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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)): Order, please.

Good afternoon everyone and welcome to the committee's 66th meeting. As planned, we are continuing our study of the Conflict of Interest Act.

Today, we are pleased to welcome Mr. Giorno and Ms. Froc, representing the Canadian Bar Association. Mr. Dodek, from the University of Ottawa, was also supposed to join us, but he will not be here today. We will have an opportunity to hear from him at another meeting. We are also pleased to welcome Mr. Boisvert, who is a professor at the École nationale d'administration publique.

As usual, we will begin with presentations. Each witness will have 10 minutes. We will then move to the question and answer period.

Without further ado, I will yield the floor to Mr. Giorno, from the Canadian Bar Association. You have 10 minutes.

[*English*]

Mr. Guy Giorno (Executive Member, Canadian Bar Association): Thank you. Ms. Froc will begin.

Ms. Kerri Froc (Staff Lawyer, Law Reform and Equality, Canadian Bar Association): Thank you, Mr. Chair, and honourable members.

The Canadian Bar Association is pleased to appear before this committee today to address the statutory review of the Conflict of Interest Act.

The Canadian Bar Association is a voluntary association of 37,000 lawyers across Canada, whose primary objectives include promotion of the rule of law, improvement of the law, and improvement in the administration of justice. It is in the spirit of this mandate that the members of our administrative law section, through its law of lobbying and ethics committee, have made the comments that we have submitted to you in writing and will speak about today.

Guy Giorno, an executive member of the CBA's administrative law section and the chair of its law of lobbying and ethics committee, is here with me today.

I'll turn it over to him to address the substance of our comments on the review.

Mr. Guy Giorno: As Kerri said, I'm an executive member of the CBA's national administrative law section, and I chair the CBA's committee on the law of lobbying and ethics.

Everyone covered by the Conflict of Interest Act holds a privileged position and each has volunteered for public service.

[*Translation*]

In Canada, public office holders are not conscripts.

[*English*]

Whether by seeking election or by accepting an appointment or employment, each public office holder freely chooses this responsibility. Public office holders voluntarily accept the public trust knowing they must maintain that trust and knowing they must be seen to maintain it.

The Supreme Court of Canada has observed, "preserving the appearance of integrity...[is]...as important as the fact that the government possesses actual integrity."

In this context, allow me to highlight a few of our recommendations.

We agree with the Conflict of Interest and Ethics Commissioner that Parliament should close the loophole by which the Governor and Deputy Governor of the Bank of Canada are not covered by the act. We support the commissioner's call for greater transparency in reporting of gifts, including extending reporting to all public office holders, and reducing the $200 thresholds.

Perhaps the most significant shortcoming of the Conflict of Interest Act is that it lacks teeth. The act contains 44 rules, 19 positive obligations or duties, and 25 prohibitions. The prohibitions and one-third of the duties are unenforceable. No one can be charged for breaching a prohibition under this act. No one who defies a prohibition will pay a fine. Other than being named in a report to Parliament, there is no sanction for violating any of the 25 prohibitions or for breaching one-third of the duties under this act.

[*Translation*]

In that case, the rule of law is not respected. If the law sets rules of conduct, those rules must be enforceable. They must be enforced, and their enforcement must be clear.

[*English*]

What's more, the current scheme results in unfairness and inequality under the law. Laws are drafted by civil servants and passed by politicians. When civil servants draft and politicians pass laws on ordinary citizens, those laws include penalties. When civil servants drafted and politicians passed the prohibitions in this law, which applies to senior civil servants and politicians and to political aides and political appointees, penalties were absent.

We recommend that the commissioner be given authority to impose administrative monetary penalties for all contraventions of this act. We also recommend that the act be amended to require the government to address and respond to each breach.

Since the Federal Accountability Act was introduced in 2006, the Canadian Bar Association has been concerned about the restriction that prevents public office holders from belonging to a professional association like the CBA. Our recommendation 3 endorses the commissioner's request for authority to permit a reporting public office holder to engage in outside activities where these would not be incompatible with the reporting public office holder's public duties or obligations.

Political fundraising can give rise to conflict of interest issues, especially when the targets of fundraising are stakeholders of a politician's department or when the funds are solicited from lobbyists who are lobbying the politician or his or her office or department. The Prime Minister has issued sound guidelines for political fundraising in the guide called “Accountable Government”. Unfortunately, the fundraising rules in “Accountable Government” do not have the force of law and cannot be legally enforced. We recommend taking the Prime Minister's fundraising rules and writing them into the Conflict of Interest Act.

We disagree with the commissioner on automatic divestment of assets whose value could be affected by government policy. She wants to reduce from 1,100 to as few as 140 the number of people subject to automatic divestment and to replace it with case-by-case divestment. We believe automatic divestment of controlled assets should remain required of all employees of ministers' offices, except students.

Contacts between lobbyists and ministerial aides number in the thousands. Much of this lobbying relates to decisions that could affect the value of publicly traded stocks and other controlled assets. This is reason to maintain the current law, which provides that no minister's office employee shall own a controlled asset.

Finally, we are concerned that statutory reviews such as this one are not taking place during the timeframes required by law. These statutory reviews are more than administrative or housekeeping matters. They were mandated by Parliament to provide a formal outlet for stakeholders and other citizens to comment on their experience with the operation of legislation that might have been controversial or passed quickly or embedded in omnibus bills.

A review of the Conflict of Interest Act was required by July 2, 2012. However, the House of Commons did not assign this committee to conduct the review until December 10, 2012. The CBA is deeply troubled by the repeated disregard of deadlines established by statute. The Parliament of Canada Act should be amended to mandate the Speaker of the House to assign the appropriate committee for a statutory review if none has been assigned by the deadline.

Thank you very much.

● (1535)

[*Translation*]

The Chair: Thank you.

I will now yield the floor to Mr. Boisvert. You have 10 minutes.

Dr. Yves Boisvert (Professor, École nationale d'administration publique): Similarly to my colleagues, I will give you a few recommendations, but from a significantly different perspective, as I will refer to political science research. We have cross-referenced analyses of scandals, of the institutionalization of government ethics measures and of recommendations made by international NGOs, including the OECD.

The objective was to raise the main concern, whereby the existence of provisions was no longer sufficient, and the effectiveness of those provisions now had to be assessed. That is something our parliaments have not worried about thus far. The main concern was to implement measures, establish a piece of legislation and appoint a commissioner, but very few tools have been provided to ensure that the measures enable those in charge to fulfill their mandate and their mission. When it comes to that, I agree with my colleague who was worried about the strength logic. Our analyses of Canadian federal provisions clearly indicate that those responsible for enforcing laws and regulations in ethics and integrity are not able to truly carry out their mandate, owing to a lack of financial and human resources. I think that this is one of the main concerns when it comes to ethics and integrity.

The expectations and goals of such a piece of legislation should be set out much more clearly in the preamble. Beyond the shopping list of very technical expectations regarding public office holders, it is unclear whether those laws have highly specific goals, which consist in maintaining the integrity of public decisions. I think it's essential to begin by pointing that out. I believe we need to move on from the logic of technical laws in favour of more living legislation, whereby we would aim to implement legislation on ethics and integrity.

Usually, four objectives should be pursued. The first is the socialization of targeted individuals; the second is the development of public office holders' ethical competence; the third is the clarification of deontological rules and expectations; and the last is increased severity of punishment. Without severity of punishment, those provisions will completely fail to convey to public office holders the government's prioritization of those aspects.

Our analysis of scandals indicated that the clarification of the following three points should be a priority in your legislation. For starters, special interest should be defined. Unfortunately, legislation often tends to refer us back to issues of personal, even financial, interest even though special interests are much more important and broad. Many political and administrative scandals, in all OECD countries, involve issues that stem from political party financing. In such cases, the public decision is negatively influenced, and political parties choose special interest. It should be very clear that special interests go well beyond the direct interest of the public office holder and their family. We see in the legislation that the scope is basically fairly limited. That gives rise to a considerable problem. Special interests can be completely outside the public office holder's private sphere. This aspect requires some serious thought.

Gifts and other benefits make up the second point. That issue was fairly absurd during the 1980s and 1990s because no one could understand that gifts could greatly influence public decisions. Our scandal analyses showed, surprisingly so, that the increasingly frequent acceptance of gifts was one of the major flaws. I invite you to look at the work done by the Charbonneau commission. I can guarantee that the increase in gifts to public servants was a very significant phenomenon.

● (1540)

As the OECD indicates very clearly, gifts are always a gateway to corruption. In other words, failing to take gift giving seriously leaves the door wide open to the gradual acceptance of corruption.

Today, the debate no longer consists in figuring out if the gift is worth $100 or $200, but in determining whether it's still tolerable for public office holders to accept gifts—regardless of their nature and value. As anthropologists say, a gift is never free; it always leads to expectations of a counter-gift. Anthropologists could show you very clearly that this is part of cultural dimensions.

One last matter appears crucial to me. Considerable revision is needed in a very porous aspect of all laws—post-employment. That's probably one of the weaknesses common to all legislation that has to do with the management of public office holders' conflicts of interest. Those in charge of managing post-employment issues should be provided with considerable capacity. It's clear that your current legislation and the budgets allocated to the commissioner probably do not provide sufficient leeway for managing post-employment cases.

Post-employment issues, especially in Quebec, were rather problematic on several levels—in Montreal alone. In a number of cases, 100% of senior officials and a few elected officials immediately obtained positions within companies involved in certain problematic cases. So the management of post-employment is a considerable issue.

In Quebec especially, the lobbyist commissioner is having a very hard time managing post-employment. Those in charge tend to only define the post-employment aspect related to lobbying, even though post-employment may be much broader. We may be talking about simple compensation for a past decision that has nothing to do with lobbying. In that case, the gift involved is huge. We are talking about compensation of several hundred thousand dollars in a prestigious position within a company where a transaction did take place. Those are not illusions, but rather realities that exist in a number of OECD countries.

I would like to raise one last issue I worry about. I am talking about the need for governments to provide real tools to those in charge of ethics and integrity. It's time to stop implementing legislative tools with overly limited budget envelopes and staff. That's something we have seen repeatedly in a number of government institutions.

The challenge lies in providing the organization that manages ethics and integrity cases with effective tools and, if possible, encouraging parliamentarians to get involved much more directly in the implementation of a regulatory system dynamic.

Whether we are talking about the management of lobbying, ethics and conflicts of interest, or disclosure, parliamentarians could provide us with a much more effective regulatory system if there was at least some coordination among them and much more narrow collaboration. Canadians could finally regain some confidence in their political and administrative institutions.

Thank you.

● (1545)

The Chair: Thank you for your presentation.

Without further ado, we will begin the question and answer period with the committee members.

Mr. Angus will speak first, and he has seven minutes.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being here today. This is a fascinating discussion.

Mr. Giorno, I certainly agree that preserving the appearance of integrity is the same thing as maintaining integrity. That's fundamental.

It also seems to me that if we're creating laws, the laws have to be clear. If they're not clear, can they really be just?

I have incredible respect for the commissioner, but my concern when we're looking at this act is there are times when I look for clarity and I don't really know what it is. It seems it's a little loosey-goosey particularly when it comes to fundraising. When I asked the commissioner about gifts—and perhaps I'm in a different realm; I'm not a deputy minister, but I am offered baseball caps and cups. If that's buying my vote, well, I don't know. It all sits in a box. I don't mind announcing 30 dollars' worth of snow globes; it's not a problem to me. But when I ask about political fundraising, we don't really hear any clear answers on what the threshold is. I'm concerned. It's not that we're trying to make our jobs impossible. As you know, we live in the world of political money. That's what political parties live on but there has to be clear rules.

I'm asking for a sense of where the line is and how we divide it. Is it that difficult to do? I see in your brief you say that we should have clear rules. What would you suggest?

Mr. Guy Giorno: First of all, Chair, the CBA position deals only with the Conflict of Interest Act. We haven't commented on the members' code, although, as members will appreciate, there are similar provisions.

Speaking to the Conflict of Interest Act, we draw attention to the fact that in annex B of “Accountable Government”, there are, concerning political fundraising by ministers and parliamentary secretaries, what we think are very clear and thorough guidelines that seek to separate quite clearly the lobbying and decision-making related to government policy from political fundraising.

The member is correct that currently, as concerns political fundraising, under the act there are no guidelines. In fact, there is only one rule, a very simple rule in section 16 that applies to all fundraising. It simply says that you can't personally solicit funds.

We believe that at least in the area of political fundraising, again, as it affects reporting public office holders—that's the only group of office holders covered by the Conflict of Interest Act—the specific rules in annex B of “Accountable Government” should be imported into the act. They would provide a lot of the guidance and clarity which the member has asked for, at least under the act, not speaking to the MPs' code.

● (1550)

Mr. Charlie Angus: In terms of the issue of divestment of assets, the recommendation is...assets of those...“who have a significant amount of decision-making...”. It seems to me that's a very subjective interpretation.

I see that your recommendations say we need to have clear rules on automatic divestment. What would you suggest?

Mr. Guy Giorno: Right now the rules are clear. The current rule is that if you're a reporting public office holder, you are subject to automatic divestment. Divestment is defined as selling or putting in a blind trust. That's very clear.

Our recommendations would maintain that clarity and maintain almost all of the automatic divestments, except in narrow cases, which I think would be clearly defined. Interns or students in ministers' offices, again is a clearly defined class. Then we would allow the commissioner to exempt public appointees, that is, Governor in Council appointees, where the nature of their mandate is so narrow—it doesn't apply to multiple sectors of the economy; it applies very narrowly and there's not likely to be an issue related to the decisions affecting the value of assets. The example we use is the Immigration and Refugee Board.

Our proposal would maintain the current clear requirement, narrow it very slightly, and only in clear ways.

I agree with the member's question that for the commissioner to say the automatic divestment rule ought not to apply to anybody except somebody who exercises significant authority leaves open a question. She names chiefs of staff to ministers only. She does not mention deputy chiefs of staff, policy advisers, directors of policy, all of whom—we know—talk on a daily basis sometimes to lobbyists who are lobbying on government decisions that would affect the value of publicly traded securities.

Mr. Charlie Angus: In terms of the administrative monetary penalties, the clarity of that, for us it's an important issue because it allows differentiation between errors in judgment and people who have done something wrong.

How would you see the administrative monetary penalties? Are there limits? When do they start? Have you built a context around how that would be applied?

Mr. Guy Giorno: We begin with the rule of law, and this is a very important point. Chair, the member's question allows me to underscore this. Parliament chooses which laws it makes and which laws it doesn't. In this case Parliament has chosen to create 44 rules and to put them in statutes. They're not guidelines or policies. Parliament voted to put them in statutes, 25 prohibitions and 19 mandatory obligations. It's open to Parliament to repeal them.

In the case of every other law that I know of enacted by Parliament, that is, the laws affecting common folk, there are penalties for those breaches, and then a lot of the considerations the member has asked about are dealt with in the judicial process. In many statutes due diligence is a defence. In many statutes there's a requirement of both a *mens rea* and an *actus reus*, that is, a mental element giving rise to the offence, and the actual activity giving rise to the offence. We trust the judicial process.

The member is correct that there are sensitivities in balancing considerations, but for common folk, we don't say that because it's very difficult to look at whether a law was broken or not there are no penalties. Ordinary people are subject to fines. They're prosecuted. What we think is a matter of rule of law.... Actually, it's absolutely utterly incompatible with the rule of law for those who write the law to say, “Well, because of these considerations, for us there are no penalties.”

Mr. Charlie Angus: I was looking at your brief. You also made a statement about the obligation of government to report each breach.

How do you frame that?

• (1555)

Mr. Guy Giorno: Right now, section 19 of the act says:

> Compliance with this Act is a condition of a person's appointment or employment as a public office holder.

We know that right now, under the few sections, the 13 of 44 rules for which there can be penalties, there are breaches. In the last 12 months alone the commissioner has found 17 breaches. It appears there has not been any follow-up on these. We know, for example, that those 17 public office holders were not removed from appointment or employment as a result of the breach. As far as we can determine, there was very little attention paid in Parliament to those breaches and very little attention paid to them in the news media.

As a matter of the rule of law, there must be consequences attached to breaches. Our recommendation is that when a breach is found, in addition to the penalty, the government that employs or appoints the individual will have to respond to the breach, having taken into account the breach and taken into account section 19, which says that obeying the act is a condition of employment or appointment, by saying either "We're going to maintain the employment or appointment, and here is why", or "We're not going to, and here is why".

What is not acceptable, in our submission, is for breaches to be found—again, there's a small number of rules for which there can be penalties under the act as it now stands—and for nothing to happen as a result of them.

We make a recommendation that applies to the government, although in our brief we comment on the absence of scrutiny in Parliament and in the news media of these breaches. If this is a significant and serious act, then breaches are significant and serious and attention ought to be paid to them.

[*Translation*]

The Chair: Thank you, Mr. Angus.

Thank you for your answers, Mr. Giorno.

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

[*English*]

Mr. John Carmichael (Don Valley West, CPC): [*Inaudible—Editor*]

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thank you.

Thank you very much for your presentations this afternoon. They've been extremely interesting. As you can well imagine, this is a topic on which we're hearing many different opinions, but we're hearing some common ones as well, and that is very helpful.

Mr. Boisvert, you talked a bit about the clarifying of personal interests. You felt this needed to be one of the priorities. Do you feel that it should be clarified as a definition, that it should be better defined in that manner? Are there other definitions that need to be looked at as well?

Could you comment on that, please?

[*Translation*]

Dr. Yves Boisvert: You used the words "personal interests". That expression is barely used nowadays because people are increasingly using "special interests". Special interests are at play. The shift from the dimension of personal interests to that of special interests already significantly broadens the interests that may be called into question when a public servant's decision is influenced.

I talked about political parties in my example. Does prioritizing or accepting some influence on a public decision because we want to place our political party in a favourable situation that enables it to receive funding constitute a problem? Earlier, we discussed the whole issue of gifts that is absent. However, regarding that legislation, I think a debate should be held to clarify the aspect of political party funding. Focus should be placed on the actions taken by public office holders, especially ministers, in terms of funding.

To quote Quebec, ministers did have profitability standards to meet in fundraising, and that could lead to all kinds of pressure and negative perceptions. From that point of view, we could have a very negative perception of the idea that someone may have had undue influence on a public decision solely for the purpose of helping their political party acquire funding more easily. That already implies a broadened scope, which is well beyond a public office holder's direct personal interest. We have crossed over into the area of special interests.

There are other cases we found interesting, where public office holders' family members and presumed friends seemed to garner certain favours. Are those not special interests related to a family network—a close network as described here? The expression of a broadened special interest could bring us to question the validity of a public decision that would favour friends. As we jokingly say back home, Mr. Accurso had a huge number of friends. Everyone was Mr. Accurso's friend. That raises the following question. How could decisions have been negatively affected with regard to that? In any case, when it comes to perception, Canadians have the right to ask questions.

Given that such a piece of legislation is being discussed again and questioned, I feel that special interests must clearly be broadened to determine what types of interests could be favoured by unfair and inequitable decisions for Canadians.

• (1600)

[*English*]

Mrs. Patricia Davidson: Thank you.

You talked a bit about "personal interest". You talked about "friend" and that definition. Perhaps it needs to be looked at too. You talked about gifts, and if I understood you correctly, I think you said there should be no gifts.

I have a question. I think those of us sitting at this table are not in a position where we, as just members of Parliament, receive much in the way of gifts, but what about cultural issues and things of that sort? There are some instances where ministers or others who have to report are in a situation where if they did not accept a meal or did not accept a cultural gift, it could be seen as a slight. Can differentiations be made?

[*Translation*]

Dr. Yves Boisvert: Let's presume that you do not receive many gifts—and you are the first to recognize that. I would venture to say that's for the best. I teach public servants and managers, and we get them to think about the fact that gifts are inappropriate in our public organizations. We agree that those public office holders should be even more exemplary. If that is required of the lowest-level public servants, the principle of denunciation is always expected.

As for exceptions, I talked about them in my very succinct presentation. One of the points—which is often debated in scientific or institutional literature—is the exception that is always there for those who have diplomatic mandates or are carrying out a diplomatic mission. I am talking about people who are abroad and face different cultural traditions. That does not prevent most experts on the issue from saying that, in such cases, the obligation to actively disclose the gift received should be implied. In addition, where possible, upon returning to the country, the person should give that gift to an institution that would be in charge of managing gifts received by public office holders.

There is a whole set of suggestions when it comes to that. In some countries, an annual auction is organized for the gifts received by public office holders, and the money collected is given to non-profit organizations, among others. So there are a number of scenarios possible to avoid impoliteness while respecting the spirit of not accepting gifts—the prohibition on gift giving in that perspective. I think we should head in that direction, instead of reconsidering the standards involved in gift giving.

The Chair: Thank you, Ms. Davidson.

[*English*]

Mrs. Patricia Davidson: Okay, thank you. Am I done?

[*Translation*]

The Chair: Your time is up. You have already been talking for seven minutes.

So I will yield the floor to Mr. Andrews for seven minutes.

[*English*]

Mr. Scott Andrews (Avalon, Lib.): Thank you, Mr. Chair, and thank you to our witnesses for coming today. We're seeing some common themes throughout our witness testimony in comparing to the commissioner what recommendations her office has made.

Mr. Giorno, from your experience from being around this place, what is it about the Conflict of Interest Act, the 19 duties and the 25 prohibitions, that public office holders don't seem to recognize those rules? Or it’s not that they don't recognize those rules, but I think if you asked them, they wouldn't be able to tell you half of them if they had to spell them out.

Is the problem that they know there are some general rules about conflict of interest, but not the specifics? Will the penalties bring more attention being paid to them? Do you understand what I'm asking? Why is it that of these 19 duties and 25 prohibitions, if you ask people, they probably wouldn't be able to name half of them?

● (1605)

Mr. Guy Giorno: I think, Chair, there are several requirements for the enforcement and upholding of laws. Some of them we haven't addressed specifically in our brief, but they are certainly historic CBA positions. We've talked about resources. Those who enforce the laws must have the resources. That is a requirement. Education is important. While it's not specifically addressed in our submission, CBA certainly believes that those who are bound by the law should be educated as to their responsibilities. I think that's part of the answer to the member's question.

If I understand the other part of the question, Chair, the member is asking whether the penalities are required—I don't want to put words in his mouth—to make public office holders more aware of the restrictions on them. That's one reason for the proposal, but I don't think it's the primary reason. The primary reason relates to the rule of law and to fairness and equality before the law. Ordinary people who break laws that are passed by Parliament face consequences, and it's simply incompatible with the rule of law that public officials who break laws made by public officials somehow get a pass.

Also, with any law there are issues related to deterrence. Penalties have a twofold significance. One, they actually are designed to punish or impose a sanction on the wrongdoer. That's one of the reasons we have penalties in our justice system. The second one is to send a message to everybody else, to deter people in future. While the member's got part of the reason for extending the penalty regime, there are probably three or four other reasons as well.

Mr. Scott Andrews: I think deterrence is a key issue in this. As you say, the commissioner can write someone up, but then there are no deterrents because, okay, the person gets written up and slapped on the wrist and he's sorry, but then someone else comes along and didn't realize what happened to the other person.

When looking at the penalties, and I think you're the first person to recommend a monetary penalty up to $25,000—you're pretty specific on that—per contravention—should we look at the $25,000 or the amount, and look at the 19 duties and 25 prohibitions and be a little more prescriptive? That is, if it's one of the 19, the penalty should go to x, or if it's one of the 25, it should go to y?

Mr. Guy Giorno: Well, $25,000 is borrowed from two provincial statutes which relate to lobbying.

The administrative monetary penalty regime is fairly new. The alternative—and public office holders can choose this—is prosecution and imprisonment. Ordinary people who break the law go before a judge and either are fined or sent to prison. That's always an alternative. But if we're going to go to an administrative monetary penalty regime, which is fairly new, there's not a lot of precedent to look at. It's quite clear that a maximum penalty of $500 is not significant either to send a message to offenders or to deter others. The $25,000 is a model. Again, it's a maximum, like a court fine, and it would still require that the severity of the infraction and other things be taken into account. That's something the committee could review. As I said, if public office holders are troubled by the idea of $25,000, the alternative is to do what happens to ordinary folk; that is, they're charged, brought before a court, and fined or sent to prison. That's how the rule of law applies to everyone else in the country.

Mr. Scott Andrews: You referred to the 17 breaches that have occurred to which there has been no response. Which one of your recommendations refer to fixing those 17? Also, these are breaches that happen with the designated public office holders. Is there any level of privacy here with these individuals, or if they breach, part of it is that they should be identified?

Mr. Guy Giorno: Let me see if I can take the member's last question first, Chair, and then go to his first question.

Part of the rule of law is that the administration of justice is open and transparent. When ordinary people break the law, subject to publication bans covering young offenders and witnesses, subject to that narrow area, their wrongdoings are made public. That's part of an open and transparent system of justice. That's why we moved away from Star Chamber. Openness and transparency in the administration of justice is a centuries-old right and principle that we observe here in Canada, so I don't see why public office holders should be any different. For common folks, their transgressions are made public. Public office holders shouldn't be in an exalted position in that respect.

You asked about which recommendation dealt with the consequences of finding a breach. I'll clarify again. For those 17 breaches in the last 12 months alone—there were more previously—it only applies to the areas where the commissioner can impose a monetary penalty, which is none of the 25 prohibitions and only 13 of the 19 positive obligations. It's our recommendation 17, which says:

> The Act should be amended to provide as follows:
>
> After the Commissioner's finding of a breach of the Act by a public office holder, the public office holder's employer or appointing authority...shall be given 30 days to confirm the employment or appointment, as the case may be, and to publish reasons for the decision. If the employment or appointment is not confirmed within 30 days of the finding of a breach, then the public office holder's office shall be vacated.

● (1610)

Mr. Scott Andrews: Thank you.

[*Translation*]

The Chair: Thank you very much.

We now go to Mr. Carmichael for seven minutes.

[*English*]

Mr. John Carmichael: Thank you, Chair.

Good afternoon to our witnesses.

Mr. Giorno, I want to begin by asking about some of your recommendations in the CBA presentation. Recommendations eight, nine, and ten all go contrary to the commissioner's recommendations. You've added a good deal more people, and I understand that you talk about common folks and some of the different nuances of people who have access.

I wonder if you could address those three items. I'm most specifically interested in boards, appointments to boards, and where you see the vulnerability, I guess, to the act.

Mr. Guy Giorno: Sure. To be clear, the commissioner has proposed moving away from the current act. It's the CBA that actually.... We're not trying to enlarge the act here. We're actually trying to keep the act more the way it is in this respect.

The difference of opinion relates to the difference between automatic divestment and case-by-case divestment. The commissioner can speak for herself, obviously, but to explain her thinking just as an introduction to explaining where the CBA takes a different view, her thinking is that in many cases it's enough to divest on a case-by-case basis. You're a public office holder; something comes before you; you own those securities; you report to the commissioner; she tells you what to do, and you either sell it or put it in a blind trust.

We don't quarrel with case-by-case divestment as a mechanism, but it's our belief that in the case of certain public office holders, they're coming into contact with decisions or issues that relate to publicly controlled assets. Routine, frequent case-by-case divestment doesn't make sense. It's simply not practical.

I'll get to appointees in a second, but let's take a minister's office employee, or the example of a policy adviser to a minister. They come into contact with lobbyists so frequently, and they're lobbied on so many issues, that case-by-case divestment is simply impractical. We think the existing rule, automatic divestment, makes sense in that context.

In the same manner, depending on the nature of the appointee.... As an example, if Parliament sees fit to adopt a recommendation to include the Governor of the Bank of Canada under the Conflict of Interest Act, should the Governor of the Bank of Canada divest on a case-by-case basis, or is it understood that he'll have such contact with such issues so routinely that automatic divestment up front is the only way to go?

Similarly, for some of the boards, such as the CRTC, is it even feasible to divest on a case-by-case basis, or would you expect that because a CRTC commissioner has such a wide scope and mandate, the only practical course is what's already in the act, that is, you just get rid of your assets up front?

I hope that answers the member's question satisfactorily.

Mr. John Carmichael: It does. Clearly, when you talk to that effect, I understand you when you say that we, as members of Parliament, choose a certain life. We run for this office—I think it was Mr. Boisvert who addressed that—and we understand the ground rules on the way in.

I understand the breadth of exposure, but I'm wondering if it's fair to extend that to somebody from outside who's being brought into a board position.

Mr. Guy Giorno: We're only talking, Chair, about boards where the appointments are made by the cabinet, or made by a minister and confirmed by cabinet, and, if our recommendation is adopted, extending it to people like the Governor of the Bank of Canada, namely, the people appointed by other bodies and confirmed by the cabinet. That totals 1,100 in all. Those are, by and large, fairly significant positions.

I'll say two things here. First, no public office is forced on anybody, including a board appointee. Second, those coming from the private sector, as the member will note coming from the private sector himself, are familiar with issues of conflict of interest and rules. Those coming from corporate Canada are already, in their own business lives and careers, familiar with the conflict of interest regime. In my view, they'd be quite understanding of the fact that accepting public office means that one is entering into the conflict of interest regime in that environment.

● (1615)

Mr. John Carmichael: Thank you. I appreciate the explanation.

When the commissioner is asked to launch an investigation, there's always potential for public and external factors to create presumption of guilt prior to her conclusions being made known. Do you see any way to mitigate the attacks on reputation for purely partisan purposes? It's something we see fairly regularly. Is there a way to mitigate that?

Mr. Guy Giorno: Well, one of the existing rules in the Conflict of Interest Act is the rule which provides that when a complaint is made by a member of the House of Commons, the member should not disclose that information to anyone except the commissioner. That is one of the 25 prohibitions for which there's no sanction. So again, Parliament actually decided that it would be appropriate that members who bring complaints wouldn't talk about them until the commissioner has had her say. That's one of the unenforceable 25 provisions. Our recommendation to make that provision enforceable would go one way toward dealing with that.

More to the point, I think the issues raised with the member were generally dealt with by the openness and transparency that is part and parcel of the rule of law. The more open and transparent a process, the better able the commissioner is to explain findings, or to explain why something has not happened. It will actually create greater understanding, and greater understanding is probably the best way to deal with adverse impacts on the reputation of those who are wrongly accused.

Mr. John Carmichael: Following a complaint where the commissioner has dismissed it as unsubstantiated or an investigation where she's ruled that the conflict of interest has not occurred, quite often the individual being investigated will not know where the complaints come from. Do they have the right to know?

Mr. Guy Giorno: Under the act as currently drafted, no.

Mr. John Carmichael: Right.

Mr. Guy Giorno: However, it is fair to say, and this is already dealt with in our submission and within certain sections of the act, that when we enter into a monetary penalty regime, that is, where people are subject to potential penalties for breaching the law, they're entitled to procedural fairness and natural justice. To extrapolate from our position, if you were to apply fines to every provision of the act, which is what we're recommending, then the process for imposing those fines should be one that is judicial. It would include natural justice and fairness, and it would be quite appropriate—and it's something the committee can look into—to apply the procedural safeguards and the principles of justice that allow you to know your accuser. Certainly, common folks who are brought before the courts know who their accusers are.

[*Translation*]

The Chair: Thank you, Mr. Giorno. Mr. Carmichael, your time is up.

We will now have five-minute question periods.

Mr. Boulerice, go ahead.

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

Ms. Froc, Mr. Giorno and Mr. Boisvert, I want to thank you for joining us and for the quality of your presentations.

Mr. Giorno, I understand your feelings very well when it comes to this legislation's flagrant injustice toward Canadians. Average Canadians are subject to laws that involve punishment. It does seem somewhat strange that we can get around that. I think that the punishment issue is extremely important.

Mr. Boisvert, thank you very much for your clarifications regarding gifts. It is true that a gift is never free. You are entirely correct. Thank you for mentioning anthropologists because I think we do not talk about them often enough on Parliament Hill. You also talked about the definition of a special interest. You said that the problem is not caused by the legislation itself, but rather by the evaluation processes or mechanisms that could be used to assess effectiveness.

I have a fairly broad question. What additional resources or mechanisms would you like to see for assessing the legislation's effectiveness? In addition, do you think that obligating the conflicts of interest commissioner to personally meet with legislators to explain the spirit of the law would be a good starting point to avoid trouble down the road?

● (1620)

Dr. Yves Boisvert: Your question contains two aspects.

The first aspect has to do with the whole issue of means, which is key. Truth be told, the debate is no longer really about what legislation could be improved. Today, my colleagues are contributing significantly to the improvement of the law. What has been shown is that the major challenge has to do with the tools for enforcing the legislation in the government setting. An extensive debate should be held on that topic. It should be determined what the real needs of our commissioner are, so that she may fully meet the goals set by the legislation. I think that is the first issue.

Keeping in mind this legislation and the commissioner's means, we should define the indicators that will enable you to determine—every five years—whether the objectives set by parliamentarians have actually been reached. That is the key question. Can that be assessed? For instance, the former integrity commissioner sparked a major debate. One thing she was criticized for was her lack of a positive response to the expectations involved in the investigations following disclosures. That is an important debate. Parliamentarians' expectations need to be known. We need to know whether objectives can be set. We need to know what kind of investigations should be conducted and how many investigations—following disclosure—are continued or rejected.

So the whole issue of budgets should be reviewed. Money is still key. According to the OECD trend, reports were produced only on the presence of ethics and integrity measures in legislation. So saying that we have a disclosure line was enough to be well-rated. In 2005, the OECD realized that this way of doing things was deceitful and misleading. You could have a disclosure line, but only two public servants handling the calls. So there were no guaranteed results in that case.

In my opinion, the debate should focus on the tools, including punishment. I agree 100% when it comes to that. That is one of the key tools for making public office holders give these matters some thought.

I have another issue to raise, regarding another aspect.

Mr. Alexandre Boulerice: There is the question on one-on-one meetings, actually.

Dr. Yves Boisvert: Let me quickly talk about socialization. I started by saying that there were four basic points. In my view, the whole debate on socialization and raising ethical awareness is fundamental.

In one of my research studies with elected people, including 17 former ministers from the Quebec legislature, 100% of them said that they were never introduced to the concept of socialization or made aware of ethics in 2004. So that raises a question: when a new Parliament is established, should we not make it our duty to socialize and educate the new public office holders, if we care about legislation on ethics and integrity? It is essential, in my view.

The Chair: You have 10 seconds left.

Mr. Alexandre Boulerice: Only 10 seconds?

Thank you very much.

The Chair: Thank you, Mr. Boulerice.

Thank you for your answer, Mr. Boisvert.

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

[*English*]

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

Thank you to our witnesses this afternoon. We appreciate your testimony with regard to this matter.

Oftentimes there seems to be confusion between what the rules are and how they might be interpreted by a respective commissioner.

One of the ones I've been following somewhat is a case involving one of our colleagues, NDP member Andrew Cash. It was recently revealed that he was receiving over $40,000 on an annual basis from what is a crown corporation, the CBC. What is disturbing is that he sits at the table of the heritage committee.

When we had the commissioner here, she said that what happens at committee is noted and should be noted with regard to whether or not there is a conflict of interest.

In this case not only is there a perception of conflict of interest, and I think that has been revealed through the media interest in this case as well as by members from several other parties, but there may be a real conflict of interest, because we do note that a letter was sent to the member indicating that he should refrain from voting on issues surrounding the CBC and refrain from engaging in debate with regard to this, both of which he has contravened, based on the public record.

You have talked generally about the necessity of not accepting gifts. If the limit of a gift is $200 and $40,000 is actually 200 gifts of $200, this seems like a significant issue and one the public has a great interest in.

How might you suggest Mr. Cash, or members of Parliament who find themselves in a situation similar to that of Mr. Cash, present themselves and undertake their responsibilities in a way that reduces the conflict of interest and both the perception of and quite possibly the real conflict of interest?

The question is for either of our witnesses.

● (1625)

[*Translation*]

Dr. Yves Boisvert: I think it is difficult to take a position on the specific matter you have brought to our attention. It is always a little tricky to comment.

I am not sure if my colleagues have something to say about this.

[*English*]

Mr. Chris Warkentin: Let's call it all hypothetical, but the commissioner made it very clear when she was here that undertaking one's responsibility at committee needs to be separate from presenting a conflict of interest. She was absolutely clear.

I'm wondering what you might suggest in a circumstance like this. Obviously this gentleman is employed by or has a contract with CBC, which is a crown corporation that receives appropriations from the federal government, from the Canadian taxpayer, that directly then support him and the cash payments that he receives.

[*Translation*]

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Mr. Chair, I have a point of order.

The Chair: You have the floor.

Ms. Charmaine Borg: I think we are really talking about a specific case. We are actually all here to see how we can study the legislation in greater detail or how to amend it, not to seek a legal opinion on a specific case. In fact, the commissioner sent a letter to Mr. Cash telling him that what he is doing is in compliance with the legislation.

[*English*]

Mr. Chris Warkentin: That's not a point of order.

[*Translation*]

The Chair: I would just like to remind you that it would be easier for the witnesses if we focused on the conflict of interest legislation for public office holders, not the code for members of Parliament. Let's try to stick to the office holders issue as much as possible. Members of Parliament are not subject to the legislation.

I will allow you to continue as long as you stick to the act, not the code for members of Parliament.

[*English*]

Mr. Chris Warkentin: Yes, I understand that you ruled on this several times when Mr. Angus brought forward names specifically alleging misconduct.

What I'm interested in is not a ruling on this. I have been very clear. What I'm looking for is a way, an avenue to reduce this type of situation in the future for any member of Parliament across party lines. This is one that's been high profile. It's been one that has caused Canadians across the country to question the system. How is it that you have a sitting member of Parliament who is voting on appropriations to a crown corporation or agency and is receiving funds from that agency directly?

The question is how we might set up safeguards to ensure that this type of thing doesn't continue.

Mr. Guy Giorno: Chair, one of our recommendations addresses this very directly. The situation described by the member actually arises under the code. The CBA has no position on the code.

We do have a position on the act. Our position on the act includes a recommendation that every prohibition in the act be enforceable by fine. On the question related to the code, under the act the analogous restriction is in section 6 of the act, which prohibits a public office holder from making decisions or participating in decisions when he or she has a private interest as defined in the act. Right now there is no penalty for breaching that under the act. There is no fine. There are no repercussions short of a report to Parliament.

I think the answer to the member's question is that the CBA recommendation that every single prohibition and the remaining six duties in the act that have no sanctions attached to them be made subject to penalties so that somebody who breaches that—granted the question was under the code—the corresponding obligation under the act would be subject to financial penalty.

● (1630)

[*Translation*]

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

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

Ms. Charmaine Borg: Thank you very much, Mr. Chair.

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

Mr. Boisvert, you said that it is always a challenge to manage post-employment. Right now, perhaps we are not investing enough resources or we are not going far enough.

Could you please elaborate on your remarks? I would like you to tell us how to improve the situation and how to ensure that, once individuals leave their public office, they are accountable and do not receive substantial gifts that may well be controversial.

Dr. Yves Boisvert: Post-employment is always a major problem. This is the debate on people's right to have a career afterwards. We cannot impose restrictions on post-employment, given that public office holders have the right to find a subsequent job.

However, there is always the question of whether we have the tools to follow up on those careers. What often happens is that, less than six months after they leave, former public office holders are working for companies they have been in contact with before. We have even seen ministers negotiate their post-employment while they were in office, which is certainly a problem. It is often a matter of figuring out if they are lobbying former partners. It is not really the lobbying that should be monitored, but the potential benefits and preferential treatment.

In terms of the issue that I am discussing, there is a whole debate on the orders in council that were used during the transition. The perception is rather negative. People were wondering if the orders in council were not used as favours. It is not about passing judgment, but about the rationale behind the perception. In other cases, the question was whether post-employment was negotiated while individuals were working in the government.

I think those in charge of managing post-employment should have the opportunity and the necessary resources for oversight for about a year or two, depending on the type of public office. This follow-up would enable us to hold public office holders accountable. Every two or three months, for instance, former public office holders could be required to provide a post-employment report. The possibility of imposing sanctions should also be explored. Our colleagues might be able to talk about this issue in terms of non-compliance.

I see people shaking their heads, but I think we should provide those people with the tools to impose sanctions on former public office holders who commit offences. An instance of an offence would be if a public office holder becomes the vice-president of a company they dealt with in the last six months of their mandate as a public office holder. I think it might be interesting to hear what Mr. Giorno has to say about this.

I feel that imposing sanctions should be a key tool.

Ms. Charmaine Borg: I really appreciate your opinion on the issue, but I only have five minutes.

All three of you are welcome to comment on my next question.

Mr. Boisvert, you mentioned that we should clarify what personal interests are. Clearly, I am not asking you to give me the definition of what you would like to see implemented. Instead, could you tell us what a better definition would be and whether there is an international model that works well?

Dr. Yves Boisvert: At the institutional level, I agree with my colleagues. I think all governments are in a conflict of interest when the time comes to define their legislation. We do not have a major reference point because all public office holders across the world take advantage of their situation to weaken the legislation that governs them. So we would have to turn more to international organizations for solutions. In terms of broader personal interests, we have to think about so-called “factual situations”.

For instance, community networks, association networks and interest groups could benefit from decisions in their favour as a result of belonging to the public office holder's local network. In that case, it is not a question of personal interests, but rather of the influence of the public office holder's local network, which will go well beyond their traditional private sphere as set out in the legislation, meaning their children, spouse and their immediate network. So it is the broadening of their network.

Debates often deal with political parties, friendship networks, association networks and interest group networks. At that point, situations come up, where we can often see that those expanded local networks received interesting favours. The idea is that favouring the interests of these local networks goes against the public interest.

In the present debate, we are talking about conflicts of interest. We must never forget that, in public life, conflict of interest means acting against the public interest to serve a personal interest. So a public decision is not made for the common good, but rather to serve a personal interest. That is the essence of the debate.

I said that this should be made clear in the preamble of the legislation. At all times, a public decision is always used as an indicator to assess whether there is a conflict of interest or not. The decision is made to promote the common good and the public interest, not to serve all kinds of personal interests. I think that we are reviewing the logic of the legislation in part by broadening this dimension.

● (1635)

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

Mr. Butt, you now have five minutes to ask your questions.

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

[*English*]

Good afternoon, ladies and gentlemen. Thank you very much for being here and appearing before the committee for what I think is an important statutory review of the Conflict of Interest Act.

One of the things we're finding out as a committee is that there are some similarities and also some conflicts and differences between the Conflict of Interest Act and the Lobbying Act. I'm going to assume that both of you learned gentlemen are familiar with both pieces of legislation.

The committee has found that the term “designated public office holder”, which is housed within the Lobbying Act, has many similarities to the term “reporting public office holder”. If they were to be more aligned, if we were to get a better definition so that they were covered in both acts, which act do you believe would maintain a better single, symmetrical definition of those individuals?

Do you want to start, Mr. Giorno?

Mr. Guy Giorno: Thank you.

The CBA's position, under both the Lobbying Act and the Conflict of Interest Act, is that post-employment restrictions should be harmonized for the reason the member alluded to, so there's greater understanding and clarity administered by a single person. That said, and there's always a “but”, the task of harmonization is actually quite challenging and difficult.

The Conflict of Interest Act right now imposes restrictions not just on paid lobbying but on unpaid lobbying for a shorter period of time. The Lobbying Act imposes restrictions on all lobbying, but it has to be paid for a longer period of time, and then it exempts people who work for corporations and who don't lobby 20% of their time. A decision has to be made as to whether, in harmonizing, it is more important to go after the paid lobbying for the longer period or unpaid lobbying immediately after you leave.

“Designated public office holders” is in fact the wider class. “Reporting public office holders” includes only public servants who are appointed by order in council. That's deputy ministers and people with the deputy minister rank, whereas the designated public office holder position goes to the level of assistant deputy minister.

The CBA actually has no position on how to harmonize, but I do stress that the DPOH, the so-called designated public office holder, category is broader, so it would cover more people. While there is no official CBA position on this, obviously, in the interest of covering more...harmonizing, in one way, would cover fewer people and therefore be less likely to achieve the purposes of either statute.

Mr. Brad Butt: Okay.

Monsieur Boisvert, do you want to comment on that as well?

[*Translation*]

Dr. Yves Boisvert: No, thank you.

● (1640)

[*English*]

Mr. Brad Butt: No, okay.

One of the things I'm trying to figure out, and it doesn't affect me personally because I'm neither a parliamentary secretary nor a cabinet minister, is that 308 individuals are elected to Parliament. We're all elected to do the very best we can for our constituencies, and also to advocate for our constituents on a wide range of issues.

You probably are aware of a couple of instances lately where the commissioner has ruled, essentially saying that cabinet ministers and parliamentary secretaries, simply because they are cabinet ministers and parliamentary secretaries, can't write letters to support anything a constituent is proposing to do on a wide variety of things, even if that matter has absolutely nothing to do with the ministry in which they are involved.

If the Conflict of Interest and Ethics Commissioner is interpreting the act correctly, and I'm assuming she is doing her very best to do that, is that a fair restriction? You're a member of Parliament; you're elected to advocate; you happen to be asked by the Prime Minister to take on an additional responsibility through a ministry or as a parliamentary secretary. All of a sudden it sounds as if the interpretation is that you're really no longer a member of Parliament.

Is there a way we can have some better definition around that? Why shouldn't a minister of the crown, as a local member of Parliament, be able to write a letter in support of a constituent on a local constituency issue, or do you feel that is a reasonable restriction, that once you've been appointed to cabinet or as a parliamentary secretary, you're essentially no longer a member of Parliament?

Mr. Guy Giorno: The interpretation as described by the member is true. That's how the act is interpreted and now stands. It's not entirely inconsistent with the history of the position of public office holders, like ministers and parliamentary secretaries. It does recognize the fact that the people we're talking about, who may be the recipients of letters or recommendations, are themselves people who are appointed by cabinet.

There is a question whether it's appropriate for a cabinet minister who may be in a different portfolio nonetheless to write a letter to somebody who is a cabinet appointee or a public officer where that's appropriate.

The second point to be made is that as our system of justice has evolved and become more complex, we have over decades and centuries less and less being decided by judges and more and more legal matters being decided by independent tribunals, such as the CRTC, the Canada Industrial Relations Board, etc. In fact, it's probably safe to say that more legal decisions are made by tribunals and administrative agencies than by the courts.

If one would not accept a minister of the crown writing to a judge, is it any different for a minister of the crown to write to a CRTC commissioner who has the same type of statutory power of decision?

The CBA has not recommended any changes to the act in this respect, and I think it's safe to say it's because we believe the act is appropriate in this respect for some of the historic reasons I've outlined.

[*Translation*]

The Chair: Mr. Boisvert, would you like to add something?

Dr. Yves Boisvert: Yes.

It is interesting to note that our studies on elected representatives and former ministers have brought to light an ethical dilemma. The ministers were well aware that one ethical issue dealt with the line between their status as members of Parliament and their status as ministers. It was fundamental to determine whether they were called upon to deal with an issue as members of Parliament or as ministers. I don't think the signature of a minister holds the same weight as that of a member of Parliament. That's fundamental and the legislation should clarify those things.

If the situation involves a constituent in their riding, I think they have to go back to their perfectly noble status of member of Parliament. But they have to make sure that their signature will not have a negative impact on their position as ministers, which is more important, since it can have a serious impact on their government. In terms of ethics, perhaps the idea is to make sure that they are not placing their government in a vulnerable situation. I don't think these thoughts only apply to the legislation. They also apply to the management of ethical dilemmas that ministers should be able to understand. Beyond legislation and codes of ethics, I think ministers must be made aware of ethical issues that concern them.

The Chair: Thank you.

Mr. Boulerice, you now have the floor for five minutes.

Mr. Alexandre Boulerice: Thank you very much, Mr. Boisvert.

The distinction between the role of member of Parliament and that of minister is an interesting issue. In the news, we have recently seen that the Minister of Finance got his knuckles rapped. There was some confusion on that.

Mr. Giorno, I have a question for you about sanctions. You have said a number of times that the legislation did not have teeth, that there were no consequences, no penalties. In the past, monetary penalties or imprisonment, like in the United States, have been discussed.

Could you give me one or two other examples of sanctions that could be imposed on public office holders?

● (1645)

[*English*]

Mr. Guy Giorno: Looking only to the Canadian experience with which I'm more familiar, Mr. Chair, there really are three sets of options.

There's an administrative monetary penalty regime. As I said, it's newer but it's increasingly common in Canadian jurisdictions for this sort of infraction.

There's the standard offence and penalty prohibition, which provides for either a fine or a jail term. That requires charges by the police, prosecution, and fining or imposition of sentence by a judge.

The third sanction we see in some legislation, including some provincial legislation of this nature—very famously, the case involving the mayor of the City of Toronto—is legislation that provides the penalty of vacating a seat.

In the Canadian context, these are really the three choices, streams, or avenues that Parliament can choose from to enforce laws of this nature.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Giorno.

Mr. Chair, I will share my remaining time with my colleague Ms. Borg.

Ms. Charmaine Borg: Thank you very much.

You said that the government had failed in modernizing the Conflict of Interest Act. The same thing is happening with another act.

In that context, I would like to move the following motion:

> That, in response to the public concern over recent data breaches that have affected more than half a million Canadians, the Standing Committee on Access to Information, Privacy and Ethics conduct a study relating to mandatory reporting to the Office of the Privacy Commissioner of incidents of data loss or breach as well as providing the Commissioner with appropriate order-making powers, and that the Committee report its findings and any resulting recommendations for modification to the Privacy Act of Parliament.

Mr. Chair, it has been noted that data breaches affected more than half a million Canadians, which is a huge number. The Privacy Act dictates what action departments must take in the event of data breaches. Unfortunately, that act has not been amended since 1985, when the Internet was not as widespread. There were no USB keys that could be lost either. As a result, I think this committee should look into the situation of the people who were the victims of those data breaches. It is crucial that the legislation be reviewed. I feel it is this committee's responsibility to do so, given that this is a privacy issue.

I would like all the members of the committee to support this. I feel it is our duty, as members of Parliament and members of this committee, to review this act.

Thank you, Mr. Chair.

The Chair: Since Mr. Boulerice was the last speaker on the list, I am going to allow the witnesses to leave the room, as planned.

Since your time is up, we are going to debate the motion. So let me suspend the meeting for a few minutes.

Once again, I would like to thank the witnesses for joining us and for their contribution to our study.

● (1645)

(Pause)

● (1650)

The Chair: Order, please. We will resume our meeting.

Ms. Borg has introduced a motion. So the members of the committee can debate it. I have three people on my list, starting with Mr. Warkentin.

[*English*]

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

I appreciate my colleague's bringing forward this motion. It's one that has been considered, of course, by the human resources committee.

Obviously, our government believes this is an unacceptable breach with respect to this personal information. While all indications are that it hasn't fallen into the hands of those who would use it for inappropriate purposes, we believe this is an unacceptable breach and something that needs to be reconciled. That's why the minister has acted as expeditiously as she has on this matter.

In terms of this issue, there are a number of elements that will tie into the study that our committee has yet to conclude. As well, I know that the human resources committee is looking into this exact matter. But I think there is some subject material, as it relates to our study, that is in the context of that. We've dealt with that in camera, so I'd like to move the continuation of this discussion in camera and make a motion to do so.

[*Translation*]

The Chair: We now have a motion before us asking that we continue the meeting in camera.

There has been a request for a recorded vote. There is no debate on this motion.

So I am going to let the clerk record the vote.

(Motion agreed to: yeas 7; nays 4)

The Chair: We are going to suspend the meeting for a few minutes before we move in camera.

[*Proceedings continue in camera*]

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