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Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

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● (1530)

[*Translation*]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): I call the meeting to order.

Good afternoon. Welcome to the 63rd hearing of the Standing Committee on Access to Information, Privacy and Ethics. Today we will continue our statutory review of the Conflict of Interest Act.

We welcome our two witnesses, Mr. Conacher, who is a member of the board of Democracy Watch, and the chairperson of the Government Ethics Coalition; and Ms. Turnbull, who is associate professor at Dalhousie University.

As usual, our witnesses will have 10 minutes for their presentation and then we will have a question and answer period.

So without further ado, I will yield the floor to Mr. Conacher for the next 10 minutes.

[*English*]

Mr. Duff Conacher (Board Member, Chairperson, Government Ethics Coalition, Democracy Watch): Thank you very much for this opportunity to testify on one of the most important democratic good government laws that exists in any country, including in Canada, namely the Conflict of Interest Act. I welcome this opportunity, slightly overdue, for this five-year review of the act.

First, just to anticipate questions that I usually get when I appear before a committee, and so we don't have to spend time answering them later, I'm here as a representative of the Government Ethics Coalition. It's a coalition made up of just a bit more than 30 organizations from across the country. The total membership of the organizations is over three million Canadians. We've been working together as a coalition now for more than a decade pushing for changes both to ethics rules and lobbying rules. As some of you will likely remember, I was here almost exactly a year ago testifying on the Lobbying Act.

As with the Lobbying Act, I see that the committee and the government has a simple choice. We're recommending 30 changes to the act. You will not have received my brief. Essentially I took a bit longer with the brief because I wanted to review the Ethics Commissioner's report, which was not short. I just got the brief in to the clerk yesterday, but you will receive it soon. You'll see that I and the coalition address in the brief not just the act but also the MP's code and the senator's code and also related laws like the Lobbying Act because they are all interrelated in terms of setting standards and enforcement systems to ensure democratic ethical good government.

The simple choice in terms of the committee making recommendations and the government making changes is either to make what the coalition sets out as 30 much needed changes to the act and the codes and another 14 changes to the related laws, or leave loopholes open and enforcement weak and ineffective, which essentially allows for unethical decision-making and unethical relations mainly with lobbyists by everyone involved in federal politics. Even the Ethics Commissioner, who has been mostly, from our perspective, an ineffective lapdog for the past five and a half years, has made 75 recommendations for changes to the act, most of them to strengthen the act, a few to weaken it.

I think there's a general consensus that the act is a bad joke. The act and the MP and senator ethics rules are so full of loopholes they should really be called the “almost impossible to be in a conflict of interest rules”. Even worse, the rules don't apply to some cabinet appointees, some ministerial staff and advisers, nor do they apply to the staff and the advisers of MPs and senators. So there are lots of people in federal politics who have no ethics rules that they have to follow at all.

The Ethics Commissioner's recommendations, 75 of them, didn't even address the two biggest loopholes in the act. Because of these huge loopholes, which also exist in the MP's code and senator's code, the act and the codes do not apply to 99% of the decisions and actions of the people covered by the act and codes. You currently have a law and codes that only apply to 1% of what people do who are covered by those codes. I'll talk about that a bit further.

The ethics rules that federal politicians have imposed on public servants through the values and ethics code of the Treasury Board and the conflict of interest policy do not contain most of the loopholes and flaws that are in the rules for politicians and their staff and cabinet appointees, so they're much stronger. Also, the Prime Minister has set an accountability guide for ministers that does not contain these loopholes. The MP's code and the senator's code have principles and purpose sections that are unenforceable, but if they were made enforceable most of the loopholes and flaws would be actually closed and we'd have meaningful ethical standards that would apply to 100% of what people do, not 1%.

● (1535)

An overall easy fix to the act and the codes would be just to take these rules from the public servants' codes, which politicians have imposed on them, and impose them on yourselves. Make these enforceable rules. In other words, the standards are already there, and they're in print; they're just not enforceable and not applicable to everybody.

There are also many enforcement problems. The cases of dozens of cabinet ministers and MPs being let off the hook with no penalty since 2007, along with many others who have escaped accountability for unethical behaviour in the past decades, show just how much the federal ethics rules and enforcement system are an ongoing bad joke. In the past 20 years, about 50 cabinet ministers have violated federal ethics rules, and only two have been penalized in any way: they were kicked out of cabinet. That's not a great enforcement record.

The Ethics Commissioner is a major part of the problem with ethics enforcement. Since 2007, she has rejected at least 80 complaints filed with her without issuing a public ruling. There could be more, because she didn't even disclose the total number of complaints she received in 2008-09 or in 2010-11. There is a total of 100 situations that she mentions in her annual reports, and she has issued 17 rulings, but that means there are 83 secret rulings at least. We don't even know how much she might have covered up, and there's good reason to suspect that she has covered up some cases, as she has repeatedly interpreted and applied the act and codes in very narrow, bizarre, and legally incorrect ways since 2007 and has let dozens of people off the hook.

A lot of the Ethics Commissioner's recommendations don't really have to be implemented. All that has to happen is for her to reverse her bizarre rulings and start enforcing the act and codes properly, legally, correctly, and in the spirit of the act and the codes. The real intent is to prohibit anyone from making a decision or undertaking any action if they're in any type of conflict of interest, real, potential, or apparent.

However, because of these loopholes and flaws, because the government has ignored recommendations over the past five years from the Ethics Commissioner and from others, including the Oliphant commission, and because the Ethics Commissioner shows no signs that she will reverse any of her bizarre rulings, there are 30 changes needed to the act and the codes, and another 14 changes, to actually clean up federal politics after the more than 145 years since Canada became a country.

There are no valid excuses for failing to close the loopholes and strengthen enforcement. It's really just a choice. If you as a committee don't recommend closing these loopholes and strengthening enforcement, you'll essentially be confirming that you think unethical decision-making and unethical relations by everyone in federal politics is just fine.

You face the same choice that past committees have faced. None of the committees has made the recommendations, and governments haven't made the changes, even though both the Chrétien and the Harper governments promised ethical decision-making and relations in federal politics. This is the 10th time that I've testified in the past 20 years. I'm hoping finally that it will have some effect and that we will finally get these changes that will make corruption effectively illegal.

We should be trying to match not just the standards that the Supreme Court of Canada has set out in several rulings but also those of the UN, the OECD, the World Bank, and the IMF. Every international institution says that if you don't have a democratic good government in which unethical decisions and relations are prohibited, you do not have democracy.

Therefore, I appeal to you to think about yourselves, to look in the mirror or look at your kids and your grandkids, and to think about whether you want to tell them in the future that you had an opportunity to push to close loopholes to end unethical decisions and relations in federal politics but that you did nothing.

Hopefully you will do something, as you did with the Lobbying Act. I think the committee made a good try. The minister rejected most of them. There were some loopholes the committee didn't address, but it was definitely a step forward, and hopefully the minister will respond more favourably in the future.

I will turn to the recommendations of the coalition.

First, as I mentioned already, ensure that everyone is covered by ethics rules. Some people are not, currently, but everyone should be, including the MPs' and senators' staff and advisers. We need to extend the codes to cover them.

● (1540)

Second, enact a general ethics integrity rule, essentially an anti-avoidance rule, such that if someone tried to exploit a technical loophole, they would not be able to but would still be found to be guilty for not maintaining high ethical standards and acting in a way that shows integrity. This rule already exists for public servants, so apply it to everybody else.

Third, enact an honesty in politics rule that everyone is required to comply with at all times. This rule already exists for public servants. It's also set out in the accountability guide for ministers and in the MPs' code in the principles section, so just apply it to everybody and make it enforceable. To paraphrase Gandhi, a lie for a lie will make the whole world dumb. As long as we allow lying in federal politics, we're going to continue turning off most voters. It's the number one hot button issue that Canadians want accountability for. Again, it's already in the rules; just make the rule enforceable.

Fourth, enact a rule prohibiting everyone from being in an apparent or foreseeable potential conflict of interest. Again, this rule already exists for all public servants, except the most senior people, who are covered by the act. This rule is in place for B.C. politicians in their act. It's also, again, set out in the principles in the accountability guide for ministers, in the MPs' code, and in the senators' code. Just make it enforceable. There has to be an apparent conflict of interest standard in force.

The huge loophole that exists in the act and in the MPs' and senators' codes is that you cannot be in a conflict of interest if you are dealing with a matter of general application. Ninety-nine per cent of what you do involves matters of general application. This loophole has to be eliminated, or the act and the codes will continue to apply to only 1% of what federal politicians, their staff, cabinet appointees, and advisers do. There's no reason to have that law if it's only going to apply to 1%.

[*Translation*]

The Chair: I am going to ask you to conclude your presentation as quickly as possible.

Mr. Duff Conacher: Very well. I only have four or five points left.

[*English*]

You need to increase disclosure of assets, lower the threshold, and strengthen the gift rules to make it clear that all gifts, if they create the appearance of a conflict of interest, must be refused. That includes deleting the loophole that allows MPs to accept sponsored travel. You need to enact a rule prohibiting the acceptance of any benefit in return for switching parties between elections. You need a specific rule on that. You need a specific rule prohibiting the personal use of government property, which is not actually in the act, even though it's in the accountability guide for ministers.

There should be a sliding scale, applying to everyone and depending upon their power and their potential conflicts, that prohibits lobbying of any kind, whether it's registered lobbying or not, for one to five years after they leave office. It should slide up and down depending upon the power of the person when they leave office.

In terms of enforcement, the ethics commissioner must be issuing public rulings. She's done more than 80 secret rulings in the last five years. Every one of her rulings must be public. She must be required to do audits and be required, when she finds a violation, to impose a mandatory minimum penalty. Mandatory minimum sentences are applicable for ethics violations, and they should match the penalties for lobbying violations, which are $50,000 to $200,000 fines.

● (1545)

[*Translation*]

The Chair: Thank you. Unfortunately, your time has expired.

Mr. Duff Conacher: Thank you for your patience.

[*English*]

I welcome your questions. Thank you.

[*Translation*]

The Chair: I am now going to give the floor to Ms. Turnbull so that she can make her presentation.

Ms. Turnbull, you have 10 minutes.

[*English*]

Dr. Lori Turnbull (Associate Professor, Dalhousie University): Thank you. I'm going to be a little bit more general in my comments.

We're talking today about the Conflict of Interest Act applying to ministers, parliamentary secretaries, ministerial staff, ministerial advisers, deputy ministers, and other Governor in Council appointees. There is, as you know, also a code for members that would also apply to ministers simultaneously, but we're dealing just with the Conflict of Interest Act today.

In a general sense I would say that most of my work on this has been in a comparative context. I can say that in terms of conflict of interest legislation and codes that apply in countries that we normally compare ourselves to, the code that we have sort of looks like everybody else's in the sense that we have rules against similar things, and we have rules encouraging similar things. Our legislation has a lengthy section on what happens when you make the transition from public life to private life. There are different rules about cooling-off periods and what you're not allowed to do and whom you're not allowed to work for. It looks in a general sense like what the U.S. does, what Australia does, what the U.K. does, what we do in the provinces.

What you see in terms of differences between the legislation is there might be differences in punishments for failure to comply. There might be different reporting requirements. There might be different lengths of time in terms of cooling-off periods. But essentially the thrust of it is relatively similar. We deal with switching sides. We deal with the inappropriate use of information. We communicate that it's wrong to use the information you got in your public office once you come out to the private sector. All of those major things are there.

I wouldn't say that if we compare ours to other similar pieces of legislation, there's any glaring omission. There's not some huge area I can see that other jurisdictions deal with that we don't. In the other direction, I would say there's nothing really we're doing that we're the innovators for, that others aren't doing right. Our legislation seems to be relatively consistent with a group of countries that we normally compare ourselves to.

But there are differences in terms of the pieces of legislation in the area, if you look at them. It seems to me that regardless of how the code is worded and exactly how it's structured and that sort of thing, generally these things have similar objectives. Sometimes you see a legislature move to create this kind of code because they want to be consistent with other legislatures, because they want to make sure they're covering this off. Oftentimes these things come about when there's a specific trigger event or problem, that sort of immediate thing you want to show you're responding to.

But whatever it is, generally a code of ethics comes forward as a piece of communication. It's a tool to communicate. It's a tool to communicate standards to the people who are under the code. In this case it's something to communicate ethical standards and expectations to public office holders. It's also a tool to communicate to the public.

What people hope when we create these codes is that the people who are working under the code, the people who have to abide by the code, get a sense of what they're supposed to do. That's first and foremost. When we have this piece of legislation come into place, I'm guessing that the people who come under the piece of legislation want to be able to look to it and figure out what they're supposed to do, because what you don't want to do is find out you're on the wrong side of it. What you want it to do is create a common set of assumptions and understandings about what's acceptable and what's not. You want to have a clear idea of how you're supposed to be compliant with this thing, because most people are going to look at it and just not want to have any problems come from it. They want the instructions to be clear so they can do what they have to do, disclose what they have to disclose, and move on with their lives.

If you don't have a code like this, the information that we have from other jurisdictions seems to suggest that MPs and public office holders will have very different assumptions about what's ethical and what's not. If you can imagine not having a code at all and you went around to every MP and asked what they thought was an acceptable value of a gift to accept, or what they thought was acceptable in terms of disclosing assets, liabilities, that kind of thing, they would have very different ideas about those things. That means if you don't have a code, everybody is doing something different. If you have a code and everybody understands it and it's enforced reasonably well, then it means everybody is working under the same set of assumptions. Everyone is toeing the same line in terms of what we expect.

● (1550)

If everybody understands what's expected of them and everyone can sort of agree that it's reasonable, then probably over a period of time you will get a culture of acceptance of what the code is about. You're more likely to get compliance that way, because people get it. They think it's reasonable. People see that's what everybody else is doing, so they want to do the same thing so they're not the exception to the rule. It's much easier to get voluntary compliance if it comes across as reasonable and if everybody understands it. That doesn't necessarily mean the penalties have to be terrible. You should understand what's expected of you. That's the communication to public office holders, MPs, etc.

As for communication to the public, normally when these things are passed, whether as legislation or as part of the Standing Orders or whatever, legislators want members of the public to think that things are being run ethically. In the Canadian context, we don't want people at home to think that everything that happens on Parliament Hill is corrupt, and every time an MP meets with a lobbyist there's something miserable going on. We use these things to tell the voters that we're mindful of ethical standards all the time, and that there's a right way and a wrong way to do things, and that we're doing things the right way.

Finally, usually these codes have some sort of mechanism of compliance and penalty if you do something wrong, which is another way of communicating to the public that we take ethics seriously and that people who violate these rules will be punished.

Sometimes there can be a problem in the sense that the objectives of the code can come to be at odds with one another. In trying to encourage ethical behaviour, in trying to encourage compliance, in the process of trying to expose any kind of wrongdoing that's happening and punishing someone, all of which are totally defensible goals, sometimes the transparency can encourage the public to think there is actually a lot of wrongdoing when in fact there is not. If the media really have a lot to focus on and there are a number of investigations, and a number of times somebody is penalized $500 because they didn't disclose on time, then there's lots of fodder to start saying that all these things are going wrong and ethics is really a problem, when that might not be the case. It might not be that behaviour has really changed much at all; it's just that this is how the code works and it's exposing things.

In order to avoid that kind of a problem, I would say that we want to have the right balance between rules and principles. Generally the codes will fall on a kind of rules versus principles continuum in the sense that some codes—and you'll see these in the corporate world too—are very principle oriented. The language is very aspirational. The code talks about what we want and what you should do: MPs should uphold the highest ethical standards; it's all about what you should do and how you should look and what it means to be ethical. That's generally what the principles look like.

The rules tend to focus on what it means to be doing something wrong: the code prohibits this; you'll be penalized $500 if you do this. The language tends to be sort of negative, because that's the way rules and laws are. You focus on the things you're not supposed to do, and then you outline the penalties for doing them.

I think you want to get the right balance between those two things so that the principles are there, but then at the same time the rules are there to give some sort of clarity to the principles so that MPs and other people under the code know what they're supposed to do.

I read Commissioner Dawson's report as well. I can see that she has made a number of recommendations, many of which are very specific on the basis of her years of experience with the code and problems that she has run into. It seems to me that in some cases there are discrepancies between her mandate and the objectives of the code on one hand and her ability to get information and see what's really going on on the other hand. I think she is trying to close those gaps in some cases. She spends a lot of time talking about the idea of gifts and advantages and how MPs and ministers are supposed to deal with those.

In terms of closing loopholes, in terms of lowering the threshold for disclosure of a gift to $30 instead of $200, you can do a lot of that. Every time you review this code, every five years, you can probably come up with another huge list of things that you can penalize, or that you can address, or that you can create a mechanism to do something about.

● (1555)

You can do that over and over and over again, but it's not going to stop. Every time you review, there is going to be another area of behaviour that will come to your attention that you can make rules about. You can't do it exhaustively. If you focus too much on the rules and not so much on the principles, it doesn't encourage MPs and other people to use the kind of common sense approach which would probably eliminate a lot of these problems.

I would hope to see that whatever goes forward would be a balance between rules and principles, so you don't go too far off in one direction.

[*Translation*]

The Chair: Thank you very much for your presentation.

Without further ado, we will begin our seven-minute question and answer round with Mr. Boulerice.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Mr. Chair.

I thank our witnesses for being here, and congratulate them on the quality of their presentations.

I would like to begin with Mr. Conacher.

Thank you for continuing to come to Ottawa to testify with such persistence, although we did feel a certain bitterness in your presentation about the absence of adequate change, as you see things.You also used some harsh words to describe the current legislation, words we rarely hear in a committee. Indeed, you referred to it as a "bad joke".

You also were critical of the commissioner's work. If I am not mistaken, you said something about the recommendations she is making. You said that some of these recommendations would beef up the act, and that others in your opinion would weaken it. Is that correct? I would like you to give us a few examples.

[*English*]

Mr. Duff Conacher: Do you mean in terms of the Ethics Commissioner's recommendations?

Mr. Alexandre Boulerice: Yes.

[*Translation*]

Mr. Duff Conacher: I apologize, but my French would have to be better; and so I am going to reply to you in English.

[*English*]

One thing the Ethics Commissioner has recommended, and I'll say generally that we agree with all of the Ethics Commissioner's recommendations and you'll see the ones that the coalition takes exception to in the brief. Essentially, it's worded very clearly saying to not do what the Ethics Commissioner has recommended. There are only a few of them. One is in the disclosure of assets. The Ethics Commissioner is saying to weaken that for some types of public office holders, and in fact, disclosure of assets should be increased.

There are a couple of assets that are actually exempt now. They do not have to be divested from. They are investment vehicles, like mutual funds, where you are investing in companies. You don't have to divest from those even though you would know that you own shares in companies.

She's saying not to increase the divestment standards and actually reduce the divestment standards for certain public office holders covered by the act. It should go the other way. The disclosure of assets should be reduced from $10,000 to $1,000 and the divestment requirements should actually be increased.

The other big one is where she is saying to make the conflict of interest screens that she currently uses legal. They are currently illegal. My position is that the Ethics Commissioner is violating the act by using conflict of interest screens. What she is doing with public office holders is saying, "Tell me the area in which you're in a conflict, and then we'll set up a screen and you will not have to disclose your recusals for every decision-making process that you recuse yourself from." She's saying the screen means that you don't have to disclose recusals, but the act says that recusals have to be disclosed. The screen is not anywhere in the act. It's not legal. I think it's an illegal scheme that's hiding recusals.

There are two loopholes that she doesn't address, the big ones. She's not saying to eliminate the general application loophole. I could call it the Nigel Wright loophole, but it applies to everybody.

If you read Nigel Wright's conflict of interest screen, for example, it says that he will recuse himself from all matters, but he's not going to notify the public when, to do with his financial holdings, except matters of general application. About 99% of what he deals with and what every cabinet minister, MP and senator deals with, are matters of general application. For example, there isn't a Royal Bank act; there's a Bank Act, and it's a matter of general application. This loophole which the Ethics Commissioner does not address means that the act doesn't apply to 99% of what all of you do, which makes it pretty useless. It's almost impossible to be in a conflict of interest. The finance minister can own $1 million in shares in every bank and still make the changes to the Bank Act because you cannot be in a conflict of interest when you're dealing with a matter of general application. If that loophole is not eliminated, it doesn't really matter what else you do in terms of the conflict of interest rules.

The gift rules and things like that are separate. The conflict of interest rules do not apply to 99% of what you do.

● (1600)

[*Translation*]

Mr. Alexandre Boulerice: Thank you for the specific nature of your comments. We are taking good note of them for our study.

Regarding punishment and monetary or administrative penalties, we also sometimes feel a certain impatience, in particular when the commissioner says that certain departments breached the Conflict of Interest Act. I don't want to launch a debate, but let's take the Minister of Finance, for instance. He sent a letter to the CRTC which contravened section 9. At the end of it all, there were no consequences, not even a slap on the wrist, aside from the work that we may do.

You also suggested fines that would go from $50,000 to $200,000. That is quite steep. What violation would a member have to commit to deserve a fine that is higher than some annual salaries?

The Chair: I am going to have to ask you to reply in one or two minutes.

[*English*]

Mr. Duff Conacher: If a lobbyist fails to register, just to register, and disclose what he or she is doing—not even act unethically, but he or she just fails to register—the penalty can be $50,000 or six months in jail. As politicians, you have decided—not you yourselves, but in the past—that failure to disclose lobbying merits that penalty. Well, if it's good for the goose, it's good for the gander. Why has no government set that same penalty for violating the most fundamental, democratic, good government law that there is, which is the Conflict of Interest Act?

There have to be mandatory minimums. It can be on a sliding scale. Rob Ford should not have been faced with a mandatory sentence of being kicked out of office for what he did in Toronto. That's off the scale, and most commentators have said that.

The provincial government in Ontario is looking to change the Municipal Act to say there should be a sliding scale for offences, but there should be a mandatory minimum for every violation. If that's not in place, you're leaving the Prime Minister to do the penalizing. As I mentioned, 50 cabinet minister have violated the conflict of interest code, as it used to be, or Conflict of Interest Act, as it's been in the last 20 years, and only two have actually been kicked out of cabinet. If the enforcement rate is 4%, which it is now, that's not going to discourage people from violating.

[*Translation*]

The Chair: Thank you for your answer.

Mr. Calkins, you have the floor, and you have seven minutes.

[*English*]

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Chair.

I would remind Mr. Conacher that Rob Ford had the due process of the court in the deliberations, whereas all of the power of the investigation and the adjudication in the administration of this piece of legislation that you're commenting on today lies solely within the discretion of one individual commissioner. Notwithstanding that, I will continue on with my line of questioning.

I'm quite interested in some of the things that Ms. Turnbull had to say. You compared Canada's legislation and codes with that in other countries that we would consider to be our peers when it comes to the level of democracy.

What are the other standards that you compared us to? Did you compare us to G-7 and G-8 countries? What have your studies shown us so far? Where have you gone?

● (1605)

Dr. Lori Turnbull: It's been mostly the U.S., Australia, and the U.K., in depth. There's been a general comparison to OECD countries, but not as in depth. Most of the comparison would be with the U.S., the U.K., and Australia.

Mr. Blaine Calkins: You found there are no glaring gaps in what we're doing here relative to those countries. Is that correct?

Dr. Lori Turnbull: Well, most of the codes try to do the same things. Most countries are very concerned, for instance, with the period when someone leaves a minister's office and goes back to the private world. How do you negotiate that relationship? How do you go from being someone who's on the inside to being someone who is very sought after and would be very useful on the outside? What are the ethical implications of making that switch?

On the one hand, you want to make sure the person who is coming out of a ministerial role or from a minister's office is not so heavily penalized, or that the cooling-off periods are so onerous that the person wishes to have never been there in the first place. On the other hand, you have to make sure there's a long enough cooling-off period, an appropriate period, so that there's not an opportunity for—

Mr. Blaine Calkins: The perception is what actually matters there.

Dr. Lori Turnbull: That's right, yes. Exactly.

Mr. Blaine Calkins: This is a very politically charged environment. This is what politics is all about. From my perspective, as someone who's actually been elected and who understands what it's like to be here and knows what it's like to have false or misleading allegations levelled at you because someone hopes to create a perception, whether the allegation is true or not.... Sometimes that creates a sense in the court of public opinion because of the role that I play—and it could happen to any one of us at this table—that already we're in a court of public opinion, and once an allegation is brought forward, even if it's unsubstantiated, it does the damage that it was intended to do. We have some folks thinking that's an acceptable thing to do. Most criminal investigations would never release the investigation until.... There's a reason young offenders aren't named. There's a reason people aren't named until they're actually convicted, and so on. There are good reasons for that.

In the presumption in the court of public opinion, the damage could already be done simply through the fact that an allegation or an investigation is being conducted by a commissioner, for example. Those investigations could easily be triggered by any one of us asking the commissioner to investigate a fellow colleague from a different political party, or whatever the case might be. That could be an effective political tool. In most cases, these investigations yield nothing. For example, they might be just blind, shooting in the dark, hoping that something's going to stick.

In the event that someone is investigated and nothing is actually found, do you think that you or a parliamentarian or an elected official or a public office holder should have the right to know? Common law, I think, pretty much tells you that you have the right to face your accuser. In some of these cases, we don't know who has levelled the allegation or complaint.

Do you think there's anything that could or should be done? Is there something done in other countries that's different from what we're doing now? Should that kind of information be made available to the accused?

Dr. Lori Turnbull: I think I know what you're getting at. I don't know of any countries that are better than we are at handling that.

For the most part, the focus is on the investigations that do find something. The result is public and everybody reads the same report. I understand what you're saying, and I understand the comparison with the legal community and the accused and that sort of thing. On the other hand, I can see how that would make this whole.... I mean, you're absolutely right: this is all politics. That's why I question the concept of enforceability and accountability as they apply here, because all of what we're talking about is within the realm of politics. If you're charging someone $200 or $500 because they weren't complying with the code, does that mean that the code is enforced? Well, no. It just means that there's a $200 cost associated with not disclosing. I don't think I would jump to enforceability just because there are monetary penalties in place.

I can see how, if these kinds of investigations and reports are used as political tools, and the results, whatever they are, are published, it could lead to more politicization and just a longer shelf life for this thing in the public eye.

● (1610)

Mr. Duff Conacher: Excuse me—

Mr. Blaine Calkins: No, Mr. Conacher, Ms. Turnbull and I are having a conversation.

Mr. Duff Conacher: I just wanted to say that—

Mr. Blaine Calkins: That's fine, Mr. Conacher—

Mr. Duff Conacher: —I agree with everything you're saying, if you'd let me just answer a little bit.

Mr. Blaine Calkins: It is my time. I suppose if you want to—

Mr. Duff Conacher: No, that's fine. I just wanted to say I agree with everything you're saying.

Mr. Blaine Calkins: That's okay. I appreciate that.

This is for both of you, then, because my next line of questioning is what I wanted to get into with you, Mr. Conacher. I'll have the floor open for both of you to answer this question.

You already addressed it a little in your comments regarding the cooling-off period. I'd like to know how we are in relation to other countries that you've studied, and whether or not you think the cooling-off period in Canada.... When I first arrived here in 2006 as a member of the Conservative caucus, and the government brought forward the legislation, the Federal Accountability Act, we made some significant changes at that time in our country. We had the Lobbying Act, and we had significant changes when it came to various other pieces of legislation regarding accountability and transparency. Notably, the cooling-off period was in one of those pieces. It has subsequently been changed, I think in 2008 or 2009, or somewhere along the line—

[*Translation*]

The Chair: Mr. Calkins, please get right to your question.

[*English*]

Mr. Blaine Calkins: I just want to know if you think that's sufficient, and where we are in relation to other countries.

[*Translation*]

The Chair: Could you reply very briefly, please?

[*English*]

Dr. Lori Turnbull: The cooling-off period of five years in the Lobbying Act, as far as cooling-off periods go, seems to be on an international scale about as long as I've seen generally. There are some jurisdictions that don't have cooling-off periods at all, and you kind of wonder why. The five years in the Lobbying Act I would see as.... In terms of a reasonable imposition on someone's professional life, I would not make an argument for going beyond five years. I've not seen other jurisdictions that we would compare ourselves to go longer than five years.

Obviously, there are some things that are prohibited in the Conflict of Interest Act that don't have an expiry date. They don't have a cooling-off period. As you know, you're not allowed to go from working on a file in a minister's office to coming out, switching sides, and working on the same file on the other side, ever. There's no cooling-off period for that. You just don't do it. Apart from that, I've not seen anything longer than five years.

Mr. Blaine Calkins: We're at the leading edge of that as far as—

Dr. Lori Turnbull: For some of the things that we have a cooling-off period of one year for, comparatively internationally that might be a little short. You might see two years for it. You might see five years for it. I haven't seen longer than five years.

Mr. Blaine Calkins: Good.

[*Translation*]

The Chair: Thank you.

Your time is almost up. You have 30 seconds at the most.

I can let you continue.

[*English*]

Mr. Duff Conacher: This is just to say there are loopholes in the Lobbying Act. You can go out and do unpaid lobbying. There is no five-year ban on that. There's not even a one-day ban on that. There are some loopholes in the definition of lobbying that undermine the five-year ban. But it shouldn't have been imposed on every MP in 2010 as it was. It should be a sliding scale, and that change in regulation in 2010 made all MPs covered by this five-year cooling-off period. It shouldn't be five years for someone who is a backbench MP; it should be a shorter period.

[*Translation*]

The Chair: Thank you.

I now give the floor to Mr. Andrews, for seven minutes.

[*English*]

Mr. Scott Andrews (Avalon, Lib.): Thank you very much.

Ms. Turnbull, my first question is for you.

You've looked at other legislation. You've looked at other countries. There's been a suggestion that we merge our conflict of interest and our code for members and the code for senators. Is that a good suggestion? Is it practical, and would it result in anything better?

Dr. Lori Turnbull: I saw in Commissioner Dawson's report that she is suggesting a merger of the code for MPs and the code for ministers. I can see why, in the sense that, if you're a minister, you're both an MP and a minister at the same time. We've dealt on a number of occasions with this issue of wearing two hats at one time. If you're doing this in your capacity as a minister or in your capacity as an MP, which rules apply?

I think that if we're going to do it, the only reason for merging the two of them that I can see would be to try to reconcile the conflict that comes when one person wears two hats. If we were to do that, it would only be worth it if we had an actual conversation about what that means, not just to consolidate the rules, but to actually figure out the complexity of being both a minister and an MP at the same time, and how you can ethically act on behalf of your constituents as an MP when you also have the responsibilities and the power and authority that comes with being a minister. That's a really, really difficult question.

As an academic, it would be very interesting to see how Parliament would deal with that. I don't see that as an administrative change. That is a huge, substantive change that would require a really complex conversation.

In terms of merging with the Senate, again, you're looking at a very different office with a very different application of accountability. I don't think the Senate would enjoy that. When we initially started with these codes, the Senate was quite clear about wanting a code for senators with an ethics office for the senators. I don't see the huge advantage of doing it, but many other jurisdictions that are bicameral have a code for each house.

● (1615)

Mr. Scott Andrews: Mr. Conacher, let's have a little chat about the commissioner and what she reports on, and what she doesn't report on. She's made three recommendations, 6.2, 6.3, and 6.4, about being able to have a preliminary review of a request and making that public. The big one there, 6.3, is to publicly correct misinformation out there, and 6.4 actually suggests that members requesting an examination refrain from commenting publicly on that.

How do her three recommendations reconcile with your thoughts about what she comments on, and how, when, and what she doesn't comment on? I don't think she addresses anything that she doesn't comment on, if I'm not mistaken.

Mr. Duff Conacher: No. Those are other recommendations the coalition disagrees with. It's increasing the secrecy, and there's already too much secrecy in the rulings.

To pick up on what Mr. Calkins was talking about, the coalition's not saying she should issue a ruling every time she comes across a situation, receives a complaint, or even gives advice. Not all those rulings would disclose who the person was, but would just be a summary that would let people know there had been a complaint about an action by someone and she had found nothing was wrong.

Right now if you read her annual report for two of the years, she says she received a number of complaints, as you mentioned. She doesn't say what number. We don't know whether she's doing her job or not. There's no way to judge that. She has issued 83 rulings, rejected 83 complaints, and she has not said anything about them. Maybe they were all valid, and she decided not to investigate them. For her accountability as the watchdog, you need to have that disclosure.

When the Senate ethics officer is asked for advice by a senator, issues a public summary that a senator has asked if he can do this in this situation, and this is what the ethics officer told him, it doesn't mention the senator. It's the same with complaints. Most of the provincial commissioners issue a summary of complaints they have received and whether they proceeded with the full investigation.

Mr. Scott Andrews: They do this without naming.

Mr. Duff Conacher: They do it without naming someone, so it's not an issue of false accusations and someone being slandered, and there was nothing there. It's ensuring we know what the commissioner is doing, what complaints have been filed, and what they were about so the public can judge, because you may read through the summaries of complaints and say it seems as if that one should have been investigated, and then someone can follow up further with the commissioner and delve into why.

She's essentially saying she should be able to do preliminary reviews and not issue anything and not even let people know what happened. That's more secrecy. You need less secrecy.

As I mentioned, the Senate ethics officer is already issuing these kinds of summaries.

Mr. Scott Andrews: What about commenting publicly on misinformation? Does that draw her into the political realm by trying to correct this information that's out there? Would that be useful for her to be able to do that?

Mr. Duff Conacher: If allegations are made, then she should be issuing findings in every case. That's essentially what she's saying. If she can comment on misinformation, she's saying she should be able to comment on a case that's before her, and she should. She should be issuing rulings in every case to clear up that allegations were false in her mind or whatever, if it's a public case. If someone just files a complaint, and doesn't do a news release or anything, we should still see a summary of what she decided. Otherwise you can't tell whether she's doing her job.

● (1620)

Mr. Scott Andrews: You mentioned the Oliphant commission and the recommendations. What is still pending, in your mind, from the Oliphant commission that we should look at, like the recommendations?

Mr. Duff Conacher: The Oliphant commission recommended an apparent conflict of interest rule be put into the act so there's the appearance standard. If you violated that standard, you would be in violation. That's the most important change.

Mr. Scott Andrews: The commissioner says that's not a make or break for her.

Mr. Duff Conacher: No, she says it's in there already.

Mr. Scott Andrews: It's in there already so it's—

Mr. Duff Conacher: Implied. But because of the general application loophole where you can be involved in a matter as long as it's a matter of general application and never be in a conflict—again, you could be the finance minister, own a million dollars' worth of shares in a bank, and still be making changes to the Bank Act—then the appearance of apparent conflict of interest standard does not apply. That would be an appearance of a conflict of interest, right? Most people would say if the finance minister owns a million dollars' worth of shares in a bank and is changing the Bank Act, that appears to them to be a conflict of interest, but because of the general application loophole, that standard is not enforced.

That's the most important loophole to remove. If you're in the appearance of a conflict of interest, whether it's a specific matter you're dealing with or a general matter, you have to recuse yourself.

[*Translation*]

The Chair: Thank you.

[*English*]

Mr. Duff Conacher: Or you have to divest from the assets you own that puts you into conflict.

[*Translation*]

The Chair: Thank you for your answers.

I now give the floor to Mr. Carmichael, for seven minutes.

[*English*]

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair, and thank you to our witnesses today.

Mr. Conacher, you made a comment that you accept the commissioner's recommendations in full.

Mr. Duff Conacher: Except for the ones we note in our brief that —

Mr. John Carmichael: We haven't seen your brief yet.

Mr. Duff Conacher: Yes, I didn't address—

Mr. John Carmichael: Hopefully, that will arrive soon.

Mr. Duff Conacher: In our brief we don't address all 75, so if the brief is silent on one of her recommendations, then it's an endorsement.

Mr. John Carmichael: Basically you find everything that's within the commissioner's—

Mr. Duff Conacher: Except for the few that I've mentioned today, and they're set out very clearly in the brief.... You'll see the ones on which we say not to do it, even though the commissioner is recommending it.

Mr. John Carmichael: Thank you.

Mr. Duff Conacher: Also, where the brief aligns with her recommendations, her recommendations are mentioned in the brief specifically, indicating that aligning with what she says, we agree with that.

Mr. John Carmichael: That's terrific, thanks.

Back to the discussion briefly on the cooling-off period, I wonder if you could speak to the sliding scale in more depth. I'd like to understand where you think we should be considering some adjustments or what you would recommend.

Mr. Duff Conacher: This regulation was put in place and essentially said that under the Lobbying Act everyone is a public office holder now. That meant that everyone has the five-year ban applying to them.

It was the only way the government could really act without having to introduce a bill and go through a delayed process to try to correct a situation and get more communication disclosure of lobbyists lobbying anybody. That was really the aim of that change, but what it did indirectly was extend the cooling-off period of five years to everyone.

It doesn't make sense. If you're a backbench MP who is not on any committee, then you and your staff should have the shortest length of time. If you're on a committee, then you'd have a slightly longer period of time from the issues you deal with on that committee. If you're a liaison to a minister or a parliamentary secretary, it would be slightly more, for a minister of state, slightly more than that, for a minister, more, and the same with staff within each of those offices. A range of one to five years is what we're recommending.

It would be set out in the act. Essentially you would go to the commissioner when you're leaving and the commissioner would say, "Okay, you were on this committee three years ago, so you're already three years into your cooling-off period on those issues." You would essentially get some instructions from her about how long you have to sit out on various issues, depending on what you had done in your time in office and when you had done it.

Mr. John Carmichael: Thank you.

Quite frankly, I think that's a fair approach.

● (1625)

Mr. Duff Conacher: Yes.

Mr. John Carmichael: That's an interesting shift from where we are right now, but clearly, what we have right now is well defined, and while it may be a bit harsh in certain cases, it works.

Mr. Duff Conacher: Well, I think it is far too harsh. An MP does not have the same decision-making power relations with the real decision-makers that a minister has, so he or she shouldn't have to sit out as long.

Mr. John Carmichael: Right, and thank you for that.

Ms. Turnbull, I am interested in your travels to the U.S., Australia, and the U.K. I take it you've studied some of the different conflict of interest rules in these different countries.

I wonder if you have seen anything in your travels or in your study of these different jurisdictions that we would be able to look at beneficially to import into legislation here that would make sense.

I like your line about correct balance between rules and principles. I think that's a common sense approach. It makes sense. I wonder if you could comment on some of your travels and whether you have seen anything we should be taking into consideration.

Dr. Lori Turnbull: Unfortunately, I haven't actually travelled to Australia yet—

Mr. John Carmichael: But you've done some—

Dr. Lori Turnbull: —but I've read.

Mr. John Carmichael: That's okay. You've done some study on it.

Dr. Lori Turnbull: Yes.

The rules in the U.S., for instance, are similar in terms of the overall objectives of what they're trying to do. They have a different approach in the sense that they get virtually an entirely new public service when there is a new president, so the applicability of the rules is different.

One thing I can remember the U.S. does a little more clearly than we do has to do with the offer of outside employment. For instance, if you're currently working in the government in the United States and you get an offer of employment, you have to keep the ethics office informed of this until you close it down, until you actually give a definitive no.

I can see different instances where that might be a little bit of overkill and there would not necessarily be a need to know that a particular person might be considering a job somewhere else, but in some cases, it would be useful to know, especially in the context of a political appointment. You serve at the pleasure of the minister and you could go at any time, and you have an outside offer that's lingering and that could be attached to something going on in the minister's office. There is some reason the organization wants you to work for them. In our system we have to disclose offers of employment, but in the United States they actually have to keep the ethics officer informed until a firm no is given and the offer is no longer on the table.

It's something to consider. Whether you think it's better or worse, it's more information, more disclosure, but it does, perhaps, facilitate more communication between public office holders and the commissioner.

Mr. John Carmichael: I'm putting you on the spot today—

Dr. Lori Turnbull: That's okay.

Mr. John Carmichael: — because obviously you aren't prepared for the question, but with some consideration, would you be able to submit some ideas with some of what you have seen that might help us—

Dr. Lori Turnbull: Yes, I would.

Mr. John Carmichael: —in the work we're doing? Would that be all right, Chair?

I think we want to do as much as we can with best practices, where they exist.

Dr. Lori Turnbull: Sure.

Mr. Duff Conacher: II would just say very briefly that the Oliphant commission has a lot on offers of employment as well, because it was a post-employment situation he was examining mainly. He has a lot of recommendations in that area also.

Mr. John Carmichael: On post-employment, are you suggesting that this is for existing public office holders?

Dr. Lori Turnbull: Yes.

Mr. John Carmichael: As soon as there's any indication of an outside offer, you're suggesting that individual should declare that to the commissioner or to their staff and then follow it through to either success or until it's off the table.

Dr. Lori Turnbull: I'm not going to go as far right now as to say "should", but it's a difference that in some cases we might want to consider.

[*Translation*]

The Chair: Thank you. Unfortunately, your time is up. Perhaps you could come back to that in another question.

I now give the floor to Mr. Angus, who will have five minutes.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): This is very interesting. I'm firmly convinced it's possible to develop common sense rules, but of course, you need someone who will apply common sense rules.

I'm looking at all the recommendations. Some I find are interesting, and some I'm less sold on. A $30 gift for me, personally, I don't know what I get out of it. I get a blanket. I get some snow globes. I don't know what the value of them is. I guess I could keep track. We actually keep them all in a box in my office because we're not sure what to do with them. We give them away to kids or whatever.

There's that, and then there's the issue of fundraising. Political fundraising to me is a real clear benefit.

When the commissioner ruled in the Lisa Raitt case on the cement lobbyist, she ruled it wasn't a problem because there was no personal benefit, but it was a lobbyist for a cement company who was lobbying on a contract and showed up at the fundraiser. To me that would be an apparent conflict. A lobbyist could show up at a fundraiser without you knowing that they were lobbying you. Would you then be held accountable? Someone could donate to you—people donate all the time—and you might not check who's coming in through your riding association, and then six months later, they're hitting up your ministry or you for a favour.

In terms of the fundraising rules, she says there needs to be clarity but she doesn't lay out what it is. How do we have clear rules so that we're ensuring that people are not using fundraising at the riding association level to try to influence an MP or a minister? How do we ensure that if someone is making a donation it isn't retroactively putting blame on an MP or on a minister? What's the clear dividing line here?

● (1630)

Mr. Duff Conacher: The Ethics Commissioner actually does address this area in her report. She says that essentially the gifts benefit rules should not be extended to cover what she views as a political interest as opposed to a personal interest. It's one of the major things the coalition disagrees with. To say that a gift to your riding association is not a gift to you is just a false dichotomy. It should be made explicit that gifts....

First of all, there should be an apparent conflict of interest standard that applies to political interests such as fundraising or campaigning. She essentially opened things up greatly and actually contradicted her gifts guideline, which is very strict.

Her gifts guideline says you can't even accept a pen as a gift, if it was from a lobbyist while you were making decisions about something that affected the lobbyist, but your riding association can. In fact, your riding association can accept all sorts of help from a lobbyist who's lobbying you.

So she contradicted her own guideline. If she reversed her ruling, that would be fine, but because she's not going to, you need to change the rules to say that a gift, including to your riding association or any other political entity associated with you, is a gift to you.

Mr. Charlie Angus: I want to follow up because we had the case with Mr. Calandra where there were two fundraisers.

Mr. Duff Conacher: Yes.

Mr. Charlie Angus: There were stations that wanted that 88.1 FM licence. This was hotly debated. People who were tied to the competing bids showed up at it. He ended up returning over $5,000. Why was he then returning money from the fundraisers? It would appear that there was an obvious political benefit there.

Again, I'm not seeing the clarity here in the decisions. Either it's right or it's wrong. Either it is a gift or it's not.

Mr. Duff Conacher: In that case, it's coherent with the earlier position that the Ethics Commissioner took, which is why she didn't look into the Calandra situation. If an MP filed a complaint with the commissioner about that situation, she would be forced to issue a ruling, and we'd know what she's thinking. I can only guess that she ruled already that it's okay for lobbyists to be involved in raising money for your riding association and no conflict is created. That's not the right standard, of course. What's ironic is that the lobbying commissioner has found the lobbyists guilty in every case. I expect we'll find these lobbyists guilty in the Calandra case, as well as violating rule 8 of the lobbyists' code, which says you can't do anything to put a public office holder in a conflict of interest—

● (1635)

[*Translation*]

The Chair: Thank you.

Your time has expired.

[*English*]

Mr. Duff Conacher: —because the lobbyists' code has the appearance of apparent conflict of interest standard. That's why that standard needs to be added to the act as well.

[*Translation*]

The Chair: I now yield the floor to Mr. Warkentin who has five minutes at his disposal.

[*English*]

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chair.

I want to go in a different direction.

The witnesses at our last meeting talked a little bit about post-employment, and we've touched on that a little bit today. Obviously there are significant post-employment rules as it relates to the Lobbying Act. There are communications that are obviously limited in one's position and a whole set of rules set that out.

What is your view with regard to post-employment rules under the act? Are there changes that you feel are necessary? People are throwing around the idea that there should be changes made, but we haven't heard any that have been articulated very clearly, and a rationale surrounding that.

This question is for either of you, but Mr. Conacher, maybe.

Mr. Duff Conacher: Generally I think Oliphant had it right in his recommendations, and the Ethics Commissioner has essentially endorsed all of those in her report. A public office holder does not have to tell the commissioner that they are leaving, unless they have had an offer of employment before they left. She doesn't know what people, most of them, are doing when they leave office. She doesn't know whether they're complying with the one-year or two-year cooling-off period that's under the Conflict of Interest Act, or the five-year, or whether they're lobbying within that—

Mr. Chris Warkentin: That's a different act. I'm looking under the Conflict of Interest Act.

Mr. Duff Conacher: Yes.

Mr. Chris Warkentin: That's all I'm talking about right now.

Mr. Duff Conacher: She doesn't know whether they've even left office. She doesn't know what they're doing, so the recommendations are generally that everyone should have to—

Mr. Chris Warkentin: Your recommendation is that people should notify when they've...what?

Mr. Duff Conacher: When they're leaving office, and then what they're doing through their entire cooling-off period so that she can tell them whether it complies or not with the conditions of the cooling-off period. But as Lori—

Mr. Chris Warkentin: Just on that point, Mr. Conacher, do you know if that would be charter compliant? Would that be something that would be seen to be in compliance with the charter?

Mr. Duff Conacher: Sure, in a free and—

Mr. Chris Warkentin: What I'm asking is whether you know if anybody's ever looked at that.

Mr. Duff Conacher: In a free and democratic society, the democratic part trumping the free to go and do whatever—

Mr. Chris Warkentin: No, I'm asking in terms of the charter. Has anybody that you know of looked at it? I'm not trying to put you on the spot.

Mr. Duff Conacher: No, but it is done elsewhere. Again, Oliphant strongly recommended that the commissioner know and needs to be able to have approval because the cooling-off period is part of your public service. You're still covered by the act through that period.

Also, some of the rules apply forever. In a way, everyone should be tracked forever because one of the big rules.... There has to be an end point, but it's not actually in the act that you can't share with anyone ever information you learned while on the job that's not publicly available.

Mr. Chris Warkentin: I think that it goes even beyond the act.

Ms. Turnbull.

Dr. Lori Turnbull: Particularly in this case when we're talking about the types of expectations that we can apply to people who have left public office. On the one hand, I understand what the commissioner is saying, in terms of wanting more information, wanting more regular and comprehensive reporting, because her mandate clearly sets out that she's supposed to be somehow responsible for this one-year or two-year cooling-off period, depending on who it is, but at the same time she doesn't necessarily have the tools to extract the information she needs to know if people are doing what they're supposed to do or not.

At the same time, I think I know what you're getting at in terms of the charter question. How much can we ask of someone—

Mr. Chris Warkentin: Yes.

Dr. Lori Turnbull: —who has left public office, in terms of disclosing their professional life, and not only who they're working for. Her recommendations seem to want the details of what they're doing.

Mr. Chris Warkentin: I think that's what we want to do. We want to ensure that anything we would recommend would not be challenged successfully, to the point where we would lose—

Dr. Lori Turnbull: That's right.

Mr. Chris Warkentin: —the ability to have reasonable rules. It seems to me that the only thing we would want to cover is the ability for a past public office holder to control the communications. We really have limited interest in any other area. Or do you see things differently?

● (1640)

Mr. Duff Conacher: There's one other area, and it's set out in the act. The commissioner has not defined what it means, but you're not allowed to take improper advantage of your former office. I have sympathy for anyone who has left the public service and is covered by that rule. They don't know where the line is because the Ethics Commissioner hasn't defined what it would be to take improper advantage. We may see a ruling from her after the criminal case is over in the Bruce Carson case. I suspect she might find Bruce Carson guilty of taking improper advantage of his former office, if you believe all the allegations. That needs to be defined. It is an area of concern because it goes to the question of whether you are using information or contacts. It's not just lobbying that we're concerned about. We're worried about people cashing in on their former public office as well. That rule needs to be fleshed out more specifically.

[*Translation*]

The Chair: Thank you for your reply.

I now yield the floor to Ms. Borg, for five minutes.

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Thank you very much, Mr. Chair.

I would also like to thank our witnesses today for their presentations and also for their replies to our questions.

My first question is for Ms. Turnbull.

You said that we really need to find a balance between the rules to be followed and the principles. In your opinion, is that balance present in the current act? If that is not the case, what needs to be done to establish that balance?

[*English*]

Dr. Lori Turnbull: To me, the legislation that's in place right now and the tone and substance of the recommendations put forward by the commissioner are very rules heavy as compared to principles. It seems to me that even if you look at the members' code, it strikes a more equitable balance between rules and principles than the Conflict of Interest Act does. It seems to me that the Conflict of Interest Act is very focused on enumerating specific areas of wrongdoing.

Most of the discussion from the commissioner is about how to close loopholes, how to address certain things that might not be enumerated now, and taking the threshold for disclosure of gifts from $200 to $30. I don't think a balance is there at all right now. That encourages ministers, and people who are under the legislation, not so much to think about big questions about what it means to be ethical, but to think about very specific cases where they might be outside the rules, and they want to avoid the bad press they'll get if someone finds out.

[*Translation*]

Ms. Charmaine Borg: Thank you very much for that answer.

Correct me if I misunderstood your words, but you suggest that more emphasis should be put on principles. That being so, how do we go about strengthening those principles? How do we promote them? Could this be done by improving the training? Indeed, we heard other witnesses say that the commissioner did not have enough time to sit down with the members to explain the principles and regulations and the rules that have to be followed. Should there be more principles, and should we make sure that they are well respected by the members and ministers?

[*English*]

Dr. Lori Turnbull: I've made arguments in the past about how it might be better to focus on education and communication rather than penalization, compliance measures, and that sort of thing. It seems to me that the commissioner has quite a bit on her plate right now, and she'd like to add to the list of things that she can be monitoring.

I don't know what kind of changes would have to happen in order for a real education program to be in place. By education I mean more communication, and having more of a general discussion about what standards you're trying to uphold.

If we get too focused on the rules, it would be easy to lose sight of what the point of all this is in the first place. It might help everyone to keep focused on the overall objectives if there were more of a discussion of principles.

It might also be helpful, as the commissioner herself mentioned, to spend a little more time, maybe in a review of the legislation, on the definitions of conflict of interest, such as what happens in the front end of the bill rather than in the back end.

To change those definitions and to have more going on in the front end, even that conversation would have educational implications.

[*Translation*]

Ms. Charmaine Borg: Mr. Conacher, do you have any comments to make on that?

[*English*]

Mr. Duff Conacher: Training is important. There should be training right up front. There is a meeting once a year that everyone, or a member of their staff, has to attend with the commissioner just to update things, but there should be some up-front training.

Principles are fine, but they're so vague that they don't mean anything. No one is following the principles in the MPs' code because it sets impossible standards. They are to maintain the highest ethical standards that will bear the closest public scrutiny, which may not be fulfilled by complying with the law. That is one of the principles. How do you do that? How could everything anyone does bear the closest public scrutiny and go beyond what laws require? Where is the line?

The problem with principles is that they don't draw lines. The two lines that need to be drawn are the apparent conflict of interest rule, and make it clear what that is, and a foreseeable potential conflict of interest rule. Add that in and delete the general application loophole that allows you to take part in discussions when you have a financial interest even in the outcome of the discussion or decision just because it's a general matter that you're dealing with. You shouldn't be allowed to be taking part in even general discussions and decisions if you have a financial interest in them.

Those two should be made rules. The other principles are fine, but they will never draw lines because the words are so vague and general that they're really meaningless. They add up to meaningless standards.

● (1645)

[*Translation*]

The Chair: Thank you, Ms. Borg, your time has expired.

It is now Ms. Davidson's turn; Ms. Davidson, you have five minutes.

[*English*]

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thank you very much, Mr. Chair.

Thanks to both of our witnesses this afternoon. You've both made very interesting presentations. I think we've heard a lot of valuable information that we can use as we go forward with this review.

There's one thing I wanted to ask each of you, and I think you've both alluded to it slightly.

Mr. Conacher, you alluded to the definition of improper advantage of former office, and Dr. Turnbull, you alluded to some of the definitions.

Are there other definitions in the existing act that we should be looking at changing? Are there some that are too broad or too narrow? Are there some that are not even there?

Dr. Lori Turnbull: If I were to emphasize an area to work on, the commissioner talks about the issue of getting gifts and other advantages. She makes the point that gifts $200 and over have to be disclosed. Ministers sometimes make the assumption that as long as the gift is within a certain monetary value range, then it's okay. She points out that this is not the case, that a gift can be improper even if it's of low monetary value.

I get that theoretically, but I'm not really sure what her point is. She says that, but then she doesn't go on to explain why she thinks that. She doesn't give an example of what an inappropriate gift would be, even if it were only $50.

I think there's a problem there in terms of understanding. I think more has to be fleshed out. I think the commissioner is asking for that, but I don't see a lot in terms of an actual recommendation from her, or an actual idea about a gift that would be improper even though it's not worth very much.

I think that has to be fleshed out, because ministers and MPs, people who are under the code, would benefit from more clarity there.

Mrs. Patricia Davidson: Mr. Conacher.

Mr. Duff Conacher: Actually, in that area she's issued a guideline that's multiple pages, very detailed, and gives lots of examples. I think the area of gifts, actually, that guideline, is the most defined line in the act currently, because of this guideline that the commissioner issued several years ago.

The words “improper advantage” need to be defined. No one could be found guilty of violating that rule currently, because as a case involving former cabinet minister Sinclair Stevens proved, the Federal Court ended up ruling and saying that he was found guilty of being in conflict of interest, but the conflict of interest wasn't defined and therefore he wasn't guilty because he didn't know where the line was and how could he know whether he crossed it.

On general application, what is a matter of general application? That has not been defined. I think it means lots of things. Maybe in the commissioner's mind it doesn't mean as much. It's a very important rule in the act in both the MPs' and senators' codes, because it's a huge exemption where it says you can't ever be in a conflict of interest if you're dealing with the matter of general application.

Those would be the two, though.

She's defined what a significant official dealing is in terms of you can't take a job with someone after you leave if you've had significant official dealings with them. She's issued a guideline on that. She's issued a few interpretation bulletins, but the big one is improper advantage, and the other one is general application. Those two should be defined by her in an interpretation bulletin or within the act itself, specifically.

● (1650)

Mrs. Patricia Davidson: Okay, thank you.

There's one other thing. I wanted to go back to the post-employment issue. That's probably an area where we need to have some significant better understanding. Do you think that former reporting public office holders should be prohibited from going to work for agents, the non-partisan agents and officers of Parliament?

Mr. Duff Conacher: Going and working...?

Mrs. Patricia Davidson: I mean, if they were a reporting public office holder, could they go and work for any of the officers of Parliament?

Mr. Duff Conacher: I don't really see any conflict there. Do you mean right away as opposed to having to sit out for a time?

Mrs. Patricia Davidson: Yes.

Mr. Duff Conacher: If they had had significant official dealings with them during their last year of office, which is what the rule is, they wouldn't be able to for one or two years. Otherwise, I don't really see how there would be a conflict with that, when to work with an entity like that.

Mrs. Patricia Davidson: Dr. Turnbull.

Dr. Lori Turnbull: I can see how it's a different exercise if you were working in a minister's office. Then there would be plenty of opportunities where you might have dealings with, for instance, the Information Commissioner, the Privacy Commissioner. Isn't that what we're talking about?

Mrs. Patricia Davidson: Right, yes.

Dr. Lori Turnbull: They're not the same types of dealings that you would have with an organization that might be coming to lobby the minister's office. The relationship between the minister's office and the lobbying commissioner would be administrative, so I don't see a huge problem. At the same time, there might be the perception that if you had a situation develop where a certain commissioner's office has a number of former staffers from a particular political party, there might be some noise made about the complexion of that office and how that might affect what's going on in the office. You can imagine how that would play out politically. There are political implications. That could all blow up, or not. It might be fun.

[*Translation*]

The Chair: Thank you for your reply.

[*English*]

Mrs. Patricia Davidson: Thank you very much.

[*Translation*]

The Chair: Mr. Boulerice, you have five minutes.

Mr. Alexandre Boulerice: Five minutes? Super.

Ms. Turnbull, you sat on the panel of the Oliphant Commission. I would like you to tell us which of that commission's unimplemented recommendations you would like to see.

[*English*]

Dr. Lori Turnbull: I'll focus on this issue of the apparent conflict of interest. That is something that other codes do, including some of the provincial codes. Many codes actually outline what a real conflict of interest is, what a potential conflict of interest is, and what an apparent conflict of interest is. The apparent standard is something that... I know what the commissioner is saying when she says it's not actually written in the code, but the code kind of does it anyway, in the sense that the code asks you to use a reasonable person's standard. If you receive a particular gift, how would that strike a reasonable person, or would that create the reasonable assumption that there's something not right going on?

That's fine, but the upshot of using the apparent is that it sort of invites the public office holder to put himself or herself in the position of the public looking at what's going on in a way that's much more explicit, and to think about the appearance of it and about how it is going to look if it lands in the newspaper. How is it going to look during an election campaign? Going back to this principal idea, public office holders might be encouraged to think more broadly about upholding ethical standards and staying away from things that are going to make everybody look bad.

In the 1960s, when Prime Minister Pearson was first dealing with this issue with his cabinet, that was what he was most concerned about. He was much more concerned with the appearance of wrongdoing than he was with what was actually going on. Politically, as you know better than I do, that's your problem, right? When everybody's talking about something as if it's a problem, there's a political imperative to try to manage that. I don't know why you wouldn't put the appearance standard in. I don't see the downside to doing it.

● (1655)

[*Translation*]

Mr. Alexandre Boulerice: You think that that would improve the current act.

I am rather favourable to that suggestion, and to including the perception of conflict of interest.

In addition, our experience shows that sometimes, some journalists or media will try to stir up a scandal with three bottle caps and two ballpoint pens, for political reasons. The perception of conflict of interest can also vary considerably according to the ideology, sensibility and partisan interests of members of the public.

How can we include the perception of conflict of interest without this becoming a circus?

[*English*]

Dr. Lori Turnbull: I don't know that you can be sure. I think one of the problems with trying to put too much in the code is that it gives us the false impression that you can cover off everything, and you can't. There are going to be times when people accuse people of wrongdoing and it's entirely invented to create some sort of political storm, and there are obvious political reasons for doing that.

I would also say that when it comes to what the public actually takes in and what they do with this kind of information, if a voter gets their political information from a newspaper, and they read about a scandal, and they read about the economy, and they read about health care, and they read about all these different types of things, at the end of the day, the voter has one vote in an election. Whether or not somebody disclosed their information on time or whether or not there was an apparent conflict of interest is only one factor that may or may not affect the decision they make. When it comes to actual accountability for these things, that's the system we're in.

[*Translation*]

The Chair: I am going to have to stop you here.

I yield the floor to Mr. Warkentin.

[*English*]

Mr. Chris Warkentin: I'd like to continue on that theme, Ms. Turnbull.

Those of us sitting at this end of the table may not necessarily agree with that last statement. You, as one of our constituents, might say that you don't make your decision based on what's written in the newspaper. Unfortunately, for many of us around this table, we stress a lot about our reputations and about the value we place on them and the integrity that we uphold.

When I look across the House, I see people of integrity in all parties. I don't look across and see corrupt folks. Unfortunately, I'm not sure that's how the newspapers present what happens in Parliament, oftentimes. I believe there needs to be the same protection for politicians that somebody in the medical community might expect or that somebody within certain professions might expect when false allegations come forward.

My concern is that as a politician, the only thing I have that I can take to the people.... I have to fight for my job every four years. I have to re-apply for it. If an activity has been alleged and it is entirely untrue, it may impact upon my ability to continue with my job.

In the case of the medical community, there are significant amounts of protection to ensure that professional credentials are protected until such time as there's a determination as to whether the allegation is true or not.

I wonder whether you have some thoughts with respect to how we might protect people of integrity against whom false allegations have been brought. How might the office undertake its responsibility to maintain integrity and ensure that this happens, but also, as Mr. Conacher has talked about, ensure transparency for the general population as well?

We're caught in a conflict. We want to be transparent with all this process, but we also have to think about protecting the reputations of people whose entire livelihood depends upon their reputations.

Mr. Duff Conacher: You can't stop false accusations. There is libel law, so that's one protection you have. You can sue someone for libel.

If you have the Ethics Commissioner—

● (1700)

Mr. Chris Warkentin: Well, Mr. Conacher, I'll stop you there. People in the House, while in the House, don't have the protection of libel law.

Mr. Duff Conacher: Yes, but I was just going to say that one of our recommendations is an honesty in politics rule that applies in the House, in Parliament, before parliamentary committees, everywhere. It's one of the biggest things that is needed to clean up this spin-counterspin and these false allegations. Apply it everywhere. It's already in the MPs' code and the accountability guide. It's in the public servants' code. It says you have to act with honesty. That's what you're expected to do under the MPs' code, but it's not an enforceable rule.

Mr. Chris Warkentin: Do you think that this office, or under the act the commissioner, should have the ability to hold people to that? Rather than use the courts, should this office also guarantee that?

Mr. Duff Conacher: The commissioner is an administrative tribunal. She's a quasi-judicial office already. She is judging. She is enforcing the law. She is finding people in violation.

If you have an apparent conflict of interest standard, you must either have a regulation that says what it means, or she has to issue an interpretation bulletin, or no one should go forward. It wouldn't be fair to have an appearance standard or a potential conflict of interest standard without defining what it means, because so many situations are there.

Right now you can't challenge the Ethics Commissioner in court on any of her rulings, even if she makes an error of fact or of law; no one is allowed to challenge her. That has to be eliminated. Everyone should be able to appeal to the courts on her rulings, especially if you were to bring in more rules, such as an apparent standard. If you were to bring in penalties, you need all those protections of due process that Mr. Calkins was talking about, so that you could appeal her rulings in court if you disagreed with them.

Mr. Chris Warkentin: The difficulty with that for politicians is that if it goes to the court, you've lost in the court of public opinion already. The damage is done; the allegation has landed. It's well entrenched by the time it's in the courts.

I'm talking about allegations that are false and that can be determined to be false even at the commissioner's office in the initial process. There already is a provision to ensure that they maintain confidentiality until such time as it's determined whether or not there is a conflict, or if an investigation has revealed that some kind of act has been undertaken that is unprofessional.

Mr. Duff Conacher: No, and to be very clear, we're not calling for investigations to be made public, just the final ruling. If the final ruling is that the person was not guilty and the complaint was not filed in a public way, then the final ruling doesn't have to name who was complained about, but just give a summary so that you know the Ethics Commissioner did look into a case.

Mr. Chris Warkentin: You believe that it should be held absolutely confidential until such time as the determination has been made.

Mr. Duff Conacher: Yes, that's fine. I have no problem with conducting these inquiries and examinations privately, but there has to be a ruling at the end. There are 83 situations that were complained about or that the Ethics Commissioner became aware of in the last five years, and we don't know what she did with any of them or why, except that she rejected them. We don't know whether she's done her job, as a result.

Officers of Parliament are watchdogs. They're czars in a way, and they can't be unaccountable czars. They have to be accountable still, to show that they're actually doing what they're doing. That's why we need more transparency—

[*Translation*]

The Chair: Thank you for—

[*English*]

Mr. Duff Conacher: —but again, I'm not talking about naming anybody, if they're found not guilty.

[*Translation*]

The Chair: Thank you for your answer. Unfortunately, your time is up.

We have another item on the agenda today, which will be discussed in camera.

I want to thank the witnesses for being here with us today to discuss these matters.

Accordingly, I am going to suspend the hearing for a few minutes to give you a chance to leave. We will come back in a few minutes to resume our hearing in camera.

[*Proceedings continue in camera*]