HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 068 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, March 4, 2013

Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

Monday, March 4, 2013

● (1530)

[*Translation*]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): Order, please. We will begin the 68th meeting of our committee. As you can see on the agenda, we are receiving two representatives from the Government Relations Institute of Canada during the first hour. Joining us are Mr. Patrick, the institute's president, and Mr. Thurlow, the chair of the Legislative Affairs Committee. We are continuing our statutory review of the Conflict of Interest Act.

Gentlemen, thank you for joining us. You have 10 minutes to make your presentation. We will then have a question and answer period, which will last about 50 minutes.

Without further ado, I will yield the floor to Mr. Patrick.

[*English*]

Mr. Jim Patrick (President, Government Relations Institute of Canada): Thank you, Mr. Chair.

My name is Jim Patrick. I'm senior vice-president of the Canadian Wireless Telecommunications Association and president of the Government Relations Institute of Canada this year.

Joining me is Scott Thurlow, president and CEO of the Canadian Renewable Fuels Association and chair of GRIC's legislative affairs committee.

We're pleased to be here today to speak to the committee's review of the Conflict of Interest Act. It was exactly 13 months ago that we were here to speak to your review of the Lobbying Act.

GRIC was founded in 1994 by government relations professionals in response to the growth and maturing of the industry over the past several decades. GRIC fosters high standards of practice through professional development and adherence to a professional code of conduct.

We also speak on behalf of Canada's government relations community on matters pertaining to the relationship between the lobbying industry and government. Our membership includes consultant and in-house lobbyists from non-governmental organizations, universities, charities, national trade associations, crown corporations, and private companies, both domestic and multinational, extending across the breadth and depth of the Canadian economy.

The Lobbying Act, by and large, governs activities of lobbyists. The Conflict of Interest Act, by and large, governs activities of public office holders. Given that much of the day-to-day activities of lobbyists and public office holders involves interaction between the two groups, it should be expected that the two statutes would intersect and overlap in key areas.

This committee completed its five-year review of the Lobbying Act in 2012. It will soon examine legislative amendments to the Lobbying Act stemming from that study. This committee's 2013 study of the Conflict of Interest Act, therefore, gives you an excellent opportunity to ensure that the two statutes are as aligned as possible and that existing gaps and overlaps between them do not work against the objectives of either statute.

We have three principal recommendations.

Specifically, first, the standard for determining whether a lobbyist has placed a public office holder in a conflict of interest should be the same as the standard for determining whether a public office holder was placed in a conflict of interest by a lobbyist.

Second, the rules on what types of gifts a lobbyist can offer a public office holder should be the same as the rules on what types of gifts a public office holder can accept from a lobbyist.

Third, post-employment restrictions on public office holders should be streamlined. They should be administered and interpreted by a single authority—in our view, the Conflict of Interest and Ethics Commissioner.

Mr. W. Scott Thurlow (Chair, Legislative Affairs Committee, Government Relations Institute of Canada): The standard for determining whether a lobbyist has placed a public office holder in a conflict of interest should be the same as the standard for determining whether or not a public office holder was placed in that conflict of interest by a lobbyist. GRIC notes that for public office holders the Conflict of Interest Act arguably sets the criteria and meaning for a real conflict of interest only. I say “arguably” because the committee has heard evidence that the test for apparent conflict of interest is implicit in the act. The Lobbyists' Code of Conduct, on the other hand, explicitly targets both real and apparent conflicts, creating a situation where the ethical bar could be seen as higher for lobbyists than for public office holders and a situation where lobbyists can be guilty of placing a public office holder in a conflict of interest that the public office holders were never actually in.

As GRIC noted in its last appearance before this committee, in February 2011, the Commissioner of Lobbying tabled a report in Parliament finding that a lobbyist had breached rule 8 of the Lobbyists' Code of Conduct and had therefore placed a public office holder in a conflict of interest. This ruling pertained to actions that took place in 2004, five years before the current rules were put in place. The retroactive application of the 2009 rules to 2004 events was never addressed or explained by the Office of the Commissioner of Lobbying. Moreover, the Conflict of Interest and Ethics Commissioner had already concluded, based on the exact same set of facts, that the actions in question did not constitute a conflict of interest on the part of the public office holder.

In other words, one officer of Parliament examined the facts and concluded that a public office holder was not in a conflict of interest, and then another officer of Parliament examined the exact same set of facts and concluded that a lobbyist had placed the public office holder in a conflict of interest, which the public office holder was apparently never really in. Logic, due process, and the fundamental tenets of natural justice dictate that once a public office holder is found by a quasi-judicial body not to have been in a conflict of interest, no individual can then reasonably be found by another quasi-judicial body to have placed that public officer holder in a conflict of interest based on the same set of facts.

● (1535)

[*Translation*]

Mr. Jim Patrick: For these reasons, GRIC recommended to this committee last year that the Commissioner of Lobbying's standard for determining whether a lobbyist has placed a public office holder in a conflict of interest be consistent with Conflict of Interest and Ethics Commissioner's standard for determining whether a public office holder has been placed in a conflict of interest by a lobbyist. The standard should be the same under both acts, whether the test is for "real", "apparent" or "potential" conflicts of interest. No one should ever be found to have placed a public office holder in a conflict of interest that the public office holder was never in.

[*English*]

Our second recommendation pertains to what types of gifts a lobbyist can offer a public office holder. The Conflict of Interest Act defines "gift or other advantage" in subsection 2(1) as the following:

> (a) an amount of money if there is no obligation to repay it; and
>
> (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.

The act further states that:

> No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

The act further requires disclosure of any gifts or gifts exceeding $200 from any one source in a 12-month period and gifts over $1,000 are to be forfeited to the crown.

As you know, in its guidelines on gifts, including invitations, fundraisers and business lunches, the Office of the Conflict of Interest and Ethics Commissioner has noted that it interprets the definition of gifts to include such things as money, loans, property, memberships, services, meals, invitations to events, and invitations to galas and fundraisers. The guideline document goes on to explain that "no specific rule exists as to which gifts can be accepted by public office holders. The value of a gift is NOT a criterion of acceptability; it is a threshold for the purpose of disclosure to the Office and the public."

Mr. W. Scott Thurlow: In its April 2012 report on the statutory review of the Lobbying Act, this committee recommended that an amended Lobbying Act "Impose an explicit ban on the receipt of gifts from lobbyists." In its September 2012 response to this committee's report, the government committed to pursuing a prohibition on lobbyists giving gifts to public office holders, and to rules specifying the value and nature of what types of gifts would be permitted and prohibited.

As it is this committee that will review upcoming changes to the Lobbying Act, which the government has signalled may include some additional restrictions on gifts from lobbyists to public office holders, you will have an opportunity to ensure that the rules on what a lobbyist can offer a public office holder are aligned with the rules on what a public office holder can accept from a lobbyist.

GRIC takes no position whatsoever at this time on what the definitions under the Lobbying Act should be when it comes to the value and nature of gifts that lobbyists can offer to public office holders. But we strongly recommend that you take the opportunity to ensure that the Conflict of Interest Act reflects the same definitions on the value, and nature, and acceptability of gifts that public office holders can accept from lobbyists, to avoid any confusion and conflict between the two statutes.

Mr. Jim Patrick: Principally, one major consideration you will have to address is the impact on charitable fundraisers and other not-for-profit events if you, as MPs, are unable to accept, for any reason, tickets to any of the dinners or receptions that are the lifeblood of many important charities, and foundations, and organizations across the country, including in your own ridings.

Mr. W. Scott Thurlow: Sections 35 and 36 of the Conflict of Interest Act describe restrictions and prohibitions on public office holders, and separately, on reporting public office holders, which generally involve one or two-year bans on dealings with former departments with which the public office holder had "significant official dealings" during a one or two-year period prior to his or her last day of office.

In addition, the Lobbying Act creates a five-year ban on former designated public office holders registering as a consultant lobbyist or in-house organization lobbyist. Former designated public office holders may, however, register as in-house corporate lobbyists provided they self-determine that they lobby no more than 19% of their time.

These multiple and overlapping definitions have already caused some confusion in the current examination of the Conflict of Interest Act, with some witnesses and members citing definitions found in one act when meaning to cite definitions found under another one. It is the submission of our association that you examine very closely the submission made by the Canadian Bar Association, which stated that:

> The CBA believes that post-employment restrictions on public office holders should be consistently applied and enforced. To this end, the CBA believes that to the greatest extent possible post-employment restrictions on public office holders should be interpreted and administered by a single authority —

—that is, the Commissioner of Lobbying or the Conflict of Interest and Ethics Commissioner.

● (1540)

[*Translation*]

Mr. Jim Patrick: In conclusion, GRIC reiterates that, by virtue of the this committee's ongoing review of the Conflict of Interest Act, and your upcoming review of legislative amendments to the Lobbying Act, you have an excellent opportunity to ensure that the two statutes work together, and not at cross-purposes.

GRIC appreciates the opportunity to provide its views in this important proceeding and would be pleased to answer any questions the committee may have.

The Chair: Thank you for your presentation.

Without further ado, I yield the floor to Mr. Angus, who has seven minutes to ask our witnesses questions.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair, and thank you, witnesses, for coming here.

I think we're certainly interested in the issues regarding anomalies between the Conflict of Interest Act and the Lobbying Act. It doesn't seem to make any sense to be able to prosecute one side of the conversation but not the other depending on what the rules are.

I'm interested in the issue of the lobbying code explicitly targeting real and apparent lobbying. It seems that we've heard at this committee in the past the legal principle that in order to be just, it must seem to be just. Yet under the Conflict of Interest Act, it says that it's just a real conflict, that the apparent aspect of it is implicit in the act. I didn't know that something being implicit was a legal principle. It seems that if someone is being called out for a real conflict, there is a higher threshold than it merely being apparent—but it wouldn't be the same with lobbying.

Would you suggest that we use real and apparent in both acts, or would you want the Lobbying Act to be loosened?

Mr. W. Scott Thurlow: I think the position we would take first and foremost is that they should be the same. So whether you pick one or the other, that is in the purview of this committee.

The second thing I would say is that common law has had more time since the creation of our country to discover through the assistance of judges what a real and apparent conflict of interest is. I think that in making these types of determinations, we should turn to common law as the best place to start.

That having been said, the Oliphant commission made several recommendations in this direction. Our comment first and foremost is that the standard for determining whether a lobbyist has placed a public office holder in a conflict of interest should be exactly the same as the standard for determining whether or not the public office holder in question was put in that conflict.

In practical terms, whether the Lobbying Act or the Conflict of Interest Act applies explicit tests for real, apparent, or potential conflict of interest, the standard has to be the same.

Mr. Charlie Angus: What surprised me when we were speaking with Ms. Dawson was the focus on gifts down to $30, but she didn't really clarify her position on political fundraising. We had a situation where the Lobbying Commissioner looked into the case of Ms. Raitt, I believe, and felt that selling tickets to a fundraiser was inappropriate. But Ms. Dawson didn't seem to find that it was, because it wasn't for personal benefit.

I think it is really important to get our heads around the issue of fundraising. It would perhaps be impossible to say that a lobbyist can't go to a fundraiser because a member of Parliament or minister might not be aware of it, but would selling tickets or holding the fundraiser be different?

From your experience in the industry, how do you think we could actually clarify the rules on fundraising, so they are fair but also ensure that there's not undue influence?

Mr. Jim Patrick: You're absolutely correct, in that Office of the Commissioner of Lobbying has held that fundraising activities for elected members are a personal benefit.

The office's interpretation of rule 8 of the Lobbyists' Code of Conduct is such that even a riding association is considered a personal benefit—almost your property—whereas we've heard, as you rightly state, from the Conflict of Interest and Ethics Commissioner that it's not personal interest. So if you are finding it confusing, I guarantee that everybody is.

We'll say what we said the last time we were here, that the rules need to be clear.

We don't have corporate and union fundraising in Canada. We have funds that are donated by individuals typically in small amounts. Those people, as much as you do, need to know that what they're doing is not going to prevent their chance of making a case to you in the future, that if they find themselves in another job that requires them to talk to government, they won't be prevented from doing so because seven years ago they attended a fundraiser.

If any area of the Lobbying Act is really to be clarified and defined, it should be the area around political fundraising, and this is the opportunity for this committee to do that.

● (1545)

Mr. Charlie Angus: If at a later point you gentlemen have some thoughts on it, I certainly think we'd be interested in hearing them, because it is about being fair and about just ensuring that we have clear rules so there are no “gotcha” moments here for any side. We need to have a fair system.

In light of that as well, I'd like to ask about the issue of gifts. I think as MPs we're probably obsessed, from our point of view. On any given Saturday night we have to go to three or four dinners that people expect us to go to. It's not as though we're getting a benefit from these dinners. Going to them is part of our job. Are those $30 tickets for the dinners personal benefits we're receiving for doing our work? Do we have to start to list all those? Or when the local organization comes and drops off the snow globe, do we have to actually price that? To me that seems like a different issue from one in which someone is giving box tickets to a deputy minister who's picking a contract.

We could lower the threshold for gifts. We could say no gifts at all; pay your own way. That's one option. But it seems there has to be a middle ground, so we clarify what a gift is and what would be seen as undue. I thought you said you didn't have a particular position in terms of the value for dollars, but is there a way we could actually walk through this so there's a little more clarity between the NGO dropping off its gifts and someone really trying to buy your influence?

Mr. Jim Patrick: First of all we think that increased transparency is always good and that an absolute prohibition isn't always necessary to achieve transparency. This committee recommended a complete ban on gifts to public office holders under the Lobbying Act, and the government seemed to agree in its response to your report.

Our primary concern is that this needs to be handled very carefully, because the definition of gifts, although there is something of a definition in the guideline documents that support the act, extends to charitable fundraisers and gala dinners. I suppose on that basis, you, as elected members, might find yourselves politically compromised by attending the Canadian Women in Communications dinner, for example. It's coming up. That's why I thought of that.

If there's going to be some level of prohibition on gifts that a lobbyist can offer a public office holder, then I think first of all that level should be the same as the level that triggers disclosure on your part. As much as we can synchronize the rules on what can be given, and what has to be disclosed or forfeited, those should be the same. Most importantly, it has to be at a level that you, as elected members, are comfortable with. I think that's the starting point for that discussion. We can give you a reaction, but I think the starting point has to be whether you, as elected members, are comfortable with a lunch. Is a lunch going to influence you unduly? Is a dinner going to influence you unduly? Is a snow globe? I've been in your office, and I've seen the box of snow globes. You still didn't agree with us on that issue, so I don't think the snow globe is where we need to draw the line.

Mr. Charlie Angus: Get me a bigger one next time.

Mr. Jim Patrick: Okay.

Is it the value of a lunch? Is it a ticket to a fundraiser? Is it a ticket to a hockey game? That has to start with you yourselves. This is one of those rare opportunities where a parliamentary committee is examining rules that apply first and foremost to itself rather than to common folk. I think that's where that discussion has to start.

Whatever the level is, we will advise our members to follow it, but any room between what a lobbyist can offer under the Lobbying Act and what an elected member can accept under the Conflict of Interest Act is just going to be a recipe for confusion. Again, think very carefully about the charities and the fundraisers in your ridings. Do you want to have to ask someone who invites you to come to the Kiwanis dinner whether they're a lobbyist? If someone says they're having a United Way fundraiser, do you want to have to get a legal opinion on whether that person works for the United Way as a lobbyist, because in their capacity as a United Way executive they ask the government for financial benefits? In going to that dinner in your riding have you just accepted a gift from a lobbyist?

We need clarity on all these things. But, again, the first question needs to be what are you comfortable with?

● (1550)

Mr. W. Scott Thurlow: If I could just add one quick thing to that, not all gifts have a pecuniary value that can easily be assigned to them. So the opportunity to meet your childhood hero, which may not cost you a nickel, may be of more value to you than it might be to anyone else at this committee, for example.

[*Translation*]

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

I yield the floor to Ms. Davidson, for seven minutes.

[*English*]

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

Thank you, gentlemen, for being with us this afternoon.

I think you've heard from the questions that we're getting today—and I'm sure you've been following our study as we've been going through it—that the more we ask the more confusing it becomes. So I appreciate your candour and your suggestions.

One of the things I always find confusing are the definitions. I think when we look at the Lobbying Act and we look at the Conflict of Interest Act, we have definitions in two pieces of legislation that mean different things. Could you comment on that, and in particular on “public office holder”, “reporting public office holder”, and “designated public office holder”? We interchange those definitions back and forth. Could you comment on those and give us any suggestions about how we could coordinate those?

There's another term and I just don't know who can define it, and that is “influence unduly”. We talk about that a whole lot, but who's going to define it? What do you take that definition to mean?

Mr. W. Scott Thurlow: I'll take a crack at the first question you asked, which is how do we get one definition out of three seemingly different definitions that appear in two acts that have at their core purpose different objectives. The Lobbying Act is about governing the conduct of lobbyists. The Conflict of Interest Act is about making sure that elected officials who are just ordinary public servants aren't putting themselves in a position where they may look like they are compromised. I think there's good reason for there to be confusion, for the reasons you just stated.

In this case, the Lobbying Act is actually a creature of criminal law, whereas the Conflict of Interest Act is one about public service. I don't think you want to have confusion in a spot where an individual could be subject to a jail term or to a very significant fine. We are on the record many times, and one more time here today, that the post-employment rules should be consolidated under one officer of Parliament. We recommended to you which officer of Parliament that should be, as long as there's one definition. We completely agree with you.

We think it's appropriate that the officer of Parliament interpret and administer the post-employment rules, as long as it's one person making the interpretation. The way that laws and definitions change is through various public officer holders interpreting those statutes through their decisions and interpretations. If there's only one body offering those interpretations, you won't see that definitional creep.

Jim, did you want to talk about undue influence?

Mr. Jim Patrick: Well, there's not much more I think I'll say than I've already said, that it's really up to you to decide what you feel unduly influences you. If one gets to know somebody and feels comfortable enough with them to take their advice or to ask them a question on an issue, there's a level of influence there. But is it undue? Whatever the standard is, the committee needs to turn its mind to that in its report, and then as the process moves forward and the government responds and then tables the legislation to amend the act, it's going to be a key question.

On behalf of 308 of your colleagues, you'll be setting the standard for what is acceptable to receive as gifts, what counts as an influence or an undue influence. That will last for another five or six years. We don't have a precise definition to put in front of you today. We talked to our members about it; we didn't have a consensus position in the end. But I hope you can come up with one because it's something that we'll all have to live with for a long time.

● (1555)

Mrs. Patricia Davidson: So it's safe to say, then, that you feel that we definitely should be putting the definition of that in the act?

Mr. W. Scott Thurlow: The more specificity you can provide to the subsequent officers of Parliament and judges in interpreting the act, the better.

Mrs. Patricia Davidson: Okay. I want to talk a little bit more about the post-employment issue, which both of you've addressed. One of the things you recommended in your presentation was that definitions be streamlined and consolidated under the Conflict of Interest Act, and that a sliding-scale cooling off period for all categories of public office holder be strongly considered.

I want you to tell me about the sliding scale, whom you would apply that to, how you would apply it, and the rationale for that, please.

Mr. Jim Patrick: Yes, we noted earlier recommendations from previous witnesses that you should be examining a sliding scale based on the actual job that somebody had and how long they had it, instead of a one-size-fits-all cooling-off period for everyone, or a series of one-size cooling-off periods for everyone. Right now, the same individual can be subject to a one-year, a two-year, and a five-year cooling-off period with respect to the department they worked for, departments they dealt with significantly, and the entire federal government in some combinations. That's a lot of cooling-off for the junior analyst from the bureau of weights and measures.

There are proposals on the table to apply the full cooling-off period to everyone. We think that has probably gone too far. There are proposals to reduce it for everyone. We think that's probably going too far in the other direction.

There is a lot of merit, I think, to tailoring the cooling-off period to how long someone has been in the job and what the nature of their job actually was. We think the appropriate vehicle to introduce that would be the Conflict of Interest Act.

We think the five-year cooling-off period in the Lobbying Act should be removed when you examine the amendments to the act that the government will bring forward to respond to last year's report. That five-year cooling-off period for designated public office holders should be removed and put into the Conflict of Interest Act, and the concept of a sliding scale should be carefully examined by the committee to see if it couldn't be better tailored to the specifics of somebody's employment rather than trying to capture everybody with one tool or oftentimes a multitude of different tools.

The other thing that I guess we'd mention that goes to the concept of a cooling-off period is the 20% rule. We mention that in our remarks, I believe. We're on record as saying that you should eliminate the 20% rule as it applies to corporate in-house lobbyists.

Right now, if I determine that I lobby 20% of the time, I can't work for a trade association, and I can't work for a consultant lobbying firm, but I can work for a publicly traded company as long as I self-determine that I only lobby 19% of the time. I think that is meant as a guideline. It has been treated as a loophole. Again, I know that I'm talking about the Lobbying Act here, but that will be one of your next projects. We can't recommend strongly enough that this loophole be closed.

Mrs. Patricia Davidson: Thank you very much.

[*Translation*]

The Chair: We will now go to Mr. Andrews.

[*English*]

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

This is a very interesting discussion that is getting down to the brass tacks of where we're trying to go with this and how we're trying to get our heads around it.

I'd like to carry on with just a couple of questions from Patricia in talking about post-employment restrictions. You're suggesting that they be streamlined. How exactly do we streamline them? You just mentioned taking the five-year restriction and putting it in the Conflict of Interest Act. How does that streamline? Is that what you mean by streamlining?

How do we streamline the two? As we know, people can go to the conflict of interest commissioner and try to establish that they're not in a conflict, but then when they go off and do their work they don't live up to what they told the conflict of interest commissioner. Then again, some of these public office holders don't even know that what they're doing is lobbying.

Mr. Jim Patrick: That's right.

Mr. Scott Andrews: So help us out here as to how they would streamline it.

Mr. W. Scott Thurlow: The answer is yes. The first thing is to start with one act. You pick one, whether it's the Lobbying Act or the Conflict of Interest Act, and then you go from there. Then you take the existing menus of the various post-employment guidelines and, as parliamentarians, you ultimately decide what will apply to yourselves and what should apply to everyone else who works in the federal public service.

I think this committee will agree that if you are in a senior ranking position in a ministry, you're going to have a different standard in terms of the impact you will make on a decision than you will if you're further down the pole in that same department. I think the original post-employment guidelines that were administered under the Conflict of Interest Act recognized that difference.

What we're saying is that creating a third sliding scale as it relates to designated public office holders under the Lobbying Act confounds that problem and also acts as a barrier to post-employment for the individuals as they are promoted through the public service. I think one area that hasn't gotten a lot of study, both by the public service and by Parliament, is the impact that the lobbying rules have had on individuals as they proceed through the public service. There are probably people who have made a very difficult decision to take that next step and move up in the public service ranks knowing that the impact will affect them after they leave the public service.

● (1600)

Mr. Scott Andrews: What should the impact be? Is it two years? Is it five years? Then when you look at parliamentarians, we seem to be held to the top bar. What are our employment chances afterwards when this all shakes out?

Mr. Jim Patrick: I think yours will be very good.

Some hon. members: Oh, oh!

Mr. Jim Patrick: I think what you want to eliminate is the opportunity for regulatory comparison shopping.

I had a young man come in my office one day looking to move out of government into the private sector. I said, “You worked for a minister within the last few years.”

He responded: “Yes, but I worked in the constituency office. So I asked the Conflict of Interest Commissioner if it's okay if I work somewhere like the CWTA, and it would be because I'd only be unable to go back to her department for a year.”

So I asked: “What did the lobbying commissioner say?”

He said: “Well, I haven't asked her because I got the answer I wanted from the Conflict of Interest Commissioner, and my father told me, 'Stop selling once you've made the sale'”.

A Voice: Oh, oh!

Mr. Jim Patrick: We weren't hiring at the time, so it was a moot point. But it made me uncomfortable that one person could go shopping for the answer he wanted from different officers of Parliament based on the same set of facts. We've seen other more publicized cases than that where designated public office holders—and there's no question that they were designated police office holders.... In the case I'm thinking of, the person worked for a party leader, but they weren't hired under a particular section of the Public Service Employment Act, but by Parliament. Therefore the cooling-off period didn't apply, whereas it may apply to other people in the office. I'm not suggesting it was the right interpretation or the wrong interpretation, but it shows that there is room for different interpretations.

The recommendation on the table from an earlier witness is a maximum five years. From there we're looking at somebody who was—and I'll make it up here—the Minister for Weights and Measures. Maybe you say that the minister had a very narrowly defined portfolio. Maybe that minister can't lobby the bureau of weights and measures for five years. That I think most people would agree with.

Now if you turn to the complete other end of the cabinet table, the department of something that has nothing to do with weights and measures, well, maybe there's room to say, “Okay, one year across everything”. However it's put together, it has to be consistent, and I think it needs to be clear, and it all needs to be done within the Conflict of Interest Act, not spread across two acts.

Mr. Scott Andrews: When you come to the 20% rule, you guys are recommending getting rid of the 20% rule altogether, because some people, as I think you said, use it as a loophole. They can rejig it because the 20% is self reported, including how they calculate the 20%. They could think, “Oh, I'm not calculate my travel time” and all of that. It's very, very confusing.

How is that so misunderstood? Why do they use it as a loophole? Is it just because they can?

Mr. W. Scott Thurlow: Well, I think the reason it's misunderstood is that there hasn't been a lot of definition applied to it. I've written in the past that different people have taken different interpretations of it because it is incumbent on them to self-report. I mean, 19% of your time means everything you did after breakfast on Monday, and that's it, okay? But that's still one day a week, when you effectively think about it, that you're spending your time lobbying.

I think that as you provide people, especially lawyers like me, with tools to interpret statutes in a way that can benefit them, they will use it. Certainty of law is the most important thing that we can have in this regard, and I think it's very important to achieve that certainty.

Mr. Scott Andrews: What do you folks think about the penalties? Right now someone could break both conflict of interest rules and there's no mandatory minimum, there's no nothing, it's just a slap on the wrist from the commissioner. They're not really impacted. It's a one-day news story and it's not really a penalty.

● (1605)

Mr. Jim Patrick: You need to bear in mind that for a professional lobbyist, it's a one-day news story, but the reputational aspect is that someone has then had their name put in a report to Parliament.

Mr. Scott Andrews: Let me just take it from a lobbyists' perspective to a business perspective. You're a business person, you're in business, and it's about your own business or the company that you work for.

Mr. Jim Patrick: You have the two acts, and under one you get the strongly worded letter from the Commissioner of Lobbying and your name is put on a report to Parliament, and under the other I think you're looking at $200,000 and—

Mr. W. Scott Thurlow: Yes. The fine and/or jail time can be very significant.

Mr. Scott Andrews: Under the Lobbying Act?

Mr. W. Scott Thurlow: Yes, for violating it.

Mr. Scott Andrews: Should we have the same fines and that under the Conflict of Interest Act?

Mr. W. Scott Thurlow: Again, my view would be as long as they're the same, that's the way to go, just so that they are clear and predictable and there isn't an opportunity to leverage one act against the other to justify behaviour.

[*Translation*]

The Chair: Thank you.

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

[*English*]

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

Thank you to our witnesses this afternoon.

I want to talk about administrative perspectives on the act, but before I do that, I have to go back to the value of gifts and some of your questions. I'm not clear, and I hope we don't lose my full time on that issue; I'm sure we could.

I don't collect snow globes, so I shoot those across to my colleague whenever I get one.

The question is regarding the size of gifts. I know that in your opinion of these gifts, when you start talking about things like fundraisers, galas, etc., in reducing the value to zero, we eliminate it altogether. Is that standard across both acts, from your perspective, and is that a fair and balanced approach to dealing with the issue?

Mr. Jim Patrick: I'll talk about the Lobbying Act first. This committee recommended a complete ban. We haven't seen that come in. The government seemed to endorse that in its response, and I guess we'll wait to see the legislative amendments when they come forward.

With respect to the Conflict of Interest Act, we noted the framework around gifts—there is the guidelines document and so forth—and there isn't an express prohibition. There's a requirement for disclosure and a requirement for forfeiture.

There have been recent cases that we have been made aware of where the Conflict of Interest and Ethics Commissioner has strongly suggested that a number of chiefs of staff to ministers, for example, not attend an event. There was the perception that a meal would be served and therefore it was a gift. It's probably not something you would put in the act, but it's part of the downstream process, part of the creation of guideline documents that would support the act. You're going to want to look at whether a meal is a gift. What if it's two courses, not three courses? You've all been to lots of gala fundraisers.

If you put those two acts together and in the course of that discussion you determine that we should stay away from these things because there could be the perception of undue influence—"It's a lobbyist inviting me and I don't want to be lobbied over dinner." If you're comfortable with that being the standard, then we'll live by it. But I think you need to ask yourselves.... We've all been to those dinners, and it's a pretty poor lobbyist who pulls a deck out halfway through a dinner and says "Can I go through my top 10 issues with you?" We all go to those for the same reasons you do—to eat the excellent chicken and listen to the excellent speeches, and then try to get home by 10 o'clock.

By and large, the activities that would be most harmed by a complete ban on gifts would be those activities that are the most benign, the charitable fundraisers and the types of gala events that we all go to, to support a cause. This is the opportunity to put some clarity around that, because there is a chill around these dinners around town. I know some of our members are feeling it. There are a lot of questions, and it will be up to you to answer them.

Mr. W. Scott Thurlow: If I could add just one sentence, I would define two things. I would define the monetary value that is the threshold and then I would define gifts. Make it a closed definition, not one that's open to interpretation.

Mr. John Carmichael: Excellent. Thank you.

From an administrative perspective—while we have these legal minds in the room—when the commissioner is asked to contemplate launching an investigation, there's potential for public and external factors to create a presumption of guilt prior to her conclusions being made known. Do you see any way that we can mitigate a tax on reputation for purely partisan purposes? I think that's an important issue.

● (1610)

Mr. Jim Patrick: We're sensitive to the commissioner's concerns here. Anything that allows any officer of Parliament to ensure an accurate public record is worth considering.

Right now, under the letter of the act, MPs and senators are prohibited from disclosing or publicizing requests for investigations on breaches of the act by another MP or senator. Perhaps that prohibition should extend to any individual or entity who requests an investigation. I agree, it's becoming a trend. There's a request for an investigation and it's inevitably accompanied by a press release announcing the fact that there's been a request for an investigation. I would agree that that would put any officer of Parliament in an awkward position and, generally speaking, could be seen to compromise the integrity of the process.

Mr. W. Scott Thurlow: I would add one sentence—and this is me speaking not on behalf of GRIC, but on behalf of myself more than anything else. There is an equally important competing obligation that an individual who is accused of something has the right to face their accuser. This is not something that we have seen done in a way that is of satisfaction to many of our members, because they don't know where the accusation is coming from. There has to be that balance.

Mr. John Carmichael: In fact, that was my second question.

Mr. W. Scott Thurlow: Oh. I'm glad I could help.

Mr. John Carmichael: Nicely done.

In the event that you have a situation in which you have found no fault, if you like, how does the accused in that case have the chance to clear his or her name effectively? It's in the public record, so you have a situation that creates a very difficult environment for that person.

Mr. W. Scott Thurlow: Yes.

Mr. John Carmichael: Is there any merit from your perspective in applying the Privacy Act to elements of the office of the commissioner? We're thinking of cases in which the commissioner is dealing with elements of conflict of interest specifically. Is there a place for the Privacy Act to be more active?

Mr. W. Scott Thurlow: I am notoriously pro-privacy, so I'll say yes. But I say that on my own behalf. This is not something we surveyed our members about.

Again, we're integrating yet another act into this. Statutes such as the criminal law obviously incorporate by reference definitions found in other acts. I would be very careful, when you're contemplating this kind of change, to make sure that you have concordance in definition among all of those acts.

Mr. John Carmichael: It sounds as though a lot of legal opinions may be coming through on that one, when we get to it.

How is my time?

The Chair: You have 20 seconds.

Mr. John Carmichael: Thank you for your time.

[*Translation*]

The Chair: We now go to Mr. Boulerice. You have five minutes.

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

I want to thank the guests for joining us today. Their answers and points of view are especially useful and thought-provoking.

As a parliamentarian, I feel that 90% of the people I meet are lobbyists. They are all asking for something. When I go to a seniors' residence, some of them want the mailbox moved closer to their door. Others want a sidewalk repaired. So certain definitions must be clarified, but our work basically consists in listening to claims and requests.

We know that some definitions are not the same in the Conflict of Interest Act and the Lobbying Act, even though they refer to similar matters. It is as though public administration had two separate systems, where it applied different rules to similar issues. The situation can become a bit schizophrenic.

It is clear that this creates confusion and that we need more consistency, but I would like you to give me some concrete examples of what you think is the impact of that confusion and different interpretations of a definition.

[*English*]

Mr. W. Scott Thurlow: The first thing I would tell you is that the senior in your riding who wants the sidewalk fixed, unless he or she is being paid by all the other seniors, is not a lobbyist. This is a constituent. This is something that we have seen from other affiants or people who are testifying in front of this committee, talking about what they've described as “volunteer lobbying”.

I want to be really clear that in order to be subject to the Lobbying Act you have to be paid. It's not an act that's subject to the situation you describe in your opening remarks.

The example that Jim spoke to in his presentation, about someone who is shopping for a specific type of interpretation in advance of whatever he is seeking to accomplish, is a good example of the conflict that exists here.

From my perspective, right now the two laws are bifurcated from one another, in that you will be placed in a conflict of interest if X, Y, or Z happens, but a lobbyist will be deemed to put you in a conflict of interest when W, X, Y, and Z happen. That should not be the case; there should be the one integrated provision.

The other interesting issue under the Lobbying Act is the interpretation of what conflict of interest is. There have been some questions about what political activities can raise a conflict of interest. In your question, Mr. Angus, you asked specifically about political fundraising.

Political activity, which was the object of the problem with rule 8, actually strikes at the very core of our fundamental charter rights concerning participating in the electoral process and freedom of speech and freedom of assembly.

I would be very wary of treading into those areas for fear of constitutional ramifications on both your constitutional rights as a member of Parliament and the freedom of speech that would apply to you, but also those of the volunteers and the people who support you in your home constituencies. If they are helping you, whether by putting signs on lawns or organizing a fundraiser, that's their political right; that is their section 3 right. To then prevent them *ex post facto* from exercising their section 6 right would be a problem.

● (1615)

[*Translation*]

Mr. Alexandre Boulerice: You briefly talked about the loophole issue—the 20% rule. I find it's a bit strange that people decide on their own what percentage of time they have spent lobbying over the course of a week. That is difficult to check.

In addition, I don't think all lobbyists are the same. For instance, if Mr. Mulroney or Mr. Chrétien were to make one or two telephone calls a year, that could have a much greater influence than someone else spending 80% percent of their time lobbying.

However, if the 20% rule was eliminated, do you suggest replacing it with something else?

[*English*]

Mr. Jim Patrick: I think the first place to start on this question is that approaching government and petitioning government is a right, not a privilege. I don't think any legislative measure or any bureaucratic decision within the public service should try to remove that right from people.

Trying to shape the lobbying activities to conform with a legislative and regulatory framework is the prerogative of Parliament and its officers, and we recommend to our members that they follow all of that regime.

Our recommendation to eliminate the 20% rule as it applies to corporate in-house lobbyists is not, I can tell you, a unanimous recommendation. Many of our members came to us saying, “Are you guys nuts? I have friends who work for this company who are not going to be able to keep their jobs”, or saying, “I'd like to hire so and so, who is in government and wants to get out, and now I can't.”

We made that recommendation because we maintain that the rules should be the same for everyone and should apply equally to everyone. If I'm coming out of a minister's office, I can't work at a trade association, I can't work for a consultant lobbying firm, but I can work for a corporation doing exactly the same work, as long as I determine that it's 19% of the time.

As you rightly point out, that's just a recipe for confusion. We understand that it was meant as a guideline, but it's been treated as a loophole. We wouldn't suggest that you reset the level to create another guideline that could then be treated as a different kind of loophole.

Mr. W. Scott Thurlow: Let me complement what Jim is saying. First of all, if he spends two phone calls, he gets what he needs done. More importantly the 20% rule, such as it is, isn't a rule; it's a guideline, because it comes from an officer of Parliament and is not embedded in statute. The statute actually says a “significant portion of their duties”. It's a question of what your definition of “significant” is.

I always go back to my original statement, which is that the more specificity that can be found in the law, the better.

[*Translation*]

Mr. Alexandre Boulerice: Thank you for your answers.

The Chair: Mr. Calkins will have the last five-minute period.

● (1620)

[*English*]

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

Thank you, Mr. Patrick and Mr. Thurlow, for coming today.

I want to get back to the point you made about the chill in the air, because I sense it as well.

As a member of Parliament, I get invited every weekend to a number of events, some of which I can go to and some of which I can't, just due to conflicts in scheduling or whatever the case may be. On any given evening, I might be invited out to support some local charity that is part of a larger organization. If I want to take my wife with me, it wouldn't be unheard of for me to spend $200 just on two tickets—every week, twice a week, every month.

So I could be spending upwards of $1,000 just for the privilege of attending a political...or not really a political event, but an event in my riding. I'm invited because I'm the MP.

We have certain things and privileges in our member's operating budget. I don't really want to get into that, but we cannot use our member's operating budget to pay for any advertising or anything like it that is going to a third party charity. So then, as an MP, you're on the hook for the entirety of the ticket if you choose to go.

If you're not given an opportunity to go to one of these events and accept a free invitation for you and your spouse to go and attend this event, a lot of these organizations wouldn't have the presence of their members of Parliament, because even though we're paid well, paying upwards of $600 or $800 or $1,000 a month just for the privilege of going out and having a dinner with your fellow constituents does beg some questions.

As a member of Parliament, if we're not out here to meet people, whether they are registered lobbyists or not, whether they are a person with an issue.... Virtually everybody comes to you with, to use a word from a long time ago, their “petitions”. They want to have access to their member of Parliament. They want to talk to their member of Parliament. They want to engage their member of Parliament. And every member of Parliament should rightfully want that in return.

What I sense now, with all of the ankle-biting, I'll call it, and nipping at the heels, for example, of various...whether it's allegations or chasing something down, trying to tarnish the reputation of somebody. We have access to information requests, and we have people's names bandied about quite loosely with allegations coming forward that they may or may not have done something, but the optics of a story can do all the damage that needs to be done.

From the perspective of a lobbyist, it's been very clear that the act of lobbying is quite necessary and quite productive in the use of constructive dialogue and building a government that responds to the needs of its people. Member organizations of your companies work, they have jobs, they raise families: they do the things they need to do in order to be successful. Not every lobbyist comes with simply the intention of furthering their own personal ambitions. They're there to further advance the development of industries that support the backbone of our country.

I want you to just help me explain to the commissioner, or to make recommendations here, about some of the effects of clamping down too much on certain types of what are considered to be, I would think, normal practices in engaging the political process, and putting a chill on those.

I'm actually quite concerned about that.

Mr. Jim Patrick: I think your question is very appropriate.

We've heard already from organizations that this is the last year we're having this dinner, a dinner we've had for 14 years, because we just can't get people to buy tables; people can't buy tables because they don't think they can invite the people who work in government who they want to invite; this is why we do this dinner in Ottawa instead of Toronto or Montreal.

I think if there is going to be some level of prohibition on gifts—and this committee recommended a prohibition on gifts from lobbyists—the government responded in a way to suggest that they may be able to define gifts in a certain way to accommodate what I would call gifts within the bounds of normal professional protocol.

We haven't consulted our members on whether that's a $100 ticket or a $200 ticket, whether it's one a month or two a month, but you will need to do that. You'll need to go through that exercise, I would suggest, either together or individually as to what you're comfortable with. What do you feel is an attempt to unduly influence you versus an attempt to invite you to an event out of normal courtesy and protocol?

Mr. W. Scott Thurlow: I would add that there's another officer of Parliament you can consult, and that would be the Chief Electoral Officer. The Chief Electoral Officer has dealt with this issue very specifically in the value that you, Blaine Calkins, as a member of the committee, would receive by attending that event—the cost of the chicken, the cost of the lettuce, the cost of the plates—and then everything else would be deemed a political contribution.

There is some insight that you could gain from that about what would be an acceptable threshold or not, but ultimately, as far as we're concerned, there is an effect. It's an effect that is going to have an adverse impact on the ability of charities, the ability of individual community organizations, separate and apart from the wing inside Ottawa, to sustain themselves. I'd be very, very concerned about it.

● (1625)

[*Translation*]

The Chair: Once again, I want to thank you for joining us.

That brings our first hour to an end. We will suspend the meeting for a few minutes, so that you can leave the room. Thanks again.

We will be back in two minutes.

● (1625)

(Pause)

● (1630)

The Chair: We are starting the second hour of our meeting with the representatives of the Office of the Commissioner of Lobbying. The Commissioner of Lobbying, Ms. Shepherd, and Mr. Bergen, senior counsel, are here on behalf of the office.

We are continuing the statutory review of the Conflict of Interest Act. You have 10 minutes to make your presentation. As usual, that will be followed by a question and answer period.

Ms. Shepherd, thank you for joining us. You may go ahead with your presentation.

Mrs. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Mr. Chair, members of the committee, good afternoon. I am pleased to be here today to discuss the legislative review of the Conflict of Interest Act. I am accompanied by Bruce Bergen, our Senior Counsel.

As the Commissioner of Lobbying, I am mandated with administering the Lobbying Act and the Lobbyists' Code of Conduct.

[*English*]

The Lobbying Act outlines requirements for lobbyists who are communicating with government decision-makers and is intended to ensure transparency in lobbying activities. The Conflict of Interest Act applies to government decision-makers and establishes a framework for preventing conflicts of interest from arising. In this way, the two pieces of legislation are complementary.

Today, I would like to share with you my perspective on matters where the two statutes may deal with related topics, such as the definition of public office holders, the treatment of post-employment periods for public office holders, and the interpretation of conflict of interest.

[*Translation*]

The first point I would like to make is that the definition of "public office holder" is different in the two pieces of legislation.

In addition, each act provides for a subcategory of public office holders—reporting public office holder in the Conflict of Interest Act, and designated public office holder under the Lobbying Act—to which specific requirements apply.

Several public office holders are captured by both subcategories, including ministers, ministers of state, parliamentary secretaries and ministerial staff. The Governor in Council appointees are considered reporting public office holders under the Conflict of Interest Act, but, with the exception of deputy ministers and associate deputy ministers in government departments, are not designated public office holders under the Lobbying Act.

In addition, the Lobbying Act considers certain public servants—such as assistant deputy ministers—as designated public office holders, while the Conflict of Interest Act does not apply to them. All members of the House of Commons and senators have been identified as designated public office holders, but the Conflict of Interest Act does not apply to them unless they are ministers, ministers of state or parliamentary secretaries.

[*English*]

These differences regarding who is covered by each piece of legislation are a source of confusion for public office holders. This is especially true when it comes to determining which post-employment prohibitions one is subject to.

Under the Conflict of Interest Act, reporting public office holders are subject to a one- or two-year prohibition on certain activities, which may include lobbying activities. The Lobbying Act prohibits designated public office holders from working as lobbyists, except under certain circumstances, for a period of five years. This can be confusing for individuals who are subject to both acts.

It is essential to make it clear to former public office holders that there are two different post-employment regimes, so they do not find themselves in breach of one of them.

I have worked with Commissioner Dawson's office to avoid this confusion. For example, a reference to the post-employment prohibitions that apply to former designated public office holders in the Lobbying Act is now added to letters sent by Commissioner Dawson to former members of Parliament when they leave office. I believe this will help alleviate some of the confusion between the post-employment restrictions contained in each statute.

● (1635)

[*Translation*]

I understand that Commissioner Dawson is recommending that the definition of reporting public office holder exclude interns and summer students who are ministerial staff for terms of less than six months.

From what I understand, this would mean that interns and summer students would not be subject to the one-year post-employment period currently in place under the Conflict of Interest Act.

[*English*]

Some interns and students working as ministerial staff, if hired under the Public Service Employment Act, are subject to the five-year prohibition on lobbying activities contained in the Lobbying Act.

The Lobbying Act gives me the power to grant an exemption from the prohibition to former designated public office holders if it would not be contrary to the purposes of the act. I have taken a strict view of the act and I have granted nine exemptions out of the 21 applications from former designated public office holders that I have considered to date.

One of the grounds provided by the act for granting an exemption is that an individual was employed under a program of student employment. Three of the nine exemptions I granted since July 2008 were granted to individuals on the basis of their being employed through a student employment program. In my opinion, Parliament may wish to consider the application of the post-employment prohibitions in both the Lobbying Act and the Conflict of Interest Act to individuals employed under a program of student employment.

As I mentioned earlier, I am also responsible for administering the Lobbyists' Code of Conduct. The code has been in place since 1997. Its purpose is to ensure that lobbying activities are conducted at the highest ethical level. The code comprises three principles and eight rules. Rule eight of the code deals with improper influence and conflict of interest. This rule prohibits lobbyists from placing public office holders in a situation that would create a conflict of interest.

In a judgment issued in March 2009, the Federal Court of Appeal offered clear direction regarding how the question of conflict of interest should be interpreted. My interpretation of what constitutes a conflict of interest and the guidance that I have provided to lobbyists flow from this decision. For a lobbyist, rule eight of the code is about avoiding placing public office holders in a situation that creates either a real or an apparent conflict of interest.

[*Translation*]

A conflict of interest may arise when a lobbyist offers a gift or anything of value to a public office holder while lobbying this same public office holder or their organization. My experience in enforcing rule 8 of the code is that lobbyists generally seek to avoid placing public office holders in a real or apparent conflict of interest.

Commissioner Dawson recommends that the current threshold of $200 for requiring public declarations of gifts received be lowered to a value of $30. This recommendation will improve transparency in terms of the gifts public office holders are receiving from lobbyists. In my view, however, the monetary value of a gift is not the most important test of whether that gift is acceptable—particularly those gifts given by lobbyists to public office holders. The test for acceptability requires a consideration of whether the giving of a gift could reasonably be seen to influence public office holders' decisions to the detriment of the public interest.

[*English*]

In 2010, I tabled two reports on investigation in Parliament, on the lobbying activities of Michael McSweeney and Will Stewart, in which I found the lobbyists in breach of rule 8 for having placed a minister in an apparent conflict of interest. They did so by helping to organize and sell tickets for a fundraising event for the minister's electoral district association. These lobbyists were at the same time lobbying the minister. Although they were properly registered, I concluded that the actions of the lobbyists created a reasonable apprehension that the minister had been placed in what appeared to be a conflict of interest. In reviewing the same situation in relation to Michael McSweeney, Commissioner Dawson in her report under the Conflict of Interest Act concluded that Minister Raitt had not taken any action that created a conflict of interest. However, she noted in her report that she was concerned that should a situation arise where the minister had to make an official decision involving the lobbyist, she could be subject to allegations of preferential treatment because of his work on the fundraiser.

As mentioned in my reports on investigation, I believe that raising funds for the minister's riding association advanced the private interest of this minister by helping her get re-elected as a member of Parliament. In my opinion, private interest is not limited to financial interest or to an interest that generates a direct personal benefit. In my view, it is broader and includes such things as political advantage and family interests, if those interests could recently be considered to create a tension between the public office holder's public duty and his or her private interest.

● (1640)

[*Translation*]

In summary, I believe that the Conflict of Interest Act and the Lobbying Act are key to achieving greater ethical behaviour, with the ultimate objective of enhancing the trust of Canadians in government's decision-making.

Mr. Chair, this concludes my remarks. I would now be pleased to answer any questions you or the committee members may have.

The Chair: Thank you for this presentation.

We will begin the question and answer period with Mr. Angus, who has seven minutes.

Mr. Charlie Angus: Thank you, Mr. Chair.

[*English*]

Thank you, Madam Shepherd, for coming here and, as always, giving us a very clear and concise interpretation of your work. I'd like to put this review and our review of the Lobbying Act into context. We felt that rules needed to be tightened because of a widespread disgust about big money unduly influencing politicians. Rules were brought in and standards were set. Now sometimes we might chafe against some of those rules because they may seem a little arbitrary, but the reason those rules were put in place was to stop the backroom influence that was plaguing Ottawa.

In looking at your reports, I'm really impressed with their clarity. In fact, in the reports on Michael McSweeney and Will Stewart, you found that they were in breach of rule 8 by placing the minister in an apparent conflict of interest. It was because they were helping to organize and sell the tickets to a fundraiser. They were playing an active role. In your act, the issue is real and apparent and these seemed perhaps to have an equal weight, or at least there's a clear weight there.

In the review we're doing, we're not getting a clear sense from the commissioner whether she sees fundraising as a personal benefit or not. You've said that it clearly is. Do you think that if we had clarity in the language in both acts, that it should be real and apparent, it would help to alleviate any possible conflict of interpretation between your office and Ms. Dawson's?

Mrs. Karen Shepherd: In terms of the definition for conflict of interest, the Lobbyists' Code of Conduct refers to three rules that deal with conflict of interest. The court case that I referred to in my opening remarks provided clear direction that it's not just looking at a real conflict of interest, but also an apparent conflict of interest, because just to look at a real conflict of interest would be to say that other conflicts are acceptable. When I look at other definitions, even of private interest for example, using a broader definition is consistent with the OECD's definition as well.

Mr. Charlie Angus: I guess the issue in terms of the word "apparent" is that the line could be used—and it was used with Mr. Jaffer's case and Bruce Carson's—that they weren't successful in lobbying, so there wasn't a problem. The only way you could have a real conflict is if they actually were successful, but it's the issue of stopping that lobbying, the importance of public office holders knowing that there's a line that has to be maintained, and, again, 95% of the lobbyists are going to follow the rules, but it's the ones who aren't following the rules that we have to make sure of. How important is that word apparent in terms of keeping the line very clearly drawn?

● (1645)

Mrs. Karen Shepherd: Just to make a small correction regarding the Rahim Jaffer case, it wasn't about conflict of interest. The issue was that the individual had not registered.

Mr. Charlie Angus: As a lobbyist, yes.

Mrs. Karen Shepherd: Yes, as a lobbyist. So you're correct in that it's not whether the undertaking is successful or not, but the actual activity of communicating on a registerable activity that requires registration.

Mr. Charlie Angus: That's what I wanted to clarify, because I've heard it said, "Well, they weren't successful so what's the problem?" But the issue is that we have a clear line about that apparent conflict, that people know what that means so that there's no ambiguity there. That's what we're trying to weed out.

I'd like to ask you—we've had so many questions going back and forth—whether or not going to your local Heart and Stroke Foundation dinner as a member of Parliament is the same as receiving a gift from a lobbyist who is trying to influence you. We are getting ourselves caught up in a morass here. Under the Lobbying Act, a public office holder is defined as "a member of the Senate or the House of Commons, or any person on the staff of such member." Under the Conflict of Interest Act, a public officer holder is a minister of the crown, member of ministerial staff, ministerial adviser, or governor in council appointee. It doesn't seem to have the exact same definition.

Am I reading that correctly, that under the conflict of interest we're not seeing members of Parliament, although there is the Conflict of Interest Code for members of Parliament? I think all of us are trying to figure out what the difference is in our role as ordinary members of Parliament in receiving gifts, first of all from community organizations, is that under the act? Is there a distinction between how we are defined under the Lobbying Act and under the Conflict of Interest Act?

Mrs. Karen Shepherd: Under the Conflict of Interest Act, as I understand it, with the exceptions of ministers, ministers of state, and parliamentary secretaries, they're considered to be reporting officers under the Conflict of Interest Act, where, as you say, a normal member of Parliament would not be a reporting officer. That's where the confusion comes, because then in the Lobbying Act, members of Parliament, whether they are ministers or MPs, are designated public office holders.

In terms of the issue of gifts, I don't look at the gifts in terms of what the public office holder is receiving. My responsibility and mandate is to look at what's happening vis-à-vis the lobbyist. Is the lobbyist's giving a gift to the public office-holder creating an apparent or real conflict of interest?

Mr. Charlie Angus: It's just something we're trying to clarify, because clearly under the Lobbying Act, you're dealing with lobbyists giving gifts, and they're doing this because they're hoping to influence. It could be okay, it might not be okay; you're interpreting that. We're trying to define it under the Conflict of Interest Act, because you have the reporting office-holders, we have public office-holders, which is a slightly different definition, but it's not really clear what exactly an ordinary member of Parliament is supposed to report, because we see a really clear set of rules in terms of conflict of interest with ministers and parliamentary secretaries. Do we need to define that language a little clearer so there is no ambiguity?

Mrs. Karen Shepherd: My experience in administering the Lobbying Act is that it's always better to have rules clearly spelled out, because then it's easier to understand what you need to do in terms of following something.

The Chair: Thank you.

[*Translation*]

I will now yield the floor to Mr. Butt for seven minutes.

[*English*]

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Mr. Chair, and my thanks to Ms. Shepherd and Mr. Bergen for being here.

One of the reasons we are here today is that the government had the foresight to bring in a number of pieces of legislation to provide better accountability and transparency through the Conflict of Interest Act and the Lobbying Act and the subsequent codes that are there. Five years later, it is appropriate for us to be here reviewing this and getting expert testimony, not only from you and other commissioners but from other witnesses who are in the trenches day in and day out. They are asking for the same thing: they want to know what the specific rules are. They're not interested in breaching rules. They want to know what the clear rules are.

One of the things we have said is that lobbying and interaction with members of Parliament, cabinet ministers, and other public office holders is a proper part of the job we all do here. Whether it's the constituent who calls about a mailbox or whether it is a lobbyist for a major company that does a significant amount of business in my riding, for them to have interaction with me, as a member of Parliament, is a legitimate part of their job. It's also a legitimate part of my job to listen to what the issues are and to what they have to say.

One of the concerns I have is there seems to be a disconnect between the two pieces of legislation and between the two commissioners' offices. It's not because you folks aren't doing your jobs. You are interpreting your different acts the way they are, but it would be better for everyone if we had one set of clear rules, clear definitions.

What are some of the specific things that we could do to have your office and the Office of the Conflict of Interest and Ethics Commissioner and the two pieces of legislation do a better job of speaking the same language to the same people? You've mentioned a few of the differences, whether we call it "designated public office holder" in one act or a "reporting public office holder" in another act. Do you have any specific recommendations on how we can get these two pieces of legislation to say the same thing, generally, to all the people to whom they apply?

● (1650)

Mrs. Karen Shepherd: Parliament decides whom to cover in using the "reporting public office holder" definition or the definition of "designated public officer holder".

The other issue that's different in both legislations is the time period for post-employment.

The third issue is the activities that are covered. The Conflict of Interest Act refers to representations. Some of these representations may be lobbying. But it may interest the committee to know that in the Conflict of Interest Act it doesn't matter whether you're paid or unpaid in that one-year or two-year period. Under the Lobbying Act, it's only considered a registerable lobbying activity, under which the five-year prohibition applies, if it's paid lobbying. Actually, where it may not be acceptable during that first year to do lobbying if it's unpaid under the Conflict of Interest Act, under the Lobbying Act that would not be something that fits the prohibition.

Mr. Brad Butt: Do you draw any differences in lobbying between government members or cabinet ministers versus members of the opposition? We know that lobbyists will try to meet with all 308 members of Parliament as well as senators. In respect of what the lobbyist is required to do and how the Conflict of Interest rules are established, is there any distinction between whether or not you are meeting with a cabinet minister, a parliamentary secretary, a government member of Parliament, or an opposition member of Parliament? Are the rules different, or are they the same for everyone?

Mrs. Karen Shepherd: It's the same rules for everyone. The only difference might be in looking at whether the conflict of interest occurred when an individual was a minister. Then, after a court case dealing with not only lobbying the minister but also the department in question, I would be looking at the conflict even closer, depending upon the lobbying that was being done. But the rules are the same. If they are paid and communicating a registerable activity for in-house organizations and corporations, there is the additional test of the significant part of duties, the 20%. And if the meetings are organized with a designated public officer holder, which all members of Parliament are no matter whether they're part of the government, a minister, or an opposition MP, then those encounters have to be registered unless it's the designated public office holder who invites the lobbyist to come in and do a presentation.

Mr. Brad Butt: Do we need to clarify the definitions of apparent versus perceived conflict of interest? I remember serving as a member of the Mississauga Committee of Adjustment, a small zoning body where we dealt with very small zoning issues in Mississauga. I remember that when I was first appointed to that as a volunteer citizen member, I had to sign a declaration. We were always read the riot act on the pecuniary conflict of interest and whether we had a pecuniary conflict, which really meant financial. Would you financially benefit personally because you participated in the debate, even a debate on an application? Maybe it was your next door neighbour who was wanting to build an illegal swimming pool and it would affect your property value, or you worked for a company and a subsidiary company was involved and had an application before the committee. I quite often declared a conflict of interest at the beginning of the meeting and excused myself from the room. I did not participate.

Are our rules in the federal legislation strong enough to give these proper definitions of where there could be direct financial benefit? Or is that something that we as a committee, through this review, need to look at when considering these definitions to make sure that they are very clear? I think there's a different story between an inadvertent conflict of interest, when you meant no harm and weren't totally aware of a conflict, versus obviously something where you stand to benefit as a designated public office holder, or if anyone else covered under the legislation would. This is where there's obviously a direct financial impact, where you or a family member would directly benefit. Have we got the definitions right so far or is there more work we need to do in setting those definitions?

● (1655)

Mrs. Karen Shepherd: As I was saying earlier, where I am drawn in regarding conflict of interest is with the Lobbyists' Code of Conduct. The court has provided me with a clear direction on the fact that I must look at both apparent and real conflict.

In looking to answer your question on whether the definition in the Conflict of Interest Act is sufficient or right, I would point out when looking at the two pieces of legislation that the reason we have these definitions is for Canadians to have more confidence in the integrity of government decision-making. Whether the definition should include an apparent conflict of interest as opposed to just a real conflict, I think is something that Parliament does want to address.

The Chair: Thank you, Mr. Butt.

[*Translation*]

Mr. Brad Butt: Thank you.

The Chair: I now yield the floor to Mr. Andrews for seven minutes.

[*English*]

Mr. Scott Andrews: Thank you very much, and welcome back, Commissioner Shepherd. It's good to see you again.

Our last witnesses who were here and some others have talked about streamlining the two acts, streamlining the conflict of interest and lobbying acts, making sure the situation is the same under both acts so there's less confusion. I noticed you also talked about which public office holders it applies to and determining that.

Is that the only streamlining we need to do? Do you agree with streamlining the two and maybe just having one commissioner responsible?

Mrs. Karen Shepherd: When I look at the history of the legislation, there was an individual at one point who was responsible for both the Lobbyists' Code of Conduct and the code for members under the Conflict of Interest Act. There was a court case on a few cases, and the issue was about whether or not there was bias, because no one was found to be guilty, in breach, on either the public office holder side or the lobbyist side.

So I think there is a reason to have the two sides separate. That said, and I said this in my opening remarks, if there's something to looking at putting the post-employment prohibitions under the Commissioner Dawson or the lobbying side, it would be that certain things do need to be harmonized because for the officers covered—the reporting officer and a designated public office holder—the definitions don't categorize the same number of people.

The post-employment times are different and so are the activities covered under post-employment.

Mr. Scott Andrews: And so are the fines.

Mrs. Karen Shepherd: Yes.

Mr. Scott Andrews: That was my next question, because there is no fine structure under the conflict of interest side but you do have some power to fine.

Mrs. Karen Shepherd: Actually, no, but I think Commissioner Dawson has the ability to fine under certain situations.

Under the Lobbying Act, if I have reasonable grounds to believe that the act has been breached, then I have to refer it to the Royal Canadian Mounted Police. It's only at that point with the prosecutor's office that fines or jail terms can be issued. What's at my disposal is tabling a report to Parliament.

Mr. Scott Andrews: Should those be harmonized as well?

Mrs. Karen Shepherd: I guess, Mr. Chair, it's a good question. It's very much whether...I think that if you're putting them under something together, then there might be some rationale, but what is Parliament trying to achieve? When I was before the committee under the Lobbying Act review and I talked about receiving administrative monetary penalties, it was to look at having them as a detriment to other lobbyists or as more of a corrective action. I think that would be the consideration as to why you would be giving fines to either commissioner, let alone harmonizing them.

● (1700)

Mr. Scott Andrews: That leads me to my next question. We have the case of Loyola Sullivan. He has been found guilty under the Conflict of Interest Act, with no retribution, nothing. He's just been written up. Where is that in your office now with his lobbying activities?

Mrs. Karen Shepherd: Well, as you know, I do conduct my reviews in private, but as this is in the public domain, as I've done previously with the committee I will confirm that I am looking into the matter. It is a priority for my office in terms of timing. I can't give any further details at this point.

Mr. Scott Andrews: Okay.

We've also heard about the 20% rule and how it's sort of self-administered. How do you test that? How do you test whether someone's being truthful with the 20% rule? Do you think there are a lot of people hiding behind the 20% rule?

Mrs. Karen Shepherd: My experience is that lobbyists do want to comply with the act. I think the calls we receive in the office about trying to understand things such as the significant part of duties and the 20% threshold would indicate that they are. There are more than 5,000 lobbyists registered.

In terms of how we go about checking, the onus is on the lobbyist. If I have reason to believe that somebody is not complying with the legislation, then I will conduct an administrative review, which is my fact-finding exercise. That will allow me to determine whether I need to open an investigation.

As for looking at the percentage, there is an interpretation bulletin out there that I look at. I look at how much time they actually spend in preparing for the meetings, and in the bulletin I—

Mr. Scott Andrews: Can you make that judgment if you're doing an investigation, in that they provide the information to you, and you will decide that they're above the 20%?

Mrs. Karen Shepherd: Actually, in the report that I tabled to Parliament on the Green Power Generation Corporation—an in-house corporation—I determined that they had passed the significant amount of duties test and should have registered.

Mr. Scott Andrews: Okay.

We've heard about a sliding scale for the different public office holders. Is that something we should look at for both conflict of interest and the lobbying?

Mrs. Karen Shepherd: When I look at why there was a post-employment provision put in for the Lobbying Act, it was to prohibit designated public office holders from using any contacts or knowledge in their decision-making authority for the benefit of lobbying, for five years.

That said, my experience in being a public office holder and the exemption review requests that I have received I think clearly show that there are different decision-making authorities. The contacts are different based on the different positions and the length that the individuals were actually sitting in the positions. I think there is something that Parliament may want to look at. Interns and students are a perfect example of that.

Mr. Scott Andrews: That sort of falls into the sliding scale.

Thank you very much.

Mrs. Karen Shepherd: You're welcome.

[*Translation*]

The Chair: Thank you, Mr. Andrews.

Mr. Dreeshen, you have the floor for seven minutes.

[*English*]

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Mr. Chair.

Thank you, commissioner, for being here today.

I have a couple of things, and Scott had mentioned them before. First, there are the difficulties you have in trying to match the two codes. Many of us are taking a look at the conflict of interest commissioner's role as well as your own.

One of the things we heard in the last session from the folks from GRIC is that they had talked about such a situation. I'll go through part of it, and maybe you can then comment on it.

They stated that in February 2011 the Commissioner of Lobbying tabled a report in Parliament finding that a lobbyist had breached rule 8 of the Lobbyists' Code of Conduct and therefore placed a public office holder in a conflict of interest. This ruling pertained to actions that took place in 2004, five years before the current rules were put in place. They speak of that. Then they said that the Conflict of Interest and Ethics Commissioner had already concluded, based on the exact same set of facts, that the actions and questions did not constitute a conflict of interest on the part of the public office holder.

Therein lies the dilemma. People are looking at these two different sets of rules and they are trying to determine how each one of you is looking at those facts, if, indeed, they were the same set of facts.

Could you enlighten us somewhat on that so we can get a picture of what they were trying to say from your perspective?

● (1705)

Mrs. Karen Shepherd: First, I would like to correct, for the record, that there were no activities in the case that, I believe, they were referring to in March 2004.

Mr. Earl Dreeshen: Okay.

Mrs. Karen Shepherd: The activities actually occurred in September 2009, which was after the court ruling dealing with the issue of fundraising came out in March 2009. That's where the issue of conflict of interest came in. As I've mentioned, it brought in that whole tension or the obligation being created between the private interest and the public office holder's duty to serve the public good. It also provided me with a clear direction in looking at conflict of interest, that it should include not only the real conflict of interest but also the apparent conflict of interest.

As I indicated in my opening remarks, as I understand it, when Commissioner Dawson looked at the same situation vis-à-vis the minister, she was looking at whether the minister had received a gift, I believe. She determined the minister had not received a gift. But as I indicated in my reports both on Michael McSweeney and Will Stewart, as was mentioned earlier in the committee, they had actively worked on a fundraising campaign by selling tickets at the same time they were lobbying the minister and her department.

So that decision actually is quite consistent with the direction the court case had provided me.

Mr. Earl Dreeshen: Thank you very much.

You also talked about the OECD in the context of conflict of interest in your earlier comments.

Mrs. Karen Shepherd: When they define private interest, it's a broader definition of private interests than strictly looking at it as the individual receiving a direct financial benefit. It includes a much broader range, which I think is consistent with looking at an apparent conflict of interest not just a real conflict.

If the committee would like, monsieur le président, that's something I could send the definition of to the committee after my appearance here.

Mr. Earl Dreeshen: Going to the 20% rule—and again this is something that we've discussed in the past—and the amount of time that a person is preparing for a meeting and the travel time someone might have if he or she were coming from western Canada to Ottawa to lobby here, have you and the folks in your office been able to come up with any new ideas how that should be addressed when you're trying to look at the percentage of time an individual lobbyist is actually engaged?

Mrs. Karen Shepherd: In terms of the guidance, I think it's been quite clear. It's really the reason I certify travel, because there are some companies that will actually put somebody in Ottawa so they can have easier face time, whereas somebody else might decide it's more significant to have the president fly across the country for a particular meeting.

I am looking at whether I can see if that guidance can be made any clearer in terms of the lobbyists. But it is clear in the bulletin that if the individual determines that it's significant that they be there, then they should be looking at registering.

As I always say, lobbying is a legitimate activity. If you're ever not sure, then err on the side of caution and register is my advice.

Mr. Earl Dreeshen: We look at other countries and the types of things they are doing. I know you've had an opportunity to go to different countries to present on behalf of Canada and to hear about other things that are happening.

Can you comment on any comparisons that you see? Are there any discrepancies between our lobbying rules and what you might see in other countries?

Mrs. Karen Shepherd: What I have found in my experience talking about the Lobbying Act is that Canada is considered to have quite a robust regime model when it comes to lobbying. In fact, in terms of designated public office holders, they now report on a monthly basis if it's oral and arranged. In my experience, when I was in the United States, they're looking at the 20% rule. It actually applies to consultant lobbyists. When we're looking at why we have lobbying legislation and transparency, it makes sense that there is no 20% rule in Canada applying to consultant lobbyists.

● (1710)

Mr. Earl Dreeshen: How much time do I have?

[*Translation*]

The Chair: You have 30 seconds left.

[*English*]

Mr. Earl Dreeshen: That's close enough.

Thanks very much.

[*Translation*]

The Chair: Thank you.

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

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

Ms. Shepherd, thank you for joining us today.

I would like to continue in the vein of the previous questions. Would adding the word "entity" to the definition clear things up a bit? Would it help us meet the OECD international standards?

Mrs. Karen Shepherd: Are you talking about organizations or businesses?

Ms. Charmaine Borg: Let's look at section 8 of the act. For instance, we could say, "seek to improperly further another person's or entity's private interests". That would broaden the scope of the provision and is actually one of the commissioner's recommendations. The scope would be expanded to cover not only a person, but also an entity.

Mrs. Karen Shepherd: If I have understood correctly, the Lobbying Act applies to lobbyists who work for non-profit corporations. The code of conduct applies to both. I don't know whether the definition must be changed because it applies to both. People who work for an organization lobby for the organization itself.

Ms. Charmaine Borg: Would that help clarify matters and reduce the differences between the two acts?

Mr. Bruce Bergen (Senior Counsel, Office of the Commissioner of Lobbying): I am not really sure that would be a good addition, but the Lobbyists' Code of Conduct is not an act. It is part of the system, but it is drafted by the commissioner and it is....

Ms. Charmaine Borg: I don't think I asked my question correctly. I will just move on to the next issue because that's not what I had in mind.

The previous witness said that he would sometimes go shopping for the right answer. He would visit you and visit the conflict of interest commissioner because there are some grey areas, and he wanted to obtain the best answer or the answer he liked the best. Is there a way to proceed other than updating the definitions to make them consistent? Is there another way to work together to avoid that kind of a situation?

Mrs. Karen Shepherd: I don't understand how someone could shop around, as the legislation is really clear. Lobbying activities are restricted for designated public office holders.

Definitions are also included for reporting public office holders. In their case, the post-employment prohibitions apply for two years after they leave their job. Those are the first two years of the five-year prohibition period under the Lobbying Act. I don't see how he can say that he shops around, as it's really....

Ms. Charmaine Borg: Regarding the example, I think he wanted to hire someone but couldn't do that because it was prohibited over a certain period under the Conflict of Interest Act. I will move on to my next question.

The commissioner recommended that the rules that apply to members be harmonized with the Conflict of Interest Act. Could you tell me how that could influence your duties within the office of the commissioner? Should the code be changed to be more consistent with the Conflict of Interest Act and the Lobbying Act?

● (1715)

Mrs. Karen Shepherd: I am responsible for lobbyists' conduct.

Ms. Charmaine Borg: I understand that, but you said several times that different definitions existed.

If the code were harmonized with the act, would there be any definitions in the act we should examine?

Mrs. Karen Shepherd: The definition of a designated public office holder may apply to more people than the definition of a reporting public office holder. It is really up to Parliament to decide who you want to include in the definition and why.

Ms. Charmaine Borg: Thank you.

The Chair: I now yield the floor to Mr. Mayes for five minutes.

[*English*]

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Mr. Chair, the only concern I have—and here we talked a little bit about the post-employment conditions—is when you're recruiting somebody as a public office holder, whether it be in a ministry or another position. Do you think that maybe we're compromising the ability to get qualified professional people because there's that restriction? If they leave their employment, it's going to restrict their ability to use their knowledge base to help an organization. That's their value. Their value is in the fact that they have insights and a particular expertise in maybe a particular ministry. Part of that is the value of the office holders as far as a knowledge resource for both private and public administrations or interests is concerned.

I'm just wondering what your thoughts are about that. Was there a problem in the past that this definitely had to be put in place? Or is it just a perceived problem? I'm wondering whether it really is necessary.

Mrs. Karen Shepherd: In terms of putting a post-employment prohibition into the act, as I understand it, with the Federal Accountability Act that was one of the things that was looked at: this whole revolving-door issue and to avoid having someone who was in some of these high-level decisions being able to leave office and to use the advantages they had gained through contacts and knowledge for a period of five years upon leaving office.

What I can say is that the five-year prohibition on lobbying activities under the Lobbying Act prohibits them from lobbying, in terms of their communicating with the public office holder in the original activity, but it doesn't stop them from earning a living. They are doing other jobs. They're going into government relations firms. There are some of them, as we've discussed, who can go and work for a corporation, as long as lobbying would constitute less than a significant part of their individual duties. So it isn't prohibiting them. It might be limiting them from wanting to do certain jobs, but it's not prohibiting them from gaining employment upon leaving office.

Mr. Colin Mayes: One of the witnesses we had before talked about clear rules, and Mr. Angus talked about fair rules. Fair and clear sometimes are not necessarily the same.

As far as clear rules go, do you think we would have the ability to put in place rules that were clear enough to cover all the bases? Are we not better off to be in some ways a little more general? I like the idea that as long as there's a real or apparent interest that is maybe connected to a financial gain of some sort.... What is your feeling about trying to identify all the areas of conflict of interest?

Mrs. Karen Shepherd: It's a fairly big task. I think you're right that there are a number of activities, but it's in looking at situations. Again, that's why I look at some of the broadest definitions because it's what a reasonable person would say in seeing a situation. I think that's where the court decision came in. So if it were individual who was actively working on a fundraising campaign and then lobbying the department or the minister in question, I would say there's a reasonable issue there and that maybe there's an apparent conflict. It doesn't mean there's a real conflict. The real conflict is a demonstrated interference. That is why the court came out saying in March 2009 that if you just look at real conflicts of interest, the bar's too high. So there is something to looking at apparent conflict of interest as well.

● (1720)

Mr. Colin Mayes: Mr. Calkins talked about the value or threshold for gifts. It's at $200 and there's a suggestion by the commissioner to lower that to $30.

I want to give you an example of a lobby group and a public office holder and how this can be a real challenge. The Canadian dairy association members always hold their meetings here in Ottawa. They invite MPs to join them for dinner at the Chateau, and it's not cheap—I would say even reaching the $200 threshold. Yet they're an organization, and so I feel they are lobbyists. They're getting paid indirectly as directors for the cost of those trips here and whatnot. Yet it would be unreasonable for me not be there, given that I have dairy farmers in my area. But there isn't a time that I sit with them when they don't talk about supply management. This is the difficulty I'm having. I think they have a right to express their views and I don't think the dinner I enjoy with them and the time out is unduly challenging my decision-making.

Those are the kinds of things that create difficulties when we put rules in place. Are these going to put restrictions on accessibility and free dialogue with constituents or organizations that have particular issues they want to bring forward to their elected representative?

Mrs. Karen Shepherd: As I've said in the past, lobbying is a legitimate activity. I think we've talked about the fact, or I've said and you have said at committee today as well, that we don't want government and decision-makers operating in a vacuum.

That said, does the lobbying and communicating have to occur over a really nice dinner? What some lobbyists have said to me is that public office holders are paying for those dinners so there is no gift or conflict. You're still at the dinner, but if I were looking at it, the lobbyist isn't placing you in a conflict. It would be more difficult if they lobbied you during that particular dinner, because they're probably registered and they would have to register that encounter. The issue is that by giving the gift of a ticket—and that's a case I'd have to look at—are they creating an apparent conflict of interest, let alone a real conflict?

Mr. Colin Mayes: Thank you, Mr. Chair.

[*Translation*]

The Chair: I want to thank the two witnesses from the Office of the Commissioner of Lobbying, including Commissioner Shepherd, for coming to meet with us today.

As for the committee members, we will see each other next Wednesday to continue this statutory review and consider the draft report.

Once again, I want to thank you for participating in today's meeting.

We will adjourn until next Wednesday.

Thank you.

The meeting is adjourned.