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## Wednesday, March 6, 2013

## Chair

**Mr. Pierre-Luc Dusseault**

# Standing Committee on Access to Information, Privacy and Ethics

**Wednesday, March 6, 2013**

● (1600)

[*Translation*]

**The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)):** Order, please.

We are going to start our 60th meeting right away and we will continue our review of the Conflict of Interest Act.

Today, we have the opportunity to welcome two very important witnesses. First, we have Ms. Morrison from the Office of the Integrity Commissioner of Ontario. Second, we have Mr. Fraser, from the Office of the Conflict of Interest Commissioner of British Columbia. Thank you for being here.

Without further ado, we will start with a 10-minute presentation each. Ms. Morrison will go first.

Thank you for joining us. The floor is yours.

[*English*]

**Ms. Lynn Morrison (Integrity Commissioner, Office of the Integrity Commissioner of Ontario):** Thank you, Mr. Chair. Thank you for inviting me here to speak about the work of the Office of the Integrity Commissioner of Ontario and the Members' Integrity Act.

Today I want to provide to you an overview of the main features of Ontario's legislation and the activities of our office. I will also comment briefly on a few of the issues this committee will be considering in its review of the Conflict of Interest Act, but I won't go into too much detail. I believe I can best assist you by allowing members to ask me questions and by providing Ontario's experience on the topics that are of interest.

First a little bit of history. Ontario enacted conflict of interest legislation in 1988 and was the first province in Canada to do so. This included the appointment of a commissioner, an independent officer of the Ontario legislature. There is some significance to this. Ontario's elected officials have had the benefit of an independent advisor on conflict of interest and ethics issues for almost 25 years. I have had the honour of working in the office since it was established in 1988, and while it certainly didn't happen overnight, I have seen first-hand how elected officials have come to trust and rely on the office.

From the outset, the main goals of the office were to provide assistance to elected officials in navigating the rules, as well as to apply appropriate scrutiny to allegations of transgressions. We have also focused on increasing the level of awareness of the rules among elected members so that they become better equipped to identify and avoid potential conflicts of interest. We extend this work through our other mandates, which include providing ethics advice to ministers' staff as well as running the province's lobbyist registration.

Our office is an independent ethics leader serving the public interest by encouraging and supporting high ethical standards that strengthen trust and confidence in the Ontario government.

There are many similarities between the federal Conflict of Interest Act and the Members' Integrity Act. The conflict of interest rules are similar, and we also require the reporting of financial holdings of elected officials. There are, however, some differences, and I would like to highlight some of those.

I do want to be clear that while I do believe our system works well, my goal today is merely to provide information about how we do things in Ontario, and not necessarily to advocate for the same system federally.

I know that another witness, York University Professor Ian Greene, spoke to the issue of elected officials meeting annually with the commissioner. Ontario is one of the jurisdictions where this is required. I meet each year with elected officials to discuss their financial holdings. However, these discussions are about more than finances. They are about building a relationship between our office and elected officials and making sure they know that we are there to advise them on any ethical issues that may arise in their day-to-day work.

Generally, the meetings take between 30 and 60 minutes, and members usually attend without their staff. During the meetings we are able to have a full and frank discussion about many issues: policies on receiving gifts, sponsorship of summer barbecues, letters of support, the appropriate use of office resources—any issue the MPP may have. Our discussions and any subsequent advice that I may provide are confidential.

The meetings also help me to understand the realities of political life for these members, and they give me an excellent opportunity to educate our elected officials, which is an important part of our approach.

I sincerely believe it is this dialogue that forms a cornerstone of the success of the Members' Integrity Act in Ontario.

● (1605)

I also believe that these annual meetings help to encourage MPPs to seek my advice regarding their obligations under the act throughout the year.

In providing these opinions, the confidentiality of the member is protected, and we always strive to foster an environment where no question is considered too insignificant. We work hard to provide frank advice in a timely manner, and if the member discloses all the facts, they can rely on the opinion to their full defence. Though some questions take longer to answer, we regularly provide opinions within 24 hours of the request, something that members appreciate given their busy schedules.

It has been my experience that an elected official will not always be automatically aware of the potential intersections that may arise between their private life and their public life prior to entering office and during their tenure in office. There is a strong need for a neutral, independent advisor to assist the member in keeping on track.

Providing confidential opinions, together with our mandatory annual meetings, provide ample opportunity to assist the members in living up to these high expectations. The objective is not to make sure the member knows all the answers, but rather to make sure they know when to ask the question.

We also answer inquiries from MPPs' staff, and particularly constituency staff, who face many requests from constituents for assistance and intervention by members and require guidance on what activities are appropriate. I believe this has developed a culture among Ontario MPPs to at least be alive to issues that require greater consideration. It's my view, and it has been the view of previous commissioners, that the high number of inquiries we receive in a year, usually well over 300 in a non-election year, has a direct impact on reducing the number of formal complaints made under the act by one MPP about the actions of another MPP.

As indicated earlier, I believe our system works because it provides members with the opportunity to ask any question and to get frank advice in return. We also focus on training and education, particularly after elections, to ensure that new members and their staff know about the rules and know about our office, and to provide a refresher to returning members. To me, education is key in helping officials comply with the rules.

I have reviewed Commissioner Dawson's recommendations to this committee about the Conflict of Interest Act. While I don't see it as my role to get into any detail about them, I do believe that they are very thorough and are clearly based on the experience of the Office of the Conflict of Interest Commissioner in fulfilling its mandate.

In reviewing the main themes of Commissioner Dawson's report, I noted two items that I felt I could speak to. The first is the issue of addressing misinformation put into the public domain. While Commissioner Dawson specifically mentions investigation work, I believe it is important for a commissioner to have the discretion to correct misinformation. In fact, when Ontario's Members' Integrity Act was amended in 2010, our office sought precisely this change. The act originally allowed me to publicly release an opinion I had provided to a member only if the member had provided his or her consent to me. This was usually fine, but we did encounter a couple of situations where a member publicly released only a part of the opinion, leading to what we viewed as an incomplete story. We sought and achieved an amendment that gives the commissioner the discretion to release the entire opinion if a situation like this happens again. Correcting misinformation by being able to speak to one's activities is important for both the commissioner and for officials.

● (1610)

Another one of Commissioner Dawson's priority areas was to harmonize the act and the members' code. This is something that makes a lot of sense to me and that l encourage the committee to strongly consider. As Integrity Commissioner, l have several mandates with intersecting areas of jurisdiction, with parties who interact with one another, such as elected officials and lobbyists. Having clear definitions, identical or at least similar language between legislation, makes my job a lot easier. The instances where the language diverges only lead to confusion among those who are affected by the laws and rules. This is a recommendation that just makes good sense. Ensuring better clarity of the language in the rules will help elected officials comply with them.

This concludes the key points l wanted to make today. l hope my comments have been helpful to you, and l am happy to answer any of your questions.

[*Translation*]

**The Chair:** Thank you for your presentation.

We will now give the floor to Mr. Fraser, British Columbia's Conflict of Interest Commissioner.

Over to you.

[*English*]

**Mr. Paul D.K. Fraser (Commissioner, Office of the Conflict of Interest of British Columbia):** Thank you.

Thank you all for inviting me to engage in your process today.

Reviews of conflict of interest statutes are breaking out all over across this country. We have one under way in British Columbia, there's another one under way in Alberta, and here we are in the nation's capital. It's interesting to look at our experience comparatively, and also, to some extent, internationally by comparison.

If we go way back in time, we ask the question, why? Why do we need this kind of legislation, and why do we need these kinds of people operating that legislation?

I saw the other day a quotation from James Madison, who was one of those who prepared the American Constitution, and 200 years ago he had this to say:

> It may be a reflection on human nature, that such devices [i.e. conflict of interest legislation] should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Those words, beautifully articulated by him, lead to the auxiliary team that you have sitting here, in part, today.

Both Commissioner Morrison and I have had the opportunity to read the transcripts from the various learned folk who have come in front of you and to listen to and watch your questioning of them, so both of us have agreed that given that you're at the end of the process—or perhaps, as some people would say, you're not closer to the end, you're just further from the beginning—we thought it would be more helpful if we spent less time, in a didactic way, telling you about ourselves.

That said, I do want to go on to say, however, that for James Madison and the Americans, the experience, in terms of the administration of conflict of interest, has been quite different than has ours here in Canada. The Americans went the route of establishing conflict of interest commissions early, which typically consist of somewhere between 6 and 12 people in each of the various states. Those commissions have a reputation of being partisan and bruising. They are commissions that are in part used for political purposes, God forbid.

An indication, I guess, of how the public reacts to the commissions in some cases comes from the quotation of a citizen who was confronted and affected by one of the commission's findings. He said, with respect to the chair of the commission, who was not a political friend of his, that the chair had a smile that closely resembled the glint of the winter sun on the brass handles of a coffin. On the other hand, the same member said, in respect of one of his own political colleagues, that he can trust him completely, and that he was prepared, if asked, to play poker with him over the phone. You can see that the process in the commission way in the United States has been highly politicized.

● (1615)

Our uniquely Canadian experience, which now involves all of our various jurisdictions, sees us governed in these respects by commissioners in all of the provinces, territories, and here in Canada. The success, it seems to me, that some of us have enjoyed, and the legislation that has come into effect and been amended to reflect that success, and further changes that need to be made, are in large part because we have chosen this unique model, which many of your witnesses have said, from their point of view, makes all the difference in terms of bringing along not only the public in its appreciation of what it is that we're doing, but the players—the people around this table who hope the commissioners will have both feet on the ground, will have some general understanding of the political process, will understand that we're all human, and finally, will understand that we're here to make sure that nobody, to use the agrarian term from out west, steps in anything soft.

That's important, it seems to me, in terms of how you view us and how you view our work, because what we do is done, if it's successful, on the basis of a trust that has been forged, and forged on the basis of, typically, meeting with members, taking their disclosures, and agreeing with them, as Judge Frankfurter said so many years ago, that sunlight in the disclosure process is the best disinfectant. In other words, we have all invested our efforts at various levels in making sure the process works.

I want to give you a little bit of context about the British Columbia situation, and that is that our legislation was passed a couple of years after that of Ontario and is modelled in large part after it. There are, however, some differences in respect of the Ontario legislation and the legislation that's contained in your federal act and code.

We have, in British Columbia, simply an act. We don't have both an act and a code, but it must be said at once that in the act is embedded all of the guarantees and the prohibitions that you will find in your code. But we have one document to have to refer to, unlike both Ontario and Canada.

Our commissioner does not have the power to initiate an investigation. Our work in British Columbia results from a purely complaint-driven process. It has, however, one very large distinction with respect to Ontario and Canada, and that is that British Columbia, along with Alberta and New Brunswick, is one of the few jurisdictions to give to the public access to our process. So the public has standing and can file complaints and request opinions in British Columbia. No doubt we'll get into that more in our discussion, Mr. Chair, which will follow.

There is in British Columbia another difference; there is no requirement for ministers to divest, though many do. We do have a blind trust and a screening kind of arrangement that's available. Our act deals with all members of the legislature, all 85 of them. There are some special provisions with respect to those who are in the cabinet, but the act itself and the reporting requirements apply to everybody.

We do not in British Columbia ask you to disclose the value of your assets or the size of your obligations. The public policy reason for that is that we don't care what your net worth is, or, perhaps put more properly, we don't think it's appropriate that you be put in a situation of having to display to the world your net worth. It's enough, as far as we're concerned, for us to know how you are invested, not how much you are invested and how much you owe.

● (1620)

We have a provision with respect to apparent conflict of interest, a subject that has taken up a lot of your time to this moment. We also have no ability to monitor and indeed we have no jurisdiction over what happens to any member after they've left office and are in a post-employment situation. We can't monitor or track what they do. We have no power to discipline.

Insofar as punishment is concerned, the commissioner, after making his determination, can make recommendations to the legislature of British Columbia for penalty. The commissioner cannot impose a fine or impose any other penalty himself. Only the legislature can do that, and the legislature can choose to ignore what the commissioner's recommendations are. If, however, the commissioner's recommendations are accepted, then there is the imposition of sanctions. The legislature cannot impose any punishment that has not been recommended by the commissioner, so it must choose an either/or kind of situation.

Mr. Chair, in broad terms, those are some of the differences between the legislation that Commissioner Morrison administers and the legislation that I administer, and I'll reserve anything else I have to say for your questions.

Thank you again for having me.

[*Translation*]

**The Chair:** Thank you very much for your presentation.

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

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

[*English*]

Thank you both for coming.

I think this has been a very helpful discussion for us in terms of looking at the act.

Ms. Morrison, I'd like to start with you about the annual meeting with the MPPs. Would you meet with senior government bureaucrats as well? Is the list we have of public office holders part of that, or is this an education process with the elected members?

**Ms. Lynn Morrison:** It's just meeting with the elected members. The only time we meet with political staff in ministers' offices, over which we have jurisdiction, is if they want to come in about a conflict issue or post-employment.

**Mr. Charlie Angus:** I think that would be very helpful. I want to get a sense from you about whether or not it's just a one-way conversation in terms of clarifying rules for members, or if it also helps you get your feet on the ground in terms of the political realities.

I don't know if there is any member who has ever been elected who was actually told what the job entailed. We all thought we would come here and do policy. When I was elected, I found in a riding as big as Timmins—James Bay that I was suddenly a shop owner. I had three shops, I had a budget, and I get requests to go to meetings. They want to take me out for lunch. Well, is that someone trying to buy my favour, or is that someone explaining the industry to me? We have requests for advertising.

We're all out there, and people will make mistakes as they're trying to make their judgment day to day. But some of the work we do is... you know, it's a messy business; we get our hands...not dirty. We're in the communities, we have budgets, and we have to make these decisions.

When you meet with the MPPs, does it somehow change how you see what is appropriate and what isn't, based on what happens on the ground, or do you have a very clear set of rules and the MPPs need to understand it?

● (1625)

**Ms. Lynn Morrison:** As I indicated, I've been at this now for a long time. When I came into this job I was not involved in politics in any way. I knew about it, I voted, but that was the extent of it. This has given me the opportunity to learn a lot about what you go through, what your job is about, and it helps me put your job into perspective vis-à-vis the rules.

Interestingly, I can often meet with somebody and talk about their family, talk about their community, what's going on in the riding, and then I have a sense, when we talk about the rules, whether they really understand them. When I'm responding to these inquiries, I have a sense of a little bit of their personal side and what they're really like. I'm a very firm believer in using good common sense—following the rules and the law, but also using good common sense.

**Mr. Charlie Angus:** Do you sense that the development of this relationship actually helps deal with potential problems that would occur down the road otherwise if that conversation didn't happen?

**Ms. Lynn Morrison:** I think what I'm trying to do is develop their trust in me, and I think absolutely it's important that a member have trust in me, because they're coming to me with sometimes very personal issues and are not sure where it's going to go. If I don't have that trust, they're not going to come to me.

**Mr. Charlie Angus:** When you know of a situation that might develop as a scandal or there are a series of accusations, you support the idea of being able to clarify the record if somebody is misrepresenting your judgment or what was said, so that the public has a sense of when there's a real scandal and when somebody might have gotten their facts wrong, that that ability to intervene helps restore the balance?

**Ms. Lynn Morrison:** Absolutely, in certain circumstances, depending on what has gone on, but certainly if I'm investigating a complaint and somebody says that I found that they could do this and it was fine, and I didn't say that, or they only release part of my opinion that shows the good side of the opinion but doesn't show what reality is, absolutely. I think it is important for the public to know what the truth is.

**Mr. Charlie Angus:** Mr. Fraser, I'm interested in the issue of the public access and the process and how that would work. I certainly agree that sunlight is the best disinfectant, and what you do in the dark will be exposed in the light, as it says in the good book.

How does the public process work? How is it practical? How are you able to do it? Some complaints may be spurious, but others are not going to be. How do you set that up?

**Mr. Paul D.K. Fraser:** In terms of processing complaints when they do come in, there's a threshold of whether or not there are reasonable and probable grounds to take the matter forward. That's the first filter, if you like.

Many of the complaints from the public don't pass that hurdle, but the vast majority of complaints that I handle are from the public. They can be in touch with us by e-mail, by a letter, and send in their complaint. If we don't understand it, then we'll try to understand it and walk them through whatever it is they want to complain about and get to the nub of the issue, and at the same time give them some advice and information about what our process actually is, so that if they have evidence that they wish to leave or to bring to our attention, they'll know that we're prepared to receive it.

● (1630)

[*Translation*]

**The Chair:** I will have to stop you there, since the bells are ringing. To be able to continue, we will need unanimous consent. Otherwise, we will suspend the meeting until after the vote. We will ask the witnesses to wait and we will come back to them at around 5 p.m.

Would you like to continue the meeting for a few minutes during the sounding of the bells or would you like to ask the witnesses to wait until the vote is over? Do I have the committee's consent to continue the meeting for a few minutes?

Go ahead, Mr. Calkins.

[*English*]

**Mr. Blaine Calkins (Wetaskiwin, CPC):** Can I suggest that we get through the first round of questions? I think that will at least give us ample opportunity to get to the chamber. That way, every party has an opportunity to ask their full sets of questions.

[*Translation*]

**The Chair:** That is what I would prefer. So we will continue.

Your time is up, Mr. Angus.

So we will go to Mr. Carmichael for seven minutes.

[*English*]

**Mr. John Carmichael (Don Valley West, CPC):** Thank you, Chair, and thank you to our witnesses. It's good to have you here today.

I have a couple of questions that will relate predominantly to your own acts and how you enforce or how you regulate. The other day we had a couple of witnesses before us, and I think at the end of the testimony we walked away with a lot of confusion more than anything else, between the Lobbying Act, the code, and the Conflict of Interest Act. I think it's extremely important that as members we identify it in black and white.

Commissioner Fraser, you said, for the farming friends, that we don't want them to step in something soft, and clearly we don't want that to happen either. I think we have to get to a place where we truly understand the rules as they exist, and firm them to a place where everybody understands what those ground rules are.

Commissioner Morrison, you discussed meeting annually with the MPPs, and I like the concept. I think it presents a great opportunity for a new member to truly get a grounding, and certainly for you to read that new member and get an understanding of who you're going to be dealing with for the next number of years.

I wonder if we could talk a bit about gifts. You talked about barbecues. Some of the standards, and you've seen some of the recommendations in our act.... I wonder if you could just talk to some of the parameters that you locked in, in Ontario, and perhaps, Commissioner Fraser, in B.C., that put in hard numbers. What are your thoughts, for example, on the gifts going from $200 to $30? Are we going in the right direction? Have we gone far enough? I wonder if you could give us just a couple of minutes on that.

**Ms. Lynn Morrison:** Sure. First of all, I think it's important to understand that in Ontario a benefit is also considered a gift. I certainly have the same concern Commissioner Dawson has. There's a serious misconception of the gift rules in Ontario. The rule in Ontario is that a gift valued at $200 must be reported. However, a lot of members have the misconception that as long as it's under $200, it's fine, and that is not the case. The case is that you must determine whether it's appropriate, and what is appropriate under the Ontario legislation is custom, protocol, social obligation—that's usually fine. I often say to members, you have to ask yourself who's giving it to you and why. What did you do for it? It has been difficult to get through to members that the only magic of $200 is reporting.

I'm not against the $30 rule. My concern would be more that it's possible that if it was reduced to $30, members would be a little more cognizant of what's appropriate and what isn't, because maybe it's going to be on the front page of the paper. Certainly in Ontario any gifts over $200 disclosed to me go on the member's public disclosure statement each year.

If you lower it to $30, you're going to cover a lot more territory, so maybe they would give it more consideration before they accepted it.

● (1635)

**Mr. John Carmichael:** Thank you.

Commissioner Fraser, any thoughts? Would you like to chime in on this?

**Mr. Paul D.K. Fraser:** There's an expression in the law, a $5 expression, in Latin, called *de minimis*. It has to do with the law not concerning itself with trifles, and on that basis, judges every day in this country do not descend to a level of detail that they think is unproductive and unhelpful.

I agree with Commissioner Morrison, and I agree with the sentiments of Commissioner Dawson that the sections having to do with gifts are misunderstood.

That said, we do know that what is called the custom, protocol, and social obligation is an exception in Ontario. In British Columbia we say that the exception has to do with whether the benefit was "received as an incident of the protocol or social obligations that normally accompany the responsibilities of office".

The concern I would have, frankly, if it was reduced to $30, even though to do that is logically consistent with the point that Commissioner Dawson has made, is that many members, it seems to me, wouldn't bother reporting. It just doesn't seem to be enough, and in terms of the real world and the gifts that people get that fall within the definitions contained in the statute, I don't think today thirty bucks is enough. I think $250, or $200, as it is in some jurisdictions, more accurately reflects what the cost of a lunch would be and makes more practical sense, frankly, and if it's practical and it makes sense, it's more likely to be obeyed, in my experience.

**Mr. John Carmichael:** Thank you, and I think you've addressed some of our concerns as well.

Both jurisdictions react to complaints, and that's the trigger that obviously draws you into a situation. I'm wondering, when the commissioner is asked to contemplate launching an investigation, there's potential for public or external factors to create a presumption of guilt prior to the conclusions being made known. Do you see any way to mitigate attacks on reputation for purely partisan purposes? I recognize you're talking about public and partisan, so I'd like to stay just within the partisan element.

**Ms. Lynn Morrison:** If I understand your question correctly, and correct me if I'm wrong, I can only take complaints from members about another member. If in fact a member releases that information publicly before I even receive it, is that political? Even before the party who's being complained about gets a copy of it? Is that political? I would suggest it could be.

I have nothing in my act that would restrict a member from releasing this information. However, my predecessors have made it quite clear in the past that they don't look favourably upon this information being tried in the public domain while we're trying to investigate and prepare a report.

To be honest, I think that many of these complaints are politically oriented. Many of them are legitimate and have good grounds for an investigation. It's just part of the job that politics enters into it. Certainly in my act, if I find it's a frivolous complaint, I can say so in my report. I don't know if that helps balance it out or not. I've never had to do that.

[*Translation*]

**The Chair:** Thank you for your answer.

I will now give the floor to Mr. Andrews.

[*English*]

**Mr. Scott Andrews (Avalon, Lib.):** Thank you, and welcome to the commissioners today.

I'd like to dive into the apparent conflict of interest. It was a recommendation out of the Oliphant commission, Ms. Morrison. I'm sure you're familiar with it.

Does your act deal with apparent conflict of interest? Is it something we should look at in ours? I know Commissioner Dawson has said it's implied, but the Oliphant commission recommends that we put it in. What's your perspective on that?

● (1640)

**Ms. Lynn Morrison:** I agree with Commissioner Dawson's approach on that. It doesn't need to specifically be added to the definition of conflict of interest. We don't have the terms in our legislation, and our system works very well. Our act provides me with all the tools I need to give the advice that I think is necessary and appropriate under the circumstances. As Commissioner Dawson said, it is implied in her legislation. If you put it in....

Perhaps Commissioner Fraser is better able to speak to that because he does deal with “apparent”.

**Mr. Scott Andrews:** I know you mentioned it in your statement, so I'd like to get into it.

**Mr. Paul D.K. Fraser:** British Columbia has it embedded in our section—it's a separate subsection, in fact—and it tracks the language that was used in the Stevens inquiry, where the judge there, in the Stevens commission, identified a definition of what is a conflict of interest. He bifurcated it into what was a direct conflict of interest and what is an apparent conflict of interest. The language in that commissioner's report has basically been imported right into our act.

I think the imperative here is that inasmuch as some of our pieces of legislation across the country now have the apparent conflict legislation in them, and inasmuch as the public, I'm bound to say, in looking at conflict of interest, thinks largely in terms of perception and makes no apology for that—if something stinks, as far as the public is concerned, that's enough; you can slice the salami as thin as you want, but if it stinks and it's perceived to stink, there it is.

I think it would be for us a situation where there's no way back. I think the public is invested in apparent conflicts of interest, in the sense that it confirms for them that if there is a suspicion or if there's a taint, then that's enough for an investigation.

What's important, though, in dealing with what the definition of apparent conflict of interest is, is to know that the definition under the section is very objective. A perception may be very subjective, but whether or not the perception of a person matures into a finding that there was an apparent conflict of interest is in this case to be judged against the following language:

> For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must [not may] have been affected by his or her private interest.

When you listen to how broadly that's cast, I think you can at once get a sense that a mere perception isn't going to be nearly enough to conclude that there is a conflict of interest, but the fact that there is an appearance of a conflict of interest is enough to bring it before us. A full-blown direct conflict of interest sometimes means that you have to have a picture of the money being handed over. That's how the section is drafted. That's how the section is working.

The issue is still on foot. I think you've heard any number of very accomplished observers tell you what they think, and they've all uniformly agreed with Oliphant in the whole issue of whether or not conflict of interest or apparent conflict of interest should be included in the legislation.

With your leave, I want to read to you, though, the contrary view, which was articulated by Chief Justice Evans, the first commissioner from Ontario, in 2001. This is what he said in discussing this general subject matter:

> Proof of a breach or complicity in a breach of the Members’ Integrity Act must be based on facts rather than conjecture, suspicion, or affinity based on friendship, common interest or political affiliation. A person’s reputation, irrespective of his station in life, is important and if it is to be impugned, there must be evidence to support that challenge. The perception standard of morality which some suggest should be the test applied to politicians would require that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an ‘appearance standard’ is that there are few, if any, reasonable, non-partisan, fully informed persons. One person’s perception of another’s conduct is a purely subjective assessment influenced by many factors including the interest of the individual making the assessment. It is not the proper criteria by which the conduct of a legislator should be measured.

● (1645)

That's what Chief Justice Evans had to say in 2001.

I suspect, and Lynn will forgive me because he was her mentor, that if Chief Justice Evans were here today—and I wish he were—he would probably agree that given the transparency that our modern press has brought to the piece, given the reporting that has gone on of decisions that have been taken by commissioners and so on, we have passed a point, frankly, of no return. I think that's what the various professors who spoke to you were really trying to say. If at the end of the day we want this kind of legislation to succeed, if we want it to work, we don't have to evangelize the public, but we have to get the public invested in it. To me, that investment is more secure if we have an apparent conflict of interest provision right in the act.

I don't disagree with Commissioner Dawson at all when she says, as a matter of reading of her act, that there are within it already words that amount, when you look at them, to the same sort of thing. I do think, though, that for more than public relations purposes, but in order to protect the integrity of our modern legislation, it's better to have it in there.

[*Translation*]

**The Chair:** Thank you for your answer.

Ms. Davidson still has three or four minutes. However, we need to give the members of Parliament at least 10 minutes to get to the House of Commons. It is a bit of a walk.

[*English*]

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** We should finish up now.

[*Translation*]

**The Chair:** Great. I will let you go vote.

I would like to thank the witnesses for coming here to answer a few questions. It was very interesting.

Would the members of the committee want to come back after the vote? I got the impression that we didn't want to discuss the confidential report and that we were going to postpone it instead.

I will therefore adjourn today's meeting. We will meet again on Monday, in a week and a half. Thank you.

The meeting is adjourned.