're saying that when you're applying section 86 and section 87, you are not limiting any of the privileges or rights of the Senate with respect to section 86 or the House in section 87.

When you add the words "except ministers", the inference to be drawn, I would suggest, is that you are in fact affecting the privileges of ministers. Is that the intention of the amendment?

Mr. Patrick Hill: If I may follow on that point, I can remind members that Liberal amendment 0.1 expressly provided that nothing in the Conflict of Interest Act derogated from or limited in any way the privileges of any members.

I would say that there seems to be an inconsistency, insofar as Mr. Stringham has said that the effect of this amendment—if I understand it correctly—would be to say that under the House code or the Senate code, the privileges of members who are ministers are to be limited by those two committees, while we have expressly said in respect of the Conflict of Interest Act that they are not to be limited. I think there is an inconsistency there.

The Chair: Next we have Mr. Moore and then Ms. Jennings.

Mr. Rob Moore: Thanks for that interpretation.

There is that inconsistency. We heard testimony, which I thought was well received by the members opposite, that we did not want to impact on members' rights and privileges and their parliamentary privileges. This amendment would do exactly that: it would impact negatively on the privileges of ministers and parliamentary secretaries.

I'm wondering why the amendment was put forward.

The Chair: I'm going to go to Ms. Jennings and then Mr. Martin, unless you have something startling to reveal, Mr. Martin.

Mr. Pat Martin: I would say simply that we are faithfully following the recommendation of the senior law clerk of the House of Commons when we asked him to do everything he could to make sure this bill in no way steps on or derogates from parliamentary privilege. He put forward a serious suite of recommendations to accommodate us in that regard. There seem to be some competing views on what this language would in fact do.

The Chair: Ms. Jennings is next.

Hon. Marlene Jennings: I may be mistaken, and you may wish to ask Mr. Walsh or a member of his staff to come and provide additional clarity.

My understanding—and as I said, I could be wrong—is that ministers of the Crown, ministers of state, and parliamentary secretaries, when acting in their capacity as ministers of the Crown, ministers of state, or parliamentary secretaries, do not have the benefit of parliamentary privilege. Parliamentary privilege is incumbent on a member of Parliament, because you can have a minister of the Crown who is not a member of Parliament.

Historically, when one looks at the Canadian Parliament, from all of the parties that have governed to date, except for this new Conservative Party, the prime ministers in place have appointed individuals as ministers, as members of cabinet. Then they ran in a by-election or a general election within 12 to 18 months of their appointment. Therefore, they did not benefit from the parliamentary privilege that is given to members of Parliament or to senators.

My understanding is that this is in order to ensure that parliamentary privilege remains with a member of Parliament, either as a member of the House of Commons or the Senate. My point is that it does not diminish or affect parliamentary privilege, as has been in existence for several hundred years now.

● (1100)

The Chair: Ms. Jennings, before we continue with the list—

Hon. Marlene Jennings: But I could be wrong. Hey, it's possible, but unlikely.

The Chair: Before we proceed with the list, I'm going to ask Ms. Mortenson, who is from Mr. Walsh's office, to comment on what has just been said.

Ms. Melanie Mortenson (Legal Services, Office of the Law Clerk and Parliamentary Counsel): Thank you, Chair.

This NDP-1.6 was prepared in the event that there should be a need to clarify the role of members and their privileges as compared to the role of ministers. However, notwithstanding that, I believe Patrick Hill gave the testimony about the Liberal motion that passed in the Conflict of Interest Act, which serves to protect the privileges of the members.

In our view, this would no longer be necessary to sufficiently clarify the distinction. I hope that clarifies this.

I think what she's trying to say is absolutely right, in the sense of the privileges and so on. But the effect of this may no longer be necessary in light of the fact that there was the earlier motion.

The Chair: Order, please.

We have a list, but I'm going to let Mr. Martin jump ahead on the list.

Mr. Pat Martin: Thank you.

I'd like to withdraw the amendment, please.

The Chair: Okay.

Thank you, Ms. Mortenson.

We're moving along to page 43.13, which is the Liberal amendment L-1.7, which is the same as NDP-1.9. Are we ready?

On a point of order, Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'd like to be sure I understand what's going on. What are you doing about pages 43.12 and 43.13, that is to say amendments NDP-1.8 and L-1.7?

[*English*]

The Chair: As I understand it, Mr. Sauvageau, NDP-1.8 was agreed to.

Thank you.

[*Translation*]

Mr. Benoît Sauvageau: What about amendment L-1.7?

That's fine; everything's perfect.

[*English*]

The Chair: That's where we're at.

Are you okay? We're now waiting for Ms. Jennings to make that motion.

Hon. Marlene Jennings: Before I make the motion, I would like a point of clarification.

Given that we adopted my amendment that was on page 5.1, would our experts be in accordance that in fact amendment L-1.7 would no longer be necessary because the amendment on page 5.1 basically covered it?

● (1105)

Mr. Warren Newman (General Counsel, Constitutional and Administrative Law, Department of Justice): Mr. Chair, we would be of the view that this is no longer necessary, given that this committee has adopted a blanket provision in the Conflict of Interest Act relating to the privileges and immunities of both Houses. So to put this provision in, which says “except as otherwise provided in that Act”, would add confusion. Had your other motion proceeded, they would have gone in tandem.

For that reason, it would no longer be appropriate, in our view, to proceed with this one.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: In view of the expert opinion, I will not be moving amendment L-1.7.

The Chair: Mr. Martin.

Mr. Pat Martin: I withdraw amendment NDP-1.9 in the same spirit.

The Chair: We're going to page 43.15, amendment L-1.8 on clause 38. Who is going to take that?

Ms. Jennings.

Hon. Marlene Jennings: The objective of my amendment L-1.8 is to see that clause 38 no longer exists. There are two ways of going about it, or potentially three. We can vote on my amendment, in which case clause 38 is simply deleted; or my amendment is voted on and defeated, and then clause 38 is voted on, and if it's defeated it's gone; or I simply do not move amendment L-1.8, and then again, you have a vote on the substantive clause itself and it's either carried or defeated.

Given the experience I had in withdrawing two of my amendments that were in line conflict with an amendment proposed by one of my colleagues, Mr. Owen, and the discussion we'd had around this table that led me, obviously wrongly, to believe Mr. Owen's amendment would in fact be carried, and it was not, and then I had no way to move forward with my proposed amendments, I'm not going to withdraw this. I'm going to ask that we vote on it.

The Chair: *House of Commons Procedure and Practice* states, at page 656, "An amendment is out of order if it simply attempts to delete a clause, since in that case all that needs to be done is to vote against the adoption of the clause in question." Therefore, Ms. Jennings, I am ruling it out of order.

Madame Guay.

[*Translation*]

Ms. Monique Guay: I'd like some clarification. Could you give us a legal opinion on the deletion of this entire clause? What will that involve?

[*English*]

The Chair: Of the clause as it stands? Normally I would say let's wait until we vote on the clause, but since we're here, why don't you ask your question?

Mr. Stringham.

Mr. James Stringham: Mr. Chairman, if I understood correctly, the question is, what is the effect of removing this coordinating amendment in clause 38?

Clause 38 would supercede what we would otherwise have in clause 5. The importance of clause 38 is with respect to proposed sections 41.1 and 41.2 of the Parliament of Canada Act, which set out the new regime with respect to trusts that apply to MPs. The effect of this provision is to remove from the scrutiny of the court the Ethics Commissioner's role when he's looking at MPs' trusts.

It's again protecting your privileges. You want it there to protect your privileges. You want to have the scrutiny of proposed sections 41.1, 41.2, and 41.3 ultimately, perhaps, in light of another amendment that might come about. You want that protection to preserve your privileges.

● (1110)

The Chair: Ms. Jennings.

Hon. Marlene Jennings: It's my understanding that there are amendments that follow in other sections that deal with the question of trusts that some parliamentarians may hold and move it into the Elections Canada Act, thereby giving all of the authority to deal with that to the Chief Electoral Officer.

Am I correct? Have you seen all of the amendments?

Mr. James Stringham: That being the case, even if it's in the hands of the Chief Electoral Officer, I'm making a presumption that members might wish to ensure that the Chief Electoral Officer exercising that role would not be subject to judicial review for the same reasons, with respect to MPs at any rate.

Hon. Marlene Jennings: Okay. So if clause 38 carries as it is now written, and further on in the deliberations of this committee we come to an amendment that takes the issue of trust out of the Conflict of Interest and Ethics Commissioner's section and moves it into the Elections Canada Act, will clause 38 then have to be changed in any way in order to make it consequential with?

Mr. James Stringham: I would answer yes.

Hon. Marlene Jennings: So is it your expert opinion that rather than dealing with clause 38 at this point, we should possibly move to the clauses that deal with the trusts, deal with them, and once we know the will of this committee through all of the votes, then determine if clause 38 requires any changes?

Mr. James Stringham: I don't think it's my role to suggest that to the committee. This is a procedural matter.

Hon. Marlene Jennings: I may have been looking in the wrong direction.

I am asking the question to you, Chair.

The Chair: Okay, that's another can of worms opened up, Ms. Jennings. Thank you very much.

Some hon. members: Oh, oh!

The Chair: The chair has a question, if I'm allowed to make one.

Are there any other trust clauses? You mentioned one. We'll have to deal with amendment L-2.2, which is on page 48.3, before we deal with clause 38. So the question is, carrying along the lines of Ms. Jennings, if we accept all that process—and you're recommending we do—are there any other trust clauses that should be dealt with as well?

Do you want to take a break?

● (1115)

Mr. Joe Wild: Amendment L-2.2 on page 48.3, and NDP-1.11 on page 48.6 both deal with trusts. I haven't checked to make sure if they're identical, but I suspect—

The Chair: Let's have a short recess.

● (1115)

(Pause)

● (1125)

The Chair: We will reconvene the meeting.

Ms. Jennings is right yet again. I'm going to ask our assistant to explain what we need to do with clause 38, before we go back to Ms. Jennings.

Go ahead.

Ms. Susan Baldwin: Clause 38 is a transitional clause, so it affects three or four other clauses and it is consequential in some ways to all of them, which makes it very difficult to deal with. It is consequential to the adoption of amendment L-2.2, which Ms. Jennings was referring to, which is on page 48.3.

So if amendment L-2.2 is negatived, there's no problem. If we adopt amendment L-2.2, then we cannot put clause 38 to the committee in its current form. So what would happen is that the government would need some time to amend clause 38 to avoid the problems with amendment L-2.2, but keep at least three other transitional provisions that are in that bill that they need for other parts of the bill. In other words, we're very tangled this time.

The Chair: Okay. I don't know where we're going to go. I guess the ball's been thrown over to Mr. Poilievre.

Mr. Pierre Poilievre: I understand Mr. Wild might have a suggestion on how all this can be accommodated.

Perhaps you could share it with the committee.

Mr. Joe Wild: It's more or less as the legislative clerk has set out.

If on L-2.2 that motion passes, what it would do to clause 38 is pretty dramatic. It would basically eliminate clause 38, which causes us several technical problems around the different items that are dealt with in clause 38.

Of course it's up to the committee, and I can't speak to what the committee will do, but obviously our preference would be to be given the opportunity to draft an appropriate amendment to ensure that everything works properly, so that the consideration of clause 38 would be, in essence, tabled until we could get that amendment drafted and the appropriate notice provided.

Mr. Pierre Poilievre: Could I ask for unanimous consent that clause 38 be tabled until an appropriate amendment can be tabled?

The Chair: Ms. Jennings.

Hon. Marlene Jennings: My question is this. If we move forward with L-2.2, the government can still give a 24-hour notice to bring a further amendment that would deal with clause 38 and make the appropriate adjustments. Am I correct?

Are you guys in favour of L-2.2?

Some hon. members: No.

Ms. Marlene Jennings: So you don't want to move the whole issue of trust under the Canada Elections Act, as has been recommended both by the parliamentary counsel and the law clerk?

The Chair: If you have any chatter...what are we doing here?

It seems to me, Ms. Jennings and Mr. Poilievre, that we need to agree to stand clause 38 down until the next meeting; otherwise we'll have a problem—well, we could have a problem.

Someone has to make a suggestion here. That's my suggestion, whether that's appropriate—

Mr. Pierre Poilievre: I have a motion on the floor.

● (1130)

The Chair: I haven't heard it yet, but go ahead.

Mr. Pierre Poilievre: I move that we stand down clause 38 until such time as an appropriate amendment can be drafted to accommodate the changes necessary in Liberal amendment L-2.2.

The Chair: If it carries, that means we'll have to delay voting on clause 2 and all those other clauses that we've been dealing with—and that's not a problem. We'll just proceed further with new clauses, but it means we can't proceed with clause 2 and the other clauses.

Mr. Pierre Poilievre: Can we proceed beyond clause 2, then?

The Chair: Yes, absolutely.

Mr. Pierre Poilievre: Okay. As long as we can progress on the other clauses.

The Chair: Just so I'm clear on your proposal, are you suggesting it be stood down until the next meeting? Will that be sufficient time? Is that what you're suggesting for the committee to decide?

Mr. Pierre Poilievre: I think we can get a draft within one day.

Just one second.

The Chair: I'm sorry to interrupt you, but another alternative would be to deal with L-2.2 on page 48.3. If that fails, then you wouldn't need to do what you're doing.

We're back to you, Ms. Jennings, as I promised.

Hon. Marlene Jennings: Yes, I move my amendment L-2.2.

The Chair: Well, I want to be clear, we do have a motion on the floor.

(Motion withdrawn)

The Chair: We're back to you again.

Hon. Marlene Jennings: I would move my amendment L-2.2, which is found on pages 48.3, 48.4, and 48.5.

The objective of this amendment is to ensure that all of the dispositions or clauses of Bill C-2 that deal with potential or existing trusts that parliamentarians may hold or that may be held by others on behalf of a parliamentarian...rather than have it dealt with under the Conflict of Interest and Ethics Commissioner, it rightfully belongs under the Canada Elections Act. The political financing bill that was adopted by Parliament in 2004 under the previous administration had already begun to deal with that issue. Therefore, the Chief Electoral Officer of Canada is the proper person, etc.

This was also recommended by the parliamentary counsel and law clerk.

The Chair: Mr. Moore.

Mr. Rob Moore: Well, I have a number of concerns with this provision, and I'd also like to get the opinion of our experts here. Maybe I'll ask their opinion first, and then—

Mr. Joe Wild: Mr. Chénier will speak to this.

Mr. Marc Chénier (Counsel, Democratic Renewal Secretariat, Privy Council Office): Thank you, Mr. Chair.

I think there are a few points that should be brought up for the committee's information.

When he appeared before the committee, the law clerk mentioned that the intent of the provisions was to regulate political financing, and as a result, the matter was best dealt with under the Canada Elections Act.

I'd just like to point out that there are measures in the current clause 99 that provide that a member is not to use any benefit from a trust for political purposes, but that's almost a secondary clause in clause 99. The main purpose of the clause is to require MPs to disclose all of their trusts and to require them to wind them up. The reason behind that is there's a perception that trusts are inherently problematic because they offer an opportunity for members to receive compensation and this compensation could lead to undue influence.

What this committee will have to consider, I guess, in determining whether to go through with this amendment, is whether the same policy rationale exists for candidates—whether, first of all, they can be subject to undue influence and whether it makes sense to also include candidates in the scheme.

Having said that, I think committee members should be aware of serious operational concerns that could be raised by placing this in the Canada Elections Act and by including candidates. Essentially what this would mean is that in the short period of an election, which can be as short as 36 days, the Chief Electoral Officer would have to receive statements from...in the last election there were over 1,600 candidates, so he would have to receive the statement of trust from 1,600 candidates. He would have to assess them and he would have to order candidates to terminate most of these trusts. Candidates would have to do so during the period of 36 days. As you are all aware, candidates are busy during an election period, and it would be a great imposition I think on a candidate to have to deal with their personal financial arrangements in the context of a 36-day election campaign.

I don't want to speak on behalf of the Chief Electoral Officer, but I believe it would be a concern for his office to have to process all of these disclosure statements from members in the short period of an election when Elections Canada is overwhelmed by other matters.

● (1135)

Mr. Rob Moore: Thanks. I guess that confirms some of my concerns with this. You've got all these candidates who could be running in an election, some of them without a hope of winning and certainly in no position to influence anything. They're a candidate; they're not in a position of power. I would think this provision could have the effect of keeping some people from even running in an election or in a nomination process, and I don't think that's what we want to do. We want to encourage participation in the democratic process. If someone is in no position whatsoever to have any influence, what could be the possible benefit of asking them to take these major financial steps? If they're perhaps in a riding where their party is going to get 2%, 3%, or 10%, they want to carry the flag in their riding, but they may not want to jump through these hoops that are set out.

I have one more question. If we're trying to eliminate undue influence or if we're trying to prevent someone from benefiting themselves, wouldn't that only apply in a case where someone was actually in a position of power, in a position to benefit themselves? I guess I don't see how a candidate for a political party would be in that position at all.

Mr. Marc Chénier: I think that's something for the committee to decide, whether there would be a policy goal to be achieved in putting in these, as you mention, severe consequences for a candidate having to run. They'll have to disclose all of their personal assets that are in trusts. The rule under the proposed amendment is to terminate all of these trusts unless they are set up by a family member, so any other personal trust would be terminated.

Mr. Rob Moore: Thanks. I just don't see the point. As a candidate, you're in absolutely no position to influence anything; you're out there trying to run a campaign. Of course, we're all governed by electoral financing laws, so what is the possible benefit to be gained by setting up what I would think would become a huge bureaucracy trying to manage these things?

The Chair: We have Ms. Jennings, Mr. Poilievre, and then Madame Guay.

Hon. Marlene Jennings: I'm perplexed at the anxiety my amendment appears to be raising among some of the members of this committee. I've been an elected officer, a member of Parliament, since June 2, 1997. I don't have any trust, and to my knowledge there's never been any trust fund set up for my benefit. I don't know of any other parliamentarian actually in office today who has a trust fund set up directly for their benefit. I am aware, and I believe it's public knowledge, that prior to the electoral financing act, Bill C-24, there were a number of parliamentarians in at least two parties, if not three, who did have trusts that were either set up by themselves or by others, and those, I understand, were all folded in under the electoral financing act.

As to the number of people who run as candidates in the general federal elections, and the fact that this amendment might overwhelm the Chief Electoral Officer, I do not believe the Chief Electoral Officer would be overwhelmed, because even if there were 3,000 candidates, I have not seen any evidence that all 3,000 candidates would in fact have a trust fund established in their benefit.

We already have to fill out a nomination ballet and collect signatures from registered voters in the riding; that's each and every person who wishes to run as a candidate and have their name on the ballot. There are also multiple reports that we each have to file, or our official agent has to file, and Elections Canada does quite well, and they know that if they require further resources to deal with any further authority or responsibilities that are given to them through changes to their statute, they will receive it.

That's the one interesting thing. The Chief Electoral Officer, to my knowledge, is the only parliamentary officer who has no limit on his or her budget under the act, and is able to go and get the increases that are required, precisely because one never knows when an election will be called. Even if this current government's legislation for fixed election dates carries, we still don't know, because there are all kinds of windows and doors open to allow whoever is the Prime Minister to call an election at any time, even though it claims to be in a fixed election date act.

So I come back to the point. I do not think the argument that the Chief Electoral Officer would be submerged under the authority that this particular amendment would provide him or her.... I think there are more than sufficient protections, including financial ones, to ensure that the Chief Electoral Officer has the resources required.

Secondly, I don't believe that this particular amendment, if it carries, is going to create a whole new cottage industry, because it is my understanding—unless a member of this committee has information otherwise—that the overwhelming majority, if not all, of the 308 members of Parliament and the 100-and-whatever senators do not have trust funds, the sole purpose of which is to benefit that parliamentarian, as a parliamentarian, or as a candidate in a future election.

● (1140)

The Chair: We have Mr. Poilievre and then Madame Guay.

Mr. Pierre Poilievre: Can you describe the kinds of trusts that are covered under the existing provisions in the Accountability Act?

Mr. Marc Chénier: Right now, clause 99, which was pretty much included in the subamendment, requires that all trusts be included, so we're not just talking about trusts that were set up for political purposes to try to campaign. It includes personal trusts; so if your friend leaves you a testamentary trust or something like that, these would be included.

Madame Jennings is right that when Bill C-24 was adopted in 2003, it solved a lot of the problems that existed with political trusts. With Bill C-24, it became impossible for such a trust fund to be used to fund a candidate, because of the new contribution limits. Basically, an association would only have been able to donate $1,000 at the local level. So the trust funds that existed for political purposes and that had $100,000 in them couldn't be used anymore. In a lot of cases, we presumed they were terminated before Bill C-24 came into effect, and the money was transferred to the electoral district associations.

● (1145)

Mr. Pierre Poilievre: So this deals primarily with personal trusts and other sorts of trusts that are not related to election campaigns, leadership campaigns, or any sort of political efforts?

Mr. Marc Chénier: Mr. Chair, that's correct.

Mr. Pierre Poilievre: Can you describe a few more? You said personal trusts, but can you elaborate?

Mr. Marc Chénier: Basically everything is included. They all have to be disclosed to the Ethics Commissioner, except for RRSPs and RESPs. The ones that must be terminated are all trust funds, except for those set up by a relative, and there's a definition of "relatives" in the clause.

Mr. Pierre Poilievre: Can you give me some examples of personal trust funds that would be banned?

Mr. Marc Chénier: As I mentioned, an example is a testamentary trust, so a trust set up by the will of a person who was not a relative. That would be included. It could include any trust set up by a non-relative, essentially.

Mr. Pierre Poilievre: Because you're worried that someone, for political reasons, could try to influence an elected representative by leaving them a trust, or providing them with..... That's what we're trying to get at in this is clause, is that not the case?

Mr. Marc Chénier: That was the purpose or intent behind the clause, to include all trusts.

Mr. Pierre Poilievre: So basically what we're dealing with here is a proposed section that has very little to do with elections whatsoever. Ms. Jennings actually makes the government's point for it, in pointing out that political trusts are largely dealt with in Bill C-24, which has already been adopted.

This proposed Accountability Act, in this proposed section, is inclined to deal with personal trusts and other things that could be inclined to influence the behaviour of a member of Parliament. It is designed to eliminate trusts for MPs because they are inherently problematic, as they offer the opportunity for MPs to acquire secret compensation that could influence them in the performance of their duties. It is not the same as a political trust that is designed to run a campaign. That is why it's in the Parliament of Canada Act. Provisions like these have always been in the Parliament of Canada Act.

So it doesn't specifically deal with candidates; it deals specifically with elected representatives and avoiding the prospect that they might be influenced through a special personal trust that could be set up for them. So if you transfer this over to Elections Canada, what you are doing is you are then putting it under the rubric of the Chief Electoral Officer, who really has very little to do with the day-to-day accountability of members of Parliament and public office holders. You're also applying it then to all the candidates in an election, are you not?

For the record, I'm getting yes from the members of the panel.

The Chair: Please indicate whether that's yes or no.

Mr. Marc Chénier: Yes, it is.

Mr. Pierre Poilievre: So you would have candidates for political office saying they present themselves as independents, with very little chance of winning. They happen to have a trust that was passed on to them. It's perfectly legitimate, but it would not be legitimate if they held electoral office. They would have to dissolve that trust, even if they were never going to be elected, simply to put their name on the ballot, and that's not the purpose of the law. The purpose of the law is to get at people who are in office so that they do not accept personal trusts that amount to secret compensation in a way that could influence their conduct in the House of Commons.

So to take that and put it under the Canada Elections Act is totally illogical. It presents a whole series of legal challenges, because you'd have a section designed to deal with the accountability of members of Parliament who are elected finding itself in a section of the Canada Elections Act that has literally nothing to do with the provision that would be contained in it.

So with that, I respectfully offer my opposition to this amendment.

Thank you.

● (1150)

The Chair: If you promise to be brief, a point of clarification, Ms. Jennings, ahead of Ms. Guay. We have about 10 minutes left and the bells—

Hon. Marlene Jennings: Yes, I simply wish to point out that under my amendment, if one looks at subsection 404.5.(1), it clearly states:

[*Translation*]

> 404.5 (1) Il est interdit à tout candidat ou député d'accepter, directement ou indirectement, un avantage ou un revenu provenant d'une fiducie établie en raison des fonctions qu'il exerce à ce titre.

[*English*]

In English:

> 404.5(1) No candidate or member may, directly or indirectly, accept any benefit or income from a trust established by reason of his or her position as a candidate or member.

So it would not cover trusts that one inherits or trusts that are set up by a family member from which one would benefit. It deals with trusts that are established by reason of his or her position.

And I would move the question.

The Chair: We have a list.

You've got a point. I allowed you in here ahead of Ms. Guay, and Mr. Moore has a question.

I think I'd like to go to Madame Guay before you, Mr. Moore, unless—

Mr. Rob Moore: I have a point of order.

The Chair: Yours is a point of order, sir? Okay. We allowed Ms. Jennings, so why not you?

Mr. Rob Moore: It's a point of clarification.

I think that interpretation is wrong. I can see that on section 404.5, but when you go to section 404.6, it says:

> 404.6.(1) Every candidate or member shall disclose to the Chief Electoral Officer every trust known to the candidate or member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income.

That does not refer to a trust set up by reason of their being a candidate.

When we read on, it says that if it's legally possible the trust should be terminated. So to me, that contemplates the scenario raised by the expert that a friend has died and in the will a trust has been left to you. If you want to be a candidate, that trust has to be terminated. That's a pretty big hoop to jump through if you want to be a candidate. It's every trust, not just political ones.

The Chair: Madam Guay.

[*Translation*]

Ms. Monique Guay: Thank you, Mr. Chair.

This is about accountability. However, I believe this clause has been included out of a concern for transparency. It makes it possible to ensure even more that people who may be in possession of trusts do not wind up in situations of conflict of interest at the time of an election.

As Marlene said, people who are in possession of trusts are not legion. Whatever the case may be, declaring to the Chief Electoral Officer at the outset that there is or is not a trust would ensure that candidates who run are clean beyond any doubt. That would prevent the Ethics Commissioner from one day discovering that elected representatives have benefited from trusts and that, consequently, by-elections must be held, which would be tiresome. So, Mr. Chairman, I believe we should examine this question.

I also want to emphasize that the NDP's amendment 1.1 is the same in all respects as that of the Liberal Party. We should ensure it is withdrawn.

[*English*]

The Chair: So withdraw them. It's the same.

I'm going to allow Mr. Moore....

● (1155)

Mr. Rob Moore: This is just to quickly say that Madam Guay said a declaration. This goes beyond a declaration; it means a termination of that trust.

The Chair: Okay. Everybody is asking for questions, so we're going to....

Do you have a point of order?

Hon. Marlene Jennings: I have a point of clarification, but if you want me to call it a point of order....

The Chair: This has to end somehow.

Hon. Marlene Jennings: The point I want to make is that I understand the concerns that are being expressed by my colleagues on the other side, that the term "trust" may not have been sufficiently defined in order to ensure that it is perfectly clear that only those trusts that have been established by reason of the candidate or member's position, the person's position as a candidate or member, would be captured in any of the sections proposed under L-2.2, and that the issue of subsection (6)....

I would be prepared to stand this down until the next sitting of this committee, in order to see whether or not these concerns could be properly addressed to the satisfaction....

The Chair: There doesn't appear to be unanimous consent, so unless someone else is going to say something, we're going to vote on it.

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

The Chair: We have a couple of minutes left. We'll give it a try.

We have not finished clause 38. On page 44 there is a government amendment, G-24.

Mr. Poilievre.

Mr. Pierre Poilievre: It is so moved.

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

The Chair: I think we've run out of time, folks, unless you want to try something.

Mr. Pierre Poilievre: Mr. Chair, I trust you'll have unanimous consent for us to sit this evening as well, to make up some of the time we've lost.

The Chair: Do we have unanimous consent to sit this evening? There doesn't appear to be unanimous consent, so I'm going to adjourn the meeting until—

Mr. Pierre Poilievre: I just want to table a motion, Mr. Chair.

I'm serving notice of a motion that the committee extend its sitting hours until clause-by-clause study of Bill C-2 is finished and has been reported back to the House. We add Thursdays from 3:30 p.m. to 5:30 p.m. and from 6 p.m. to 9:50 p.m., Fridays 8 a.m. to 10 a.m. and 1 p.m. to 9 p.m., and Mondays from 8 a.m. to noon.

The Chair: Thank you.

Mr. Owen.

Hon. Stephen Owen: Are we not debating this now?

The Chair: No, that's a notice of motion. We can't.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'd like this question to be put to a vote immediately. I request unanimous consent for that purpose.

[*English*]

Mr. Pierre Poilievre: We're going to vote on it—

Mr. Benoît Sauvageau: No, no—right now.

The Chair: There's been a request for unanimous consent to vote on that now. Do we have unanimous consent?

● (1200)

[*Translation*]

Mr. Benoît Sauvageau: The Conservatives refuse.

Thank you.

[*English*]

The Chair: There's no unanimous consent. Is anyone else going to have some fun here?

We are adjourned until Monday at 3:30. I believe it's this room, unless we are otherwise notified.

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