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Chair

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)): Good afternoon, everyone. Welcome to the 64th hearing of the Standing Committee on Access to Information, Privacy and Ethics.

Today, we have with us three representatives from the Office of the Conflict of Interest and Ethics Commissioner, the commissioner, Ms. Dawson, and her two assistants, Ms. Robinson-Dalpe and Ms. Bélanger. We thank them for being here with us. As you know, we were unable to meet with them during a previous meeting. We are pleased to have them with us today.

As usual, there will be a 10-minute presentation. There will be time for questions and comments from the members of the committee afterwards. We are continuing our review of the Conflict of Interest Act.

Without any further ado, I will give the floor to Ms. Dawson, who has 10 minutes.

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you.

Mr. Chair, I would like to thank the committee for inviting me to appear before you today. With me this afternoon are Lyne Robinson-Dalpe, Assistant Commissioner, Advisory and Compliance, and Nancy Bélanger, General Counsel.

I am pleased to contribute to the five-year review of the Conflict of Interest Act. This is an excellent opportunity to explore how well the act is working and ways in which it might be strengthened.

As the committee is aware, I was previously scheduled to appear before you on January 30, and had provided the committee with a written submission recommending various changes to the act. Although my appearance was rescheduled, the submission was made public on my office website, with the approval of the chair.

[English]

The committee has already heard from some witnesses who have commented on my recommendations, and I'm pleased to have this opportunity to discuss them with you myself.

My written submission reflects my five years of experience in administering the act and the conflict of interest code for members; it is therefore comprehensive and quite detailed. It includes a large number of recommendations, based on a thorough analysis of the act and its administration. However, I do not mean to suggest by the

number of recommendations I have made that the regime is not at its core functioning relatively well.

The format of my submission mirrors the structure of the act, but my presentation today will be more thematic. I want to talk about eight broad priority areas that are supported by many of my individual recommendations.

The first priority area involves increasing transparency around gifts and other advantages through increased disclosure and public declaration. There's a fairly common misconception that a gift's value determines its acceptability under the act. In fact, an acceptability test applies in all cases, irrespective of the value. Public office holders are prohibited from accepting any gifts that may reasonably be seen to have been given to influence them. According to the act, the value of the gift is simply a threshold for public declaration by reporting public office holders. Acceptable gifts worth \$200 or more must be disclosed to my office and publicly declared. I recommended lowering the \$200 threshold for disclosure to the commissioner to a minimal amount and requiring that all disclosed gifts that relate to a public office holder's position be publicly declared.

A second priority area involves strengthening the post-employment provisions by introducing reporting obligations for public office holders during their cooling-off period after they leave public office. I recommend requiring former public office holders to report to the commissioner any firm offers of employment received during their cooling-off period, including offers of service contracts, appointments to boards of directors, and partnerships—which is an increase from the current rule—and to report on their duties and responsibilities in relation to their new employment.

The third and fourth priority areas involve narrowing the act's overly broad prohibitions against engaging in outside activities and holding controlled assets. With limited exceptions, the act prohibits reporting public office holders from engaging in a range of outside activities. I've seen cases where restricting some of these activities goes beyond the purposes of the act. I propose that the commissioner be given discretion to grant an exception from the general prohibition in such cases if the activities in question are not incompatible with the reporting public office holder's official duties.

With respect to controlled assets, I recommend that the broad prohibition against holding these assets be restricted to those who have a significant amount of decision-making power or access to privileged information, such as ministers, ministers of state, parliamentary secretaries, chiefs of staff, and deputy ministers. The prohibition, and its related requirement to divest, would only apply to all the other reporting public office holders if holding the controlled assets would constitute a risk of a conflict of interest.

A fifth priority area involves establishing some disclosure and public reporting requirements for non-reporting public office holders in relation to outside activities, recusals, gifts, and other advantages. However, I would not go so far as to recommend that we require them to make the initial disclosure of their assets and liabilities. I believe that introducing some limited reporting obligations would help to ensure compliance with the act.

• (1535)

A sixth priority area involves addressing misinformation put into the public domain in relation to investigative work. I generally refrain from making public comments about an ongoing examination, choosing instead to correct any misinformation once the examination is completed and a report is issued. However, if I do not conduct an examination, or if I discontinue an examination without issuing a report, I do not necessarily have an opportunity to correct the public record. I therefore recommend that the commissioner be given express authority to comment where appropriate, especially to correct misinformation.

A seventh priority area involves extending the administrative monetary penalties provisions to cover obvious breaches of the act's substantive provisions. At present, penalties may only be imposed for failures to meet certain reporting deadlines. I note that of all my recommendations, penalties have received the most attention to date. I'd like to clarify that I am proposing the extension of the administrative monetary penalties regime as a means of dealing with some substantive contraventions under the same expedited process that exists for procedural contraventions where an examination under the act is not warranted, generally because the facts are clear and undisputed. I'm also suggesting that for cases where the commissioner undertakes an examination and finds that a contravention of the act has occurred, consideration be given to whether penalties should be imposed as a result of that finding. I recognize that there are differences of opinion on whether it's necessary or desirable to impose penalties in such cases. My view is that issuing a public report in which a contravention is found is itself a significant adverse result and that the imposition of monetary penalties is not necessary.

An eighth and final priority area involves harmonizing the act and the members' code to ensure consistency of language and processes where appropriate. Although the two regimes have similar provisions, there are substantive and procedural differences between them. Those differences have led to a lack of clarity for individuals who are subject to both regimes—namely, members who are also ministers or parliamentary secretaries. For example, I recommend harmonizing the processes for launching an investigation. Unlike the code, which provides for a preliminary review stage before an inquiry is launched, the act requires me to launch an examination immediately upon receiving a written request for investigation from

a senator or a member. I propose that the act also provide for a preliminary review of examination requests so that the commissioner can determine whether an examination is warranted before proceeding.

As the members' code is also under review by the Standing Committee on Procedure and House Affairs, it would appear to be timely to examine both instruments for opportunities to harmonize the two regimes.

[*Translation*]

Mr. Chair, these and other recommendations that I have presented for the committee's consideration seek to increase the act's effectiveness in preventing conflicts between public and private interests.

I believe that my recommendations would help to clarify the rules, ensure transparency and fairness, and above all, strengthen the means by which the act's objectives might be achieved. I hope that the committee will see fit to recommend that Parliament adopt some or all of them.

I will be happy to answer the committee's questions.

The Chair: Thank you for your presentation.

I will now give the floor to our first speaker, Mr. Angus, for seven minutes.

• (1540)

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you for coming, Madam Dawson. We very much appreciate your presence here in helping us to wade through some of these issues and to get a sense of where we need to tighten up, if we need to tighten up, and where things are working. Then it's a question of what is appropriate in judging the problems and consequences.

I'm interested in the issue—you didn't mention it—of fundraising rules. Clearly, one of the ways that someone can benefit is through political fundraising. That is to me one of the most obvious direct connections between asking you to do something and helping you out—political fundraising.

Now I see that you want to drop the value of gifts to \$30. I don't mind that, but people drop books off at my office all the time. It might be months before I even notice. I've gone into my constituency office and it's in a back drawer. Am I really being politically enticed by that \$30 book? Maybe it's a \$25 book. You seem to think this needs to be dealt with, but what about political fundraising? What do you recommend there?

Ms. Mary Dawson: Fundraising is a very awkward area. There is a fundraising prohibition now in the act, but it's only if there's a conflict-of-interest situation. I think I've recommended that the fundraising should be tightened up, and that there should be some increased higher-level rules for fundraising. I'm not saying exactly what, but it could go so far as to prohibit public office holders from being involved in fundraising at all.

Mr. Charlie Angus: Not to try to make things politically impossible for people, but someone might donate to my riding association and I might not even notice who they are or even know which corporate interest they represent. Later on, they might come to my office and ask me to write a letter. That can happen, and I don't think it's fair that MPs should be smacked for that.

We had the issue with Mr. Calandra, where there were two fundraisers, both with many people tied to licences that were competing.... He was Parliamentary Secretary to the Minister of Heritage. He had to give \$5,000 back, but you didn't rule in that case.

Is that an example, or was it okay?

Ms. Mary Dawson: I can't discuss specific cases, but I did take a look at that and I did not find any reason to believe that this provision, section 16, had been contravened. I should mention that section 16 refers to personal fundraising, so if money is given to your riding association and you don't know about it, that's not a problem.

Mr. Charlie Angus: If the guys from 89.1 FM, or whatever, had sent Mr. Calandra a couple of books, that could have been buying his interest, but \$5,000 in a fundraiser wasn't going to influence him?

Ms. Mary Dawson: In another context I have made comments where I'm suggesting that entities be included as well as persons when you're benefiting. I think this would go some way to answering the question about riding associations.

With respect to the books, I picked \$30 because it seemed to me one could assume that if something was under \$30 it probably wouldn't be seen to have influenced you. But it could be \$50, or whatever one thought was sensible. There's a frustration there: I've heard it constantly that people think it's not a problem if it's under the reporting amount, which is \$200. I think there could be gifts that are problematic at \$100 or \$50.

Mr. Charlie Angus: I don't have a problem. I keep all the snow globes and pens and blankets in a box, and I give them out to people afterwards. I guess to me the issue of riding associations is the most obvious direct political benefit that any politician has. I don't know if anything is clearer. Perhaps we'll just have to agree to disagree.

I'm interested in your issue of administrative monetary penalties and when they should be used. If someone's late in reporting, is that an automatic administrative monetary penalty, or would you look at the situation?

• (1545)

Ms. Mary Dawson: I have discretion as to whether I impose a monetary penalty or not. The way I have generally been administering the act...because of the illogicality of imposing penalties for failures to meet deadlines but not being able to impose penalties for actual contraventions in certain cases, I have generally applied the administrative monetary penalty only when it's been associated with something that contravenes the act.

Mr. Charlie Angus: You're saying "substantive". If something is obvious, you want to be able to provide an administrative monetary penalty. What would you define as a substantive breach that we could understand? I think we need some clarity on that.

Ms. Mary Dawson: I'm suggesting that because I think it would be another expedited process to deal with things without going through a long investigation. The example I would think of is purchasing controlled assets that you're not allowed to hold. It's pretty evident that you've either purchased them or you haven't, so there's not much deliberating to be done. In cases like that, or if somebody's participating in outside activities, for example, that they definitely should not be, another process to use, rather than a full examination, would be an administrative procedure.

Mr. Charlie Angus: A question I also have is in terms of the role.... We had this recently with Mr. Flaherty and his writing a letter on behalf of a commercial interest to a semi-independent tribunal, where clearly that's not allowed as a cabinet minister. But the House leader was basically saying that Mr. Flaherty was actually acting as an MP.

Does a cabinet minister get to take off his cabinet minister's hat and then say, "I'm just doing this as an MP"? Which rule applies here, the MP rule or the cabinet rule?

Ms. Mary Dawson: I think the cabinet rule applies.

Mr. Charlie Angus: Thank you very much.

[Translation]

The Chair: Thank you, Mr. Angus. Your time is up.

I now give the floor to Mr. Warkentin for seven minutes.

[English]

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

I appreciate your coming back, Commissioner. We appreciate your testimony today in our efforts to clarify your recommendations.

I'll just follow up where Mr. Angus left off, as it relates to MP versus minister. It seems to me that it's difficult for a minister or a parliamentary secretary to advocate on behalf of their constituents in a situation where there might be an expansion of the act that would now specify that that entity be enlarged.

I wonder if you've given any consideration to the difficulty for a parliamentary secretary or a minister as it relates to municipalities or first nations communities within their jurisdiction. It seems to me that an entity would describe a business interest, but a public sector interest as well. I wonder if you have given any thought as it would relate to that.

Ms. Mary Dawson: Well, the decision I came to was simply that a minister and a parliamentary secretary should not be trying to influence the outcome of a decision-making body. That's as far as I have gone.

I've—

Mr. Chris Warkentin: Pardon me. When you're talking about a decision-making body, that would include the cabinet or a minister's department, I suspect?

Ms. Mary Dawson: No, it's more a decision-making tribunal.

Mr. Chris Warkentin: Do you believe that's absolutely clear within the changes you're proposing?

Ms. Mary Dawson: Yes.

The entity is in a couple of different.... I'm not sure quite how that relates to the question you're asking.

Mr. Chris Warkentin: Well, my concern is that it's one thing to advocate on behalf of another individual; it's another thing to advocate on behalf of somebody's business. But an entity might also be a municipality or a school board, charity, church, or some of the things we would expect that members of Parliament would advocate on behalf of, regardless of their role.

I wonder, do we risk limiting their capacity to do their job as an elected member of Parliament?

Ms. Mary Dawson: The rule is with respect to third parties—not family and not the member—only when it's improper, and that's where a decision has to be taken. I would say it's improper to do that to a decision-making tribunal, but I would not necessarily say it was improper with respect to other causes. It's a question of a case-by-case determination.

I think it's quite clear that it's improper for a decision-making tribunal. That's been a long-standing understanding.

• (1550)

Mr. Chris Warkentin: I'm not sure I'm clear if it's been fully reviewed as it relates to the word “entity” and who that would describe.

Ms. Mary Dawson: It would have to be a case-by-case....

Mr. Chris Warkentin: So it may describe a municipality or a first nations community that a member would represent.

Ms. Mary Dawson: Yes. It would depend.

Mr. Chris Warkentin: Thank you.

You talked about harmonization of the code and the act as it relates to the ability to do a preliminary investigation. Obviously the code allows for that, and the act doesn't allow for that.

You're suggesting that should be a requirement, or something that should be changed, so that's one, and getting agreement on that. Do you want to go further with that?

My understanding would be simply that you want the ability to see if an investigation should be launched or not, should resources be allocated to something that might be frivolous.

Ms. Mary Dawson: That's right. I think it's a useful provision in the code. It seems to have worked well, and I don't know why it couldn't also apply in the act.

Mr. Chris Warkentin: In terms of frivolous complaints that come before your office, we all understand that we live in a hyper-political environment where sometimes these things may be frivolous, either intended or not. The challenge for members of Parliament is that the only thing we have to go out to our constituents is our reputation. In doing so, your office obviously plays an important role in either protecting reputations or in helping somebody else. I think your desire to be able to speak or to clarify the record might be in attempting to protect the members of Parliament in cases where reputations are being slain unnecessarily, using your name.

Ms. Mary Dawson: It could go either way, actually. It could be somebody saying that I'd said it was fine and I hadn't said it was fine. It could be somebody saying somebody did some dastardly thing that they've told me about and I'm investigating it, and I'm not. It could be any number of situations.

Mr. Chris Warkentin: It seems to me that a number of different organizations have undertaken a number of precautions to ensure that their membership is protected until such time as a guilty verdict has been rendered. I look at the College of Physicians and Surgeons as well as a number of different professional organizations that have a number of things to ensure that reputations are protected until such time as a guilty verdict has been rendered.

Have you undertaken any consideration of anything in your purview that needs to be enhanced so that you might be better able to protect the reputation of somebody who may be unnecessarily hindered as a result of an investigation or a frivolous accusation?

Ms. Mary Dawson: Probably the one that comes to my mind is that recommendation that says that people putting in complaints shouldn't be releasing them to the press before they've told me they've put them in to me and before the person that is complained about knows about it. That's another one of my recommendations.

I would say that was probably the most problematic area.

Mr. Chris Warkentin: So what would happen in that case where the decision was released to the media? Would you suggest that you would not investigate if in fact the information is released publicly before you were made aware of it?

Ms. Mary Dawson: No, I would suggest that would be a contravention of the act.

Mr. Chris Warkentin: So that would be a monetary penalty?

Ms. Mary Dawson: It could be.

[Translation]

The Chair: Mr. Warkentin, your time is up.

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

[English]

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

Welcome to our panellists today.

Carrying on with the conversation about your recommendations regarding 6-2, 6-3, and 6-4, you were just speaking about a member refraining from commenting publicly on an investigation and your allowing a preliminary view of requests and so on.

It's a two-way street. Obviously part of the communication is letting people know that there's an investigation ongoing, and you can't do that unless you go public. How do you square that circle? It's often charged in the media or elsewhere, and if neither party is commenting on it, then it just goes up into a vacuum. Do you see that as being a problem?

• (1555)

Ms. Mary Dawson: No. The media can call me and ask me whether I've received a complaint and I can answer that question. I'm not sure if that's quite what you're getting at, but there's not a huge delay between the time somebody sends a complaint in to me and I say that I've received a complaint.

Mr. Scott Andrews: When you say correct public misinformation out there, how far do you want to go? It's like one step, and then it's two, and then you're into the debate.

Ms. Mary Dawson: There is a balance. Certainly I'm very conscious of protecting people's reputations when they shouldn't be attacked needlessly.

I've had several cases, for example, where an MP has gone out and said they had taken something to the Ethics Commissioner and she said it was just fine, and I haven't. I think it should be within my power to say "No, I did not say that."

I'm not even sure that the act as it stands right now doesn't allow me to make some public comment. The provision in the act is restricted to once an examination has begun, but there's a general philosophy in the act that I keep things confidential, and also in the Parliament of Canada Act.

So all I'm really suggesting is that there be some kind of a provision to make it clear that I can cover off misleading information.

Mr. Scott Andrews: So you've had examples where members of Parliament have said they've come to you and the commissioner has said it's okay, and that's not actually the fact.

Ms. Mary Dawson: Yes. Usually it's because they may have said yes, it's fine, but in fact it wasn't a matter that could be dealt with under the act.

Mr. Scott Andrews: Wouldn't you feel it your duty to speak out on that regardless of what you're allowed to say or not say?

Ms. Mary Dawson: Yes, and I think I probably would be allowed to say that because it's not while I'm in the middle of an examination, but what I'm saying is that I think that role should be clear. I think there should be some parameters around that, such as when there's a misrepresentation, or a misunderstanding or something.

Mr. Scott Andrews: Mr. Conacher was here last week and he said that you've initiated over 100 investigations, but you've only put out 17 rulings. His suggestion was that every time you do an investigation, you should have some reporting mechanism, not necessarily saying what was involved or who was involved, but the broad strokes of what was alleged or asked, and what the ruling was. Do you see that as a useful suggestion in changing the act?

Ms. Mary Dawson: I actually saw that as kind of a useful suggestion, yes, not necessarily to change the act, but I'm asking myself whether there's not a little bit more in that line that I could put in my annual reports.

Again, it's a balance between protecting somebody's reputation being impugned unnecessarily, so of course one would have to not mention the individual. Sometimes the situations are notorious, or are in the media, so just saying what it was about, somebody would know which case it was.

One has to be quite careful in that area, but I'm thinking about it.

Mr. Scott Andrews: It would be helpful if you read your reports and this was in there. You can say, yes, I can see that happening—

Ms. Mary Dawson: Yes.

Mr. Scott Andrews: —and this is what I should do if I saw that happening.

Ms. Mary Dawson: Yes. I actually called up a little list of what kinds of decisions had been made that we didn't go forward with investigations. Usually, it's because there's insufficient evidence to warrant going forward. For example, one of them wasn't really a gift or something. There are a number of different circumstances that just don't fit within the parameters of the act, or sometimes it's simply an allegation with absolutely no substantiation.

I could certainly think about categorizing those in a general way and giving a little bit more information on that, because I do give quite a bit of information on the investigations, but it's true that the ones that... Now that's over the five years. He has that 83, or whatever it is, but there are about 20 a year or something that might be worth at least saying something about.

Mr. Scott Andrews: Talking about the cooling-off period and your recommendations 5-1 through 5-7, and reflecting back on a recent report you did on Mr. Loyola Sullivan—a public office holder and his breach as a public officer in a conflict of interest—if we make all these recommendations on the cooling-off period and it still happens, and there are no imposing penalties...I'd have to disagree with you when you say your report alone sort of does the deed. I don't think it does. It partially does, but when you look at it, there's no penalty: I got written up by the commissioner. Big deal.

• (1600)

Ms. Mary Dawson: There could be an admin monetary penalty for the failure to report it in the 30 days, or whatever the deadline was, and I think I've said that would certainly carry on into the post-employment situation. So there would be some. But those penalties are really administrative. It's a matter for Parliament to decide whether in fact the regime I'm administering lends itself to significant penalties or whether that should be left to the government or somebody else to impose or to have the results.

Mr. Scott Andrews: In your opinion, should there be significant penalties because you look at the cooling-off period and you write it up? You have written up a number of cabinet ministers now with no consequences whatsoever.

It has to be pretty discouraging that these offences are out there, and it happens, and then it's just brushed off unless there's a substantial penalty. Should there be substantive penalties?

Ms. Mary Dawson: I'm not of the view that there should be, but I recognize that there are a number of people who are.

I was fairly taken with the testimony of...what was his name? Professor...?

Ms. Nancy Bélanger (General Counsel, Office of the Conflict of Interest and Ethics Commissioner): Green.

Ms. Mary Dawson: Professor Green suggested this was not appropriate for the kind of entity that I am or that my commission is.

I think I am a fact-finding, advisory, report-making entity. I'm not so sure I should build myself up like a criminal court or something. If the thing gets bad enough or takes on the tenure of a criminal offence, then obviously it should go into the criminal justice system.

Personally, I think there is an effect if I issue a report. I think it's very embarrassing. The other effect is that people don't tend to do it again. As we build up a body of these decisions, my hope is that people will know not to do it.

[Translation]

The Chair: Thank you.

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

[English]

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair.

Good afternoon, Commissioner, and to your colleagues.

Following up on your comment, I'm one who would agree, unlike my colleague, that the damage or impact on reputations, I believe, is significant. For anybody living this life, our reputation, who we are, what we are doing, and why we're doing it here, representing our constituents, is very important to us. I for one believe that the impact on one's reputation of a judgment of that nature is very great, so I would agree with you on that.

I want to cover a couple of different areas. With regard to gifts, etc., and not to the numbers so much, but I recall in one of your earlier visits before this committee that you talked about the strain on resources in your organization. One of the thoughts I have as I read some of these recommendations is that while I agree with you with regard to tightening up some of the gaps and filling in where a greater definition is required...have you quantified the financial impact on your organization and what that might look like?

Ms. Mary Dawson: I don't remember saying I had a terrible strain on my resources.

Mr. John Carmichael: That could be me. I may have listened to somebody else, and if that is the case, I apologize.

Ms. Mary Dawson: I think it was a different person.

In any event, I don't think these recommendations would require much more work than we have now. We're quite well organized on our advisory role. Every person under both the code and the act has a designated adviser. One person looks after a particular person.

I recognize there may be some difficulty in reporting those gifts, but it just isn't right that people think they don't have to report or tell us, and they assume it's fine to have a gift that goes up to a value of \$200. I thought if you put those two figures together there wouldn't be such confusion because you would only have to worry about one figure.

Mr. John Carmichael: Whatever the number is, I wouldn't disagree. It's in there now. I understand that. I wonder if lowering that amount creates a conflict in terms of the volume.

• (1605)

Ms. Mary Dawson: I don't think that's a big problem.

Mr. John Carmichael: All right.

As we talked about, and as you laid out your eight points on post-employment, we heard from a witness the other day who talked about the impact of post-employment on public office holders at varying levels of responsibility and influence. One piece of the

testimony I found interesting was about a sliding scale of time following leaving the position and being responsible to the rules. I wonder if you've ever considered that, or was that part of the consideration when the five-year rule was established?

Ms. Mary Dawson: I don't have a five-year rule. That's under the Lobbying Act. I have a two-year rule and a one-year rule.

Mr. John Carmichael: I'm sorry, it is under the Lobbying Act.

Ms. Mary Dawson: I have a two-year rule. I think that's something one could consider. It's not one of my recommendations, but it's not an outlandish suggestion.

It's interesting. I've always observed that two of the purposes of the Conflict of Interest Act are to "encourage experienced and competent persons to seek and accept public office"—that's paragraph 3(d)—and to "facilitate interchange between the private and public sector". These post-employment rules go against those particular objectives, but on the other hand, they're attempting to protect the integrity of information and influence.

There is a balance. Usually it's one year. It's only two years for the parliamentary secretary and the minister, so in a sense, there is already the start of a sliding scale. I don't know whether you'd want to go too much less than one year, but it's not something that I think is outlandish.

Mr. John Carmichael: The balance in that is all I'm looking for. I did find the concept interesting in that, as you say, you want to encourage people to take on the role. You don't want to discourage them by post-employment penalties that are too onerous.

Ms. Mary Dawson: Right. It's interesting, because there's no similar prohibition coming in; it's just going out.

Mr. John Carmichael: I have a question on one-on-one meetings with you and/or your staff—obviously, your staff more frequently. Do you feel right now that public office holders are receiving the amount of attention, one on one, in terms of guidance and direction from your team that they need in order to get the job done?

Ms. Mary Dawson: Certainly those who want it get it, and a large number of people seek advice from our office on a regular basis. I'm sure there are others out there who haven't paid an awful lot of attention to the act. Those are the people for whom, perhaps, there should be some kind of... I made a recommendation for at least one mandatory piece of training. Those who automatically come anyway for advice won't mind mandatory training; they will have already done it. I've suggested that happen in that first 120 days, when they're becoming familiar with the act.

It could be done in a number of ways. I couldn't do it all. I have 3,000 public office holders. But between the advisers and group sessions, it could be done.

Mr. John Carmichael: You have to rely on your people to be able to spread the message.

Certainly, when we look at the volume of information we're required to know as public office holders, in whatever position we enjoy here, it's a critical element that there be.... And I think mandatory is the right way to go. You have to ensure that somehow people have received the message at some point.

The concern I have is that if you're too early in the process.... There's so much information coming at people. You want to know that it's going to stick.

Ms. Mary Dawson: Yes. When there are new MPs—of course, these are MPs, not public office holders—there are sessions for them, but they don't all turn up.

Sorry, I'm in the act.

Mr. John Carmichael: Good. Thank you.

[Translation]

The Chair: Mr. Carmichael, your time is up.

[English]

Mr. John Carmichael: Thank you very much.

[Translation]

The Chair: We will now move on to the five-minute question and answer period.

Ms. Borg, you have the floor.

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

I would like to thank the commissioner for being here with us today.

I believe that everyone around this table absolutely wants to have an act that will allow us to avoid any further scandals. The general public has had enough. There is currently a lot of cynicism surrounding politics, especially in Quebec.

Some witnesses told us that there was really a shortcoming in the actual act because no distinction is drawn between real, apparent and potential conflicts of interest.

Do you agree with that? What is your opinion on that?

•(1610)

[English]

Ms. Mary Dawson: I would say that's an overstatement.

I have several pages in my report where I point out that in fact the apparent conflicts and the potential conflicts are covered, to some extent, in the definition of “conflict of interest” and in certain other provisions. I go into the details of the provisions I give as examples.

I note that there are a number of provincial jurisdictions, at least a few, that have special provisions for apparent conflicts of interest—I think of British Columbia, for example—but their primary section on conflict of interest isn't identical to ours. The caution I put out is that you can't just stick words into an act because somebody else has them in there. You have to look at the provision you're sticking them into and whether it's really necessary.

I don't really care if you put an extra provision in there on apparent conflict of interest, because I think it's covered. But it will

create some confusion in those sections where the “apparent” is very obviously covered, and it's building on that concept of conflict of interest.

All I'm saying is that if you put in an amendment to add “apparent”, you'd better take a look at all the sections it's going to affect and make sure it makes sense.

I don't think it's necessary, but I'm not militant against it.

[Translation]

Ms. Charmaine Borg: Thank you very much.

Of course, there is an increased risk of a conflict of interest when a minister or a parliamentary secretary solicits funds. You stated that in your report. In recommendation 3-10, you also specified that more stringent rules than the current ones in section 16 should be established with regard to fundraising.

Do you have any specific recommendations regarding measures you would like to see to strengthen section 16?

[English]

Ms. Mary Dawson: No, I didn't put a specific recommendation in, but I think one could, for example, prohibit a minister from fundraising. I think there could be rules that focused on not accepting fundraising from lobbyists or certain kinds of lobbyists, which would be broader than if just you yourself had a conflict of interest.

I'd just like you to consider that. I think there is room. It's an awkward area. I know the Prime Minister's guidelines in the accountability guide go further than this act does, so that's the place to start.

[Translation]

Ms. Charmaine Borg: I see. Thank you.

The question I am going to ask you has already been brought up.

I would like to know whether you believe citizens should be able to file complaints.

[English]

Ms. Mary Dawson: You know, if any citizen sends in a concern, I look into it. I have the power to initiate an investigation myself. I end up initiating more investigations myself than I do as a result of complaints, I think, at this point, whether that's from media I'm reading or as a private citizen.

I don't think it's necessary. I think if that provision were in the act, probably it would encourage a lot more spurious complaints, just because there are certain people who are sending in complaints to deal with. I wouldn't recommend it, but again, I think I'm accomplishing it in the way we're administering the act.

[Translation]

Ms. Charmaine Borg: Do I have any time left, Mr. Chair?

The Chair: You have 10 seconds.

Ms. Charmaine Borg: Okay. I will stop here.

Thank you very much.

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

[English]

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Mr. Chair.

Thank you very much, Commissioner and associates, for being here today.

I wasn't a member of Parliament when this legislation was brought forward, but I'm certainly proud to be a member of a government that did decide, five years ago or longer, that we needed such accountability legislation and we needed this type of an office. I remember that during my orientation shortly after the May 2011 election, you and your staff were there. You provided, I think, a very comprehensive overview of the legislation so that we, as new members of Parliament, understood the rules, even though as backbench MPs we weren't necessarily affected directly by the act—and that's one of the questions.

The first question I have for you concerns the definition of designated public office holder as far as the act is concerned. Is that broad enough? Are we covering enough people? You mentioned you're responsible for 3,000 people. Are we covering enough people in that? Should we be covering people like me, and opposition MPs, and others who have influence around here on how public policy is developed? Is the definition in the act as we currently see it strong enough so that really we're getting at cabinet ministers and parliamentary secretaries and deputy ministers and others who are covered under the current definition?

• (1615)

Ms. Mary Dawson: First of all, just to avoid confusion, the expression “designated public office holder” comes from the Lobbying Act, not from my act.

I think the appropriate people are covered by the act. The members, of course, are covered by a separate piece, a separate code. Those rules are there, so I don't think there's a gap there.

I have suggested that maybe the two should be looked at together to see whether there's anything that could be harmonized, because it's easier for people to understand rules if they're not different all over the place.

I don't know if that answers your question, but I think it's not bad.

Mr. Brad Butt: Did you want to add something else?

Ms. Mary Dawson: Yes. I've made a number of technical suggestions. I'm not sure there's any interest in going into them in detail. I'm suggesting that maybe ministerial staff have a separate system. There are lots of issues surrounding the general political behaviour of members, but I don't think that's my bailiwick. I think that would probably be a separate code that would maybe be administered from within the House or something.

Mr. Brad Butt: Are there specific areas? I made the mistake of saying designated public office holder because I guess I was thinking of the Lobbying Act. I get confused, too, between the two acts, the two offices, who we're all interacting with on a day-to-day basis while doing our jobs as members of Parliament, what's covered, what isn't covered, what you declare and do not declare, and different things.

Have you had any discussions with your colleagues in the office of the lobbying registrar about that act versus this act, and about the confusion in some of the sections and with some of the language? We can look at it to make sure that....

I think it would be better for everybody if all the rules under the various pieces of legislation were consistent across the board. It would make it easier for all of us who have lots of things to worry about all day long other than the Conflict of Interest Act to be sure we are in compliance. The wording in the legislation and the rules is somewhat similar, given the fact that there's probably a fair bit of crossover between the two pieces of legislation.

Ms. Mary Dawson: I have not had discussions with the lobbying commissioner about this. I mean, we're aware there are different terms and rules, but the fact is the designated public officer holders in the Lobbying Act are a somewhat different group than my reporting public office holders. So it may not be as bad a thing as it looks that it has a different title.

I sympathize with the plethora of rules that are out there, but I'm not coming forward with any particular proposals there.

Mr. Brad Butt: I'd like to follow up on some questions Mr. Angus asked.

We run for this office to represent our community. We get elected. We don't know if we're going to be in government or in opposition until all the votes are in and we find out who forms the government. Then some of us get phone calls from the Prime Minister of the day saying, congratulations, you're a member of cabinet. But you're still a member of Parliament representing your local community.

I know you've made some rulings. You've made some comments about someone who might be a cabinet minister or a parliamentary secretary, but they're also acting as a local member of Parliament in sending a letter of support for something. I write support letters all the time for my constituents who have an issue with a government department or something. I'm trying to be helpful and supportive, as their local member of Parliament. I would hate to think that just because the Prime Minister of the day said I'm now a parliamentary secretary or a cabinet minister that I wouldn't be able to operate with the same level of independence as a member of Parliament in standing up for my community.

Where do you find that balance, or is there any balance? Is it your view that the day you're in cabinet you can no longer do any of that to represent your own constituency? I can understand if you're the Minister of Industry writing a letter to the CRTC to support an application. I get that. I can see that's a clear conflict because you're the minister who oversees that. But if you're a minister who has nothing to do with that area or that branch of a government, I would find it difficult. I would find it difficult, as a member of Parliament, not to represent my constituents on an issue they were concerned about and say to them, sorry, I can't help you because I happen to be a cabinet minister.

Where do we draw that distinction? Where do we draw that line to have more clarity around this?

●(1620)

Ms. Mary Dawson: First of all, there are lots of things you can still do. You can pass on factual information or help direct your constituents as to where they ought to go for help and give them lots of information and advice. But I don't think you can have your cake and eat it too. Once you've stepped into the executive, you have a different role that you're playing, and I think there have to be some distinctions.

Again, I feel your pain when one is a cabinet minister and your next door neighbour is out there putting in their recommendations and the voter is happy with him and is not happy with you.

I actually question how useful those letters to tribunals are, in any event. I think they're just kind of there. I don't think the tribunals take them terribly heavily. All they are is a letter that an MP has written to say this guy is in my constituency and I support him.

I guess the bottom line is that there are many, many things that the minister, as MP, can still do, and his office can certainly help with a number of questions.

I think there are some lines to be drawn, and this is an obvious one.

[Translation]

The Chair: Thank you.

I will now give the floor to Ms. Davies for five minutes.

[English]

Ms. Libby Davies (Vancouver East, NDP): Thank you, Chairperson.

Thank you to Ms. Dawson and her staff for coming today.

I have a couple of questions. First of all, obviously to do this review is very important.

As a bit of a comment, I think one of the most important criteria is to have rules that are strong and clear and well understood, and the less ambiguity the better. You've talked a bit about the discretion you have. I don't know how many cases you've dealt with overall, but you must have a general sense of how MPs, public officer holders, and even how the public view this process.

Would you say there is a good understanding of what the process is about, say, by public office holders and MPs? Do we understand it properly?

Ms. Mary Dawson: I hope so. I mean, I'm doing everything I can to explain it. My annual reports are very fulsome. I try to be very transparent as to what has gone on in the previous year.

Now, not every MP or minister or whoever... I'm talking about the act, of course, which is only ministers and parliamentary secretaries—I don't know if there are actually any of them in this room—but the same goes for the code.

I try to be very transparent in my reports. I try to be fulsome in my investigation reports. We do put up advisories and guidelines in certain areas for the act.

We have a bit of a problem in the code, because we can't put guidelines up unless they're approved by the procedures committee.

That has slowed that process down significantly. That's one of my recommendations to the procedures committee, that we don't have to get their approval to put some guidelines up.

We also do our educational work. Every year we offer a briefing to every caucus so that people feel free to talk amongst their own caucus.

I don't know what else we could do really.

●(1625)

Ms. Libby Davies: The reason I ask is that I recall, in one instance, just how much questioning and even confusion there was over this issue of the gifts and the \$30. I think it was at the procedure and House affairs committee. It didn't matter which side of the House it was on; there was confusion.

So it does seem to me that with regard to the whole protocol of laying a complaint—what happens when a complaint has been laid, what our responsibility is in terms of the code—it's very important to make that strong and clear and well understood, over and over again.

That leads me to another question. I do know that in B.C. there has been a system in place for the conflict of interest legislation. When you speak about harmonization of the code and the act, I know that in B.C. the code.... It's actually within the legislated code, and it seems to me they're having some success there in terms of penalties and maybe giving some better clarity.

I'm wondering if you could comment on the following. If, when you talk about harmonization, you're not suggesting that the code be put in the act, why not? And have you looked at what's happening in B.C.? Do you see that as potentially a model that should be followed federally?

Ms. Mary Dawson: A number of provinces have combined the MP rules and the public office holder rules. Generally the provinces don't have as broad a range of public office holders as I have under my authority.

I certainly would be quite happy to see them in the same instrument. Even if they were in the same act, the rules wouldn't have to be identical. There are some logical places where they should be somewhat different.

I think there will be resistance to that, though, so what I'm saying is that it's fine if people would like to put it all into one act; I think that would be great. But I suspect they won't want to, so could they at least harmonize some of the stuff so that the same language is used and so that, where possible, the rules can be the same?

Ms. Libby Davies: Do I have a little more time, Mr. Chair?

[Translation]

The Chair: You have a little bit of time left.

[English]

Ms. Libby Davies: Just to follow up on what my colleague said, in terms of the ability of the public to file a complaint, you're saying you use your own discretion and you self-initiate. Well, that is very discretionary, and you suggested that it would encourage spurious complaints if there were public complaints.

I'm thinking about Elections Canada. I do find it ironic that on the one hand, in the process of getting elected, there is a role for the public to play in terms of Elections Canada, but once you are elected, apparently there is not.

So yes, there will always be spurious complaints and so on, but I just wonder if you have any more experience or evidence of other jurisdictions that do allow public complaints. I mean, it is something that is probably worthy to consider given that this is a procedure that takes place at Elections Canada.

Ms. Mary Dawson: I have not done a study on that, but I can assure you that whether public complaints were or were not in the act, I would look into them as carefully, in the same way, as I do now.

I don't think practically there would be a difference; I just think we'd get more. We'd get more because there would be an encouragement to put more complaints in.

But you know, I wouldn't be devastated at all if the public complaints went in there. That's not a problem for me. I think that effectively we're doing that now because of the self-initiation power, but again, if Parliament felt they wanted to put that in, that's fine.

[Translation]

The Chair: Thank you very much.

I now give the floor to Mr. Dreeshen for five minutes.

[English]

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Mr. Chair, and thank you, too, Commissioner, for being here, and your associates.

On one of the things you mentioned a little bit earlier, for those of us who go back every weekend and are meeting with constituents and are constantly writing on their behalf and so on, you made the point that writing to any of these groups perhaps doesn't make much difference. I know you mentioned tribunals, and I'm sure that is the case. We think it does some good, but if not, it maybe isn't doing any harm either. Maybe that's a way of looking at some—

Ms. Mary Dawson: I'm perhaps a little cynical. I'm sorry.

Mr. Earl Dreeshen: I just wanted to make sure that I still felt that I was doing the right thing.

You were saying you have about 3,000 people who would fall under your jurisdiction. Of course, MPs report and go through all of this.

I remember when we were first elected in 2008, going to the orientation. Of course, at that time it was like drinking water from a fire hose, there were so many things coming at us.

One of the things you talk about is the educational aspect of this. I'm just wondering whether you have produced any products online that people could take a look at and say, all right, here's where my situation is now, but there are changes of this type, and this is something you would anticipate being contacted over in your office, but this doesn't really make any difference because it's still part of the ordinary process of some operation you might have been involved with.

Do you have that? Are there some examples? I think really the key issue is that a lot of people have really no idea whether they're going offside on some of the smaller things that take place, and before they get into big trouble, it would be nice to know whether you have some tools there that can help.

Ms. Mary Dawson: Yes. Of course, the best tool is to call your adviser, but there's a lot of information on the website. When people first join the government, they are sent several pages summarizing their obligations, and every year we do an annual review and every year we send the same information.

The other comment I could make is that it's as a result of the questions we get from members that we know what we maybe should put a guideline up on. If we can think of something useful to put a guideline up on, we will.

Mr. Earl Dreeshen: Okay.

On the comment on the 3,000 people that you have, what categories are they reflective of, if you wouldn't mind reviewing that?

● (1630)

Ms. Mary Dawson: Okay. There are basically five groups. There are ministers, parliamentary secretaries, ministerial staff, Governor in Council appointees, and...who's the fifth one? Ministers of state. I always forget that because I figure a minister of state is a minister. So there are the five, and it's interesting that by far the largest group of those—and they're about equal—are Governor in Council appointees and ministerial staff. There are about 500 or 600, I think, of each, and smaller numbers of the other groups.

Mr. Earl Dreeshen: In your presentation you were talking about controlled assets. The last paragraph, just reading here, says, "The prohibition, and its related requirement to divest, would only apply to other reporting public office holders if holding the controlled assets would constitute a risk of conflict of interest."

How do you gauge that risk of conflict of interest? Again, I know you mentioned before to come and ask and you'll tell us whether that's the case, but can you give us more indication of what's happening there?

Ms. Mary Dawson: What I'm saying there is that there's an absolute rule now that if you're holding controlled assets, which are basically shares and things like that, you must, if you're a reporting public office holder, divest either by putting it in a trust or by selling. I think that's unnecessarily broad for some reporting public office holders. Members of a particular board who don't have access to the kind of information that ministers have, for example, it seems to me maybe don't need to be under the same rule.

Basically what I'm proposing is that for these people who are not in the designated groups, and I'm a little bit flexible on what the designated group would be too—I've suggested deputies, parliamentary secretaries, deputy ministers, chiefs of staff, but that's to consider. Aside from those people who have lots of access to information and decision-making powers, it's really quite onerous for some people, to no avail, to have them have to put all their holdings into trust or to sell them. I'm just suggesting that it doesn't need to be that wide a rule. So you'd decide whether there was a conflict of interest in the same way that we decide.... We've had lots of practice now in developing screens if there are conflicts that could be out there, so I think that's not a problem to me.

• (1635)

[Translation]

The Chair: Thank you.

Thank you, Mr. Dreeshen.

I now give the floor to Mr. Angus for five minutes.

[English]

Mr. Charlie Angus: Thank you.

Just so that we really understand where we are with regard to writing letters, last week I was pilloried in the House for writing a letter on behalf of Aboriginal Voices Radio. I personally think it is really important that we have aboriginal communities and aboriginal voices in radio.

Did I do anything wrong by writing that letter saying that I support the idea of an aboriginal radio station?

Ms. Mary Dawson: I don't think so, unless you have some kind of personal interest or there's some conflict that it would create.

Mr. Charlie Angus: Right, so I want to give my colleagues a heads-up. I was asked to write a letter on behalf of a little radio station in Cobalt, Ontario. I have no financial interests, but I love the little town. I think it's going to be a great radio station to involve community interest. I'm not doing anything wrong by saying that.

Ms. Mary Dawson: Not by the information I have.

Mr. Charlie Angus: If I have anything else, I'll give it to you.

Okay. Now the minister wrote a letter on behalf of a business interest that wasn't even in his riding, but since he's a member of cabinet and he's also the minister for greater Toronto and the finance minister, he's under separate rules from me, correct?

Ms. Mary Dawson: That's right.

Mr. Charlie Angus: We would be able to fix this in one of two ways: either the minister would stay with his rules or they would make all MPs come under the same rules as the Minister of Finance. Do you think we should tighten up the rules so that none of us are allowed to write letters, or do you think what we have now is a good distinction?

Ms. Mary Dawson: I think it's a fair distinction. I think there will be cases when a member will have a conflict in writing some kind of a letter.

Mr. Charlie Angus: Certainly.

Ms. Mary Dawson: It's a case-by-case issue for members, I believe.

Mr. Charlie Angus: Okay. I'm looking at the "Stand up for Canada" 2006 election platform of the Conservative Party because they had really clear recommendations on the Ethics Commissioner. One was to give the Ethics Commissioner the power to fine violators. That was in the 2006 code, and I've heard my colleagues say it's about making the judge and jury all in one person. I heard them say you have the right to face your accuser. But that was their 2006 election commitment, that they were going to give you the power to fine violators.

Do you think we should finally enact that Conservative promise from 2006?

Ms. Mary Dawson: We do have administrative monetary penalties. It's only for failure to meet deadlines, and I'm suggesting it be broader than that.

Mr. Charlie Angus: It should be broader than that, substantially

Ms. Mary Dawson: I'm not suggesting huge penalties.

Mr. Charlie Angus: For substantive issues, you say we should—

Ms. Mary Dawson: Yes.

Mr. Charlie Angus: Sometimes I've agreed with the Conservative Party.

In 2006 the Conservative Party said they wanted to be able to enable members of the public, not just politicians, to make complaints. You say you are sort of doing that anyway, but should we enshrine that in the code? If we do enshrine that in the code, should we make sure that any of these complaints you decide are not frivolous and actually deserve to be looked at—will you issue reports on them?

Ms. Mary Dawson: Yes, the ones that I self-initiate now I issue reports on.

I must say that I wouldn't say all the ones that we don't proceed with are frivolous. It's just that they don't happen to fall in my jurisdiction, or there are not enough reasonable grounds to support it.

As a matter of fact, in the time I've been here I have yet to find that a request I've had was actually frivolous. I may think it's off base or silly, but I don't think it's met the limit of what you'd have to find for "frivolous". That's a serious charge.

Mr. Charlie Angus: That's very interesting. Certainly, the concerned public has a desire to find out if rules were broken, and we are all accountable to the public at the end of the day. Would you be in a position then to report that you had x number of cases initiated by the public, that some were not in your jurisdiction—just so that people know—or for some you didn't have enough evidence?

Under Scottish law there is guilty, innocent, and there is not proven. Sometimes not having any evidence provided might warrant a statement. Do you feel that you should put that out?

Ms. Mary Dawson: I now report on the self-initiated investigations, and many of those come from the public. I don't know whether I've actually itemized which ones came from the public and which ones I just happened to notice in the newspaper, but everything that is examined is reported on—everything that gets into an examination stage.

Mr. Charlie Angus: Thank you very much.

[*Translation*]

The Chair: Thank you, Mr. Angus.

I now give the floor to Mr. Warkentin for five minutes.

[*English*]

Mr. Chris Warkentin: Thank you very much, Mr. Chair.

Charlie has done my work for me already. He outlined that we, as Conservatives, have made a number of commitments, and we've fulfilled them through your office, and we certainly want to thank you for your continued efforts in order to protect the integrity of the office. Thank you.

With regard to Charlie's line of questioning, he ventured into the hypothetical with regard to that, so I'm going to continue in that vein. If Charlie wrote a letter supporting a radio station and then subsequently received a donation to his association from somebody who had a financial interest in that, would you see a conflict in that situation?

•(1640)

Ms. Mary Dawson: Yes, I might well. It depends on the timing.

Mr. Chris Warkentin: Okay. And if Charlie didn't write a letter but sat on a committee that had a responsibility to review the legislation or the particular rules surrounding that radio station and then received a donation to his association, would you see a conflict there?

Ms. Mary Dawson: Whenever you have a responsibility that will impinge upon some particular person, it's the sort of thing you look at for a conflict of interest.

Mr. Chris Warkentin: It makes it difficult, I think, for members of Parliament to sometimes be sure what's permitted. I can see under the act that this is the case for ministers as well.

Ms. Mary Dawson: Absolutely.

Mr. Chris Warkentin: You'll view it with the evidence that you have on a case-by-case scenario. We as members of Parliament may see things differently, or the public may see things differently from either your office or ours. I'm wondering how we can protect, without outlining every scenario, and whether in fact we shouldn't have guidelines that are more hard and fast. The review of conflict of interest is somewhat subjective, I guess, varying from one person to another, and it presents a complex position. I'm wondering how we might be able to better serve all offices by having more clarity and more assurance.

Ms. Mary Dawson: Certainly I'm in favour of clarity. The problem is that sometimes, if you try to identify what you're trying to cover, you'll miss a bunch. There's room for the general as well as the particular in certain cases.

What was I going to say? I'm sorry; I had another thought, but it will come back to me.

Mr. Chris Warkentin: I'm going to go to one other issue. We as members of Parliament obviously have a number of different portfolios. There are certain circumstances in which a member of Parliament is engaged with either an ethnic group or an international group for which the giving of gifts is a gesture of goodwill, and the decision to refuse that gift would be seen as a snub to their country.

In some cases, for some folks who are in international affairs, or in my case sitting as the chair of the aboriginal affairs committee, sometimes sharing a meal would be expected, or receiving a small gift might be. In these cases, the people receiving the gift obviously have some purview over legislation relating to those folks. I'm wondering how you review those culturally sensitive engagements and whether there is a different reflection concerning them.

Ms. Mary Dawson: It depends on the circumstances. There's an exception in both the code and the act whereby gifts that are received as a normal expression of courtesy or protocol are acceptable or within the customary standards that normally accompany the public office holder's position. Now, one has to interpret whether it's normal, and—

Mr. Chris Warkentin: That's the question, I guess.

Ms. Mary Dawson: Right. But certainly, if every time an aboriginal group has some kind of event they give the person they have invited something or other, then it's probably a normal expression of courtesy.

I had occasion to look at some golf memberships, as I recall, when I first came in, and some of them were over the top, I thought. But it depends on the circumstances. Anyway, there's lots of room for exception in that kind of case.

[*Translation*]

The Chair: Thank you, Mr. Warkentin.

[*English*]

Ms. Mary Dawson: May I just add, on the other matter—?

[*Translation*]

The Chair: Okay.

•(1645)

[*English*]

Ms. Mary Dawson: What I wanted to say about the difficulty of having general rules is that I accept that sometimes a member—or a minister or whoever—may do something and not realize that subsequently there's going to be a situation in which a gift is provided, or something or other. They can refuse the gift. Or, if they have a situation in which they're voting on something or making a decision, they can recuse from the decision. There are ways of handling an after-the-fact realization that something is tainted.

I just wanted to complete that answer. I knew there was another half to it.

[*Translation*]

The Chair: Thank you.

I now give the floor to Mr. Andrews.

[*English*]

Mr. Scott Andrews: Thank you, Mr. Chair.

Getting back to these hypothetical situations that have been bantered about, if you put the words “apparent conflict of interest” or “potential conflict of interest” in this act, would it make it a stronger piece of legislation? I know that you've recommended there is no need for it, but if there is an apparent conflict in certain circumstances, would it help if these were put in the act because we have had that request?

Ms. Mary Dawson: The quasi-definition of “conflict of interest”—because I have comments about where that’s located too, and I suggest that it belongs in the definitions section—reads, “provides an opportunity to further his or her private interests”. That’s more than just a real furthering of the private interest. There is a step behind.

I would argue that that’s both a potential and—

Mr. Scott Andrews: And an apparent—

Ms. Mary Dawson: —an apparent. How are you going to know whether...? You are going to decide whether there is an opportunity provided—there is a “reasonable man” test there—and that’s similar to any apparent test that’s—

Mr. Scott Andrews: Sometimes, though, these things need to be defined implicitly.

Ms. Mary Dawson: If people are more comfortable with putting “apparent” in there, that’s fine with me, as long as they go through the act and make sure it doesn’t gum up some later provisions.

Mr. Scott Andrews: Okay.

Regarding your suggestions in recommendation 2-5 as to who is covered by this, you recommend in 2-5 that the definition of “ministerial adviser” be amended. Have you come to a circumstance where you really need to make that recommendation?

Ms. Mary Dawson: Nobody is caught by “ministerial adviser”. I never hear about any. There aren’t any. So I’m saying there is something wrong with that being in the act.

What I’m suggesting there is... I’m sure there are a number of advisers who don’t occupy a position in an office. That thing is what makes it so that we’re not getting any information on advisers. That’s the thrust of that recommendation. Something tells me there is something wrong if we don’t have any ministerial advisers under the current definition.

Mr. Scott Andrews: With regard to recommendation 2-8, you’re asking that there be an exemption for the Canada-Newfoundland and Labrador Offshore Petroleum Board. You specifically referenced the two petroleum boards to be exempted from the definition.

These are two pretty big boards on the east coast. They’re politically appointed boards. Why would we want to exempt them from this? I’ll start with that question.

Ms. Mary Dawson: Well, they’re already covered under the provincial legislation, apparently, with the conflict rules.

What I’ve said there is that it looks like that was an anomaly in the amendment. There was a change. The code or guidelines or something was accepted under the original legislation. When the act came in, I think, it just didn’t happen to technically fit the description of what was exempted. I don’t care if they’re exempted or not, but I think it was inadvertent that they weren’t. We don’t apply it to them now.

Mr. Scott Andrews: Because they fall under the provincial....

Ms. Mary Dawson: Yes, and because it’s patently obvious to me that it was an oversight of a consequential amendment. But I don’t care. This is an example of a technical amendment that I think needs to be made.

• (1650)

Mr. Scott Andrews: Are there any other boards as such that we should be looking at, that you do not cover?

Ms. Mary Dawson: I’m not aware of any.

Mr. Scott Andrews: You’re not aware of any?

Ms. Mary Dawson: No. I think it was part of the original deal as to which jurisdiction was going to look after them from a conflict of interest point of view.

I’m being told that it’s the provincial legislation that says they’re not subject to a federal regime. It’s a very funny anomalous little case. I’m trying to clean up the things that are somewhat inaccurate in that list of definitions.

Mr. Scott Andrews: Recommendations 2-9 and 2-10 seem very similar. Could you tell me the difference between them: “...expressly exclude individuals appointed by Governor in Council...”?

Ms. Mary Dawson: With recommendation 2-10.... There is a group of appointees whose appointment is only approved by the Governor General. They are not part of the appointment. In other words, it’s usually in a museum board or something, where the board votes who’s going to be the chairman. I’m saying that I think the intention was to cover them as well.

Most of them are now voluntarily putting themselves under the act. It was an omission that we discovered a year or two into the time I was acting as commissioner.

Again, this little list of amendments is of highly technical little aberrations we’ve come upon, and I’m suggesting that whether the appointment is made by or approved by the Governor in Council, it’s the same sort of person and they should be covered.

[Translation]

The Chair: Thank you.

This brings today’s meeting to an end.

I would like to take this opportunity to once again thank our witnesses from the Office of the Conflict of Interest and Ethics Commissioner, Ms. Dawson, Ms. Bélanger and Ms. Robinson-Dalpe.

The committee will reconvene on Wednesday to continue this study.

The meeting is adjourned.

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