HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 070 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, March 18, 2013

Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

Monday, March 18, 2013

● (1530)

[*Translation*]

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

Welcome to the 70th hearing of the Standing Committee on Access to Information, Privacy and Ethics.

In the context of our review of the Conflict of Interest Act, we welcome Mr. Dodek, who is a professor at the University of Ottawa in the Common Law Section.

As usual, witnesses will have 10 minutes for their presentations, and a question and answer period will follow. This will last about an hour in total. As you may have noted when you read the agenda, we will be hearing other witnesses later.

Without further ado, I will yield the floor to Mr. Dodek so that he can make his presentation.

Mr. Dodek, thank you for being here with us.

Professor Adam Dodek (Professor, Common Law Section, University of Ottawa): Mr. Chair, members of the committee, thank you for this opportunity to address you today.

[*English*]

I apologize for not being able to attend the previously scheduled appointment with the committee. Unfortunately, I was sick and would prefer not to go into further details of that on the record in *Hansard*.

[*Translation*]

Today I will testify in English. I will try to reply to your questions in English as well as in French.

[*English*]

There are three issues I would like to address in my testimony today: first, the need to amend the Conflict of Interest Act to codify certain provisions of the guidelines included in the document "Accountable Government: A Guide for Ministers and Ministers of State"; second, the need for changes to sanctions available to the Conflict of Interest Commissioner; and third, the need to set clear timelines for compliance with specific provisions of the act, and to make public notification when office holders have failed to meet those deadlines.

Before I address those issues, I would simply like to make members of the committee aware of the background I bring to my testimony on the review of the Conflict of Interest Act today. As the chair of the committee informed you, I am a law professor in the common law section of the University of Ottawa's Faculty of Law. I'm a member of the public law group at the Faculty of Law, and my two chief areas of research are one, public law and government; and two, ethics of the legal profession including judicial ethics. Today's subject obviously lies at the intersection of these two research interests. I've written about ethics in government, particularly concerning lawyers in government.

Prior to entering academia, I was a political staffer for three years in Ontario, between 2003 and 2006, first as senior policy adviser and then as chief of staff to the Attorney General of Ontario. As a political staffer, I was subject to certain conflict of interest provisions and the jurisdiction of the then existing conflict of interest commissioner. As chief of staff to the Attorney General, I had frequent interactions with the Office of the Integrity Commissioner of Ontario on behalf of the Attorney General, who, as a member of provincial Parliament and as a minister, was subject to provisions of the Ontario Members' Integrity Act. I believe you heard from the current Integrity Commissioner, Lynn Morrison, who I had frequent contact with during those years.

Finally, in 2009 I had the opportunity to serve as a research consultant for the Institute of Public Administration of Canada on a CIDA-funded project known as the deployment for democratic development. I worked under the supervision of former deputy minister Mary Gusella on a law reform project in Tanzania, related to conflict of interest in government. Our team analyzed conflict of interest provisions across Canada, the United States, countries in Asia and Africa, and within the UN and the OECD.

With that background, let me turn to my submissions.

First, I recommend that the act be amended to codify certain provisions of the guidelines included in the document "Accountable Government: A Guide for Ministers and Ministers of State". Recent events have demonstrated the need to amend the act to include an express prohibition on public office holders contacting courts or quasi-judicial tribunals, seeking to promote the interests of private individuals.

Section 9 of the act prohibits public office holders from using their positions as public office holders to seek to influence a decision of another person, etc. As you know, the commissioner has interpreted this provision—rightly, in my opinion—as prohibiting public office holders from writing letters on behalf of individuals in support of applications before quasi-judicial tribunals. In one such compliance order, the commissioner cited provisions from the document "Accountable Government". That document contains some of the most important legal, constitutional, and ethical prohibitions on ministers and ministers of state. However, it does not have the force of law. As it says, it is only a guide. I recommend that the act be amended to clearly set out, first, that all public office holders be absolutely prohibited from intervening or attempting to intervene on behalf of any person in any court proceeding, and second, that all public office holders be prohibited from intervening or attempting to intervene on behalf of any person in any quasi-judicial proceeding.

● (1535)

On the quasi-judicial point, I think the guidelines are extremely comprehensive, and I would simply recommend them to members of the committee for their consideration.

On interference or attempted interference with court proceedings, I feel compelled to say a few words because of some of the comments that were made in response to the recent resignation of a minister of the crown for providing a character reference to the tax court on behalf of a constituent. Under our system of government we do not have a formal separation of powers, as they do in the United States. What we do have is certainly a strict separation between the judicial branch and the other branches of government. With the exception of directing a reference to the courts, the executive or the legislative branch simply cannot direct the courts in what to do. History teaches us that when executive control over the courts happens, that is often the beginning of tyranny, as recent events in Pakistan, Zimbabwe, Egypt, and elsewhere have demonstrated.

In Canada, we are proud to have a strongly independent judiciary respected by Canadians and people across the world. It's incumbent upon us to ensure there are no encroachments on public confidence in our independent judiciary. Public office holders exercise power in trust for the public. They simply have no business attempting to intervene with the operations of the judicial branch on behalf of anyone. I don't think, as some commentators in the media have said, that this was simply an issue of no harm, no foul. It's about protecting the integrity of both the judicial branch and the executive branch, and I think it is far too important to be left to guidelines issued by the executive. This imperative of non-interference in judicial matters should be enshrined in the Conflict of Interest Act.

Second, I recommend that the act be amended to repeal the provisions related to administrative monetary penalties. I believe that the current level of $500 is simply not commensurate with the importance of the issues contained in the act. This low level risks equating conflict of interest and ethics issues to parking tickets, or perhaps to speeding tickets.

I don't favour increasing the administrative monetary penalties to a level that I think would be commensurate with the importance of these issues, which in my mind would be at least $10,000, because I fear that that would lead to greater judicialization of the act. Although I'm a lawyer and a law professor, it is not my brief today to seek further employment opportunities for our students. Instead, I believe the strongest sanctions the commissioner has at her disposal are her moral authority and the power of condemnation. I would like to see the act amended to increase the powers of the commissioner in two specific ways: first, to issue a formal reprimand against a public office holder for violation of any provision in the act; and second, to send a copy of any decision regarding a public office holder to the minister responsible, or, in the case of a minister or a parliamentary secretary, to send a copy of any decision to the Prime Minister, and require a response from the minister or the Prime Minister as to how they propose to deal with the violation within a set period of time.

Finally, I recommend that the act be amended to require the commissioner to publish the names of those who are not in compliance with various reporting provisions of the act. In her 2011-12 annual report, the commissioner reported that in the prior fiscal year, 53 out of 299 new reporting public office holders did not complete their confidential reports within the 60-day deadline. That was an increase from the previous year. The commissioner does have the power to issue administrative monetary penalties for such non-compliance, but I think is understandably hesitant to do so. I recommend that the act be amended to require every appointing body or person to notify the commissioner of an appointment of a public office holder within seven days of their appointment. I further recommend that the act be amended to require the commissioner to publish the names of those public office holders who fail to meet specific deadlines set out in the act. I would expect that the media and the opposition would be interested in such a list, and that such a list would be considered a list of shame. I would hope so.

● (1540)

I believe that such a process would provide a strong incentive to all public office holders to meet the deadlines set out in the act. I can tell you that's certainly my own experience as a lawyer subject to the jurisdiction of the Law Society of Upper Canada, which publishes a notice in *Ontario Reports* of lawyers who have delayed in paying their fees and have thus been administratively suspended. That document is distributed free each week to all of Ontario's 44,000 lawyers.

As the chief of staff to the Attorney General of Ontario, the province's highest lawyer, I had a recurring nightmare that we would forget to pay the minister's dues and we would see his name on that list. I knew that if that day were to come, it would be my last day on the job.

I suggest to you that a similar process under the Conflict of Interest Act would provide a stronger incentive for timely compliance than that which currently exists under the act.

Thank you, and I look forward to your questions.

[*Translation*]

The Chair: Thank you for your presentation.

We will now have questions.

Mr. Angus, you have seven minutes.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Dodek, for coming.

This has been very interesting, and I think some of your suggestions are somewhat provocative to consider.

I don't know if we'd have to call this the “shame list” that you call it, but insisting that people have to take this seriously, that this is not a pro forma but is part of their contract with the people in terms of being accountable...are you suggesting this would be on top of administrative monetary penalties? Or do you think this would be a better system for dealing with people to be in compliance?

Prof. Adam Dodek: I think it would be a preferable system than the currently available administrative monetary penalties. As I set out in my testimony, I'm not supportive of the current administrative monetary penalties. I think that a monetary penalty of $500 is simply not at a high enough level to be commensurate with the importance of the issues in the act, and to me that leads one to go in one of two different directions.

You've heard testimony from various witnesses, including from representatives of the Canadian Bar Association, who favour far more stringent administrative monetary penalties. My fear with that, and why I do not support that, is I believe that would lead to a more antagonistic environment between public office holders and the commissioner and the commissioner's office. Instead, I think there are other available sanctions or incentives that would achieve the goals of the act in a preferable manner.

Mr. Charlie Angus: One of the issues we've been dealing with is this. We have the accountable government. We have the code. We have the members' code. We have the lobbying commission rules. We have Madam Dawson's code. These are not always exactly lined up and we're being told we should harmonize them. But it seems that the question is, how do we harmonize them? Do we harmonize them to a lower standard or to a higher standard?

It was interesting when we had Madam Shepherd here and she talked about her 2010 report on the lobbying activity of Michael McSweeney and Will Stewart. She found that the lobbyists were in breach of rule 8 for putting the minister in an apparent conflict of interest. Madam Dawson didn't feel they had done anything wrong, because with having lobbyists hold a fundraiser for a minister, the minister wasn't getting the money personally; therefore there wasn't an issue.

How do we deal with differing interpretations of the same situation by the Commissioner of Lobbying and the Ethics Commissioner?

Prof. Adam Dodek: I would agree with what I think is the premise of your question, which is that it is a challenge, certainly for the commissioner, to administer different pieces of legislation in terms of the Conflict of Interest Act that you're reviewing, as well as the members' code. Then there is a further problem with a different person administering the Lobbying Act and lobbyist registration. I think it would be preferable to harmonize different provisions in one piece of legislation. It may set out different standards for different officials, and I think that's fine.

But in the case you're talking about, I think it is problematic to try to explain to a member of the public how, for the same event, a lobbyist can be found to have done something wrong, but a minister has not done something wrong from exactly the same event. I don't know the specifics of that provision and that case, and I'm certainly not judging either the lobbyist or the minister involved in that, but I think it is very difficult to explain to the public how that could be.

I think in terms of good governance and your duty to the public to legislate in the public interest, the clearer the provisions can be—and if they can all be found in one piece of legislation—the better it would be for the public.

● (1545)

Mr. Charlie Angus: I was interested in your comments about section 9 because we've had some very divergent views on the obligations of ministers and public office holders in terms of writing or interfering with semi-judicial bodies. Minister Duncan has just resigned because of this. Minister Flaherty was censured by the Commissioner. Some of my colleagues thought he was just acting as a normal member of Parliament.

How important is that code? How much can we leave that up to interpretation of whether it's good for one, not good for the other? Is it a fundamental principle that members of cabinet should be held to?

Prof. Adam Dodek: I think it is a fundamental principle. I think the Prime Minister and various prime ministers have identified it in the guidelines *Accountable Government* as a fundamental principle for ministers and ministers of state. I think it is preferable to set out those principles or those provisions in law rather than to leave them in guidelines.

The principle of non-interference or perceived non-interference in judicial matters certainly goes back a number of decades in Canada, and there have been serious consequences for ministers of various political parties who have run afoul of that provision.

That is why I think it should be expressly articulated in the Conflict of Interest Act.

Mr. Charlie Angus: So you support the provisions in the accountable government guide, but you feel they should be put right into the rule of law within the act itself?

Prof. Adam Dodek: Yes.

Mr. Charlie Angus: Are there specific elements that are not in the act now that you feel in particular need to be brought forward?

Prof. Adam Dodek: The document, *Accountable Government*, is a very long document and contains many provisions. The two provisions I focused on were the ones dealing with non-interference of ministers and ministers of state in judicial matters and in quasi-judicial matters. There is quite an extensive explanation in the guide relating to quasi-judicial officials, quasi-judicial proceedings, which tend to fall under the authority of another minister.

I tried to speak to the importance of non-interference in judicial matters because a lot of people....I certainly didn't see this from elected officials, but in the blogosphere, or the Twitterverse, or the media, some commentators said the last place an MP or a minister of state or a minister could interfere is a court, because our courts are so strongly independent. There's really no harm, so why should we be concerned about that? A judge is simply going to toss out a letter from a minister. It may actually hurt that person's case.

My response to that is I think ordinary citizens rightly see you who come to Ottawa as exercising public power. I certainly see this from my students, and I think many Canadians don't necessarily know the difference among members in the different branches of government. I think there is an unfortunate tendency for many Canadians to think people in government, or people in one political party, are helping people in another political party, or judges will help people in government, etc. That's why I think it is necessary to have that prohibition, to make it very clear and to have a clear separation between the functions of the executive—the functions of ministers and ministers of state—and the functions of the judiciary.

● (1550)

[*Translation*]

The Chair: Thank you.

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

[*English*]

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

Just following up on your comment with regard to the guide and your focus on the two provisions with regard to non-interference, would you say that the current definition is too vague and that by becoming more specific and better defined the problem would be solved?

Prof. Adam Dodek: I don't know if it would necessarily solve the problem.

Mr. John Carmichael: Let me correct that. Not so much solve the problem, but would it give the affected members a better understanding of what the definitions and guidelines are specifically?

Prof. Adam Dodek: Yes, I think the legislation should provide clear notice to public office holders, and especially to ministers and ministers of state, as to what sorts of conduct are considered to constitute conflicts of interest. So right now, what you see, and what you've seen in some of the rulings from the commissioner, is her reference to some conduct that is set out as prohibited under the guidelines. What she has done is essentially incorporated that by reference into the definition under section 9 for conflicts of interest.

I think if some activity has been accepted for, I would say, at least the last 20 or 30 years, as constituting a conflict of interest or prohibited activity by successive prime ministers in the instructions that they have given to their ministers and ministers of state, then certainly now, 20 or 30 years later, we're at the time where it is appropriate to explicitly spell that out and prohibit that in legislation.

Mr. John Carmichael: Clearly, our job in reviewing the act is to do just that, to ensure that we provide a better road map, a better guideline, a better set of guides, that assists all of our members in doing their jobs appropriately, and without confusion, which is a part of it that concerns me.

I just wonder, are there any other definitions in the act as you've studied it and you know it that you would feel are just too broad, or just simply not specific enough, and that we should be focusing on or paying attention to?

Prof. Adam Dodek: Without pointing to any specific provision that comes to mind, I would say that—on the theme of giving fair notice to public office holders, many of whom are government and council appointees, many of whom may never have held public office before and may not be familiar with the sorts of guidelines that exist for ministers or ministers of state—to the extent that legislation is able to set out prohibited activities, I think it's something that would assist public office holders. I think it's something that would assist the commissioner, and I think it's something that would assist public confidence in ethical government.

Mr. John Carmichael: Along the same theme, then, are there other jurisdictions you're aware of that we should be perhaps reviewing or paying attention to that are taking some of these provisions to a level where we should be more thoughtful?

Prof. Adam Dodek: I know that you heard from the Integrity Commissioner in Ontario, as well as the commissioner from British Columbia, about the different experiences and different levels of detail in those two acts. I certainly know from the research I did on the United States that there is an incredible level of detail, and I would say very severe sanctions as well, in the United States. I think it's worth looking at the United States, not necessarily as a model to follow every provision, but I'm a strong proponent of comparative analysis for getting ideas and asking ourselves whether we are doing the right thing in a particular provision.

Mr. John Carmichael: Right, thank you.

You talked about repealing the current administrative monetary penalties in favour of more severe penalties, or stronger sanctions, and you listed the direction that you would look at that. When you start talking about monetary penalties, is there a place where a certain amount is just too much in this consideration, or is there an area that should be considered reasonable, as we consider how to approach these final decisions that we have to make?

● (1555)

Prof. Adam Dodek: As I stated before, I'm generally not a proponent of the administrative monetary penalties idea. You heard from various other proponents as to what they thought were appropriate levels, and the reasons why they favoured administrative monetary penalties. I think whatever the level is, $500 is obviously too low. My concern, again from the experience in the United States where there are very high fines and sanctions, is you create a legalistic structure and an antagonistic structure. From my experience in Ontario and seeing elsewhere, I think what you want to do is not create a regime where you are essentially creating an ethics officer or the conflict of interest commissioner who is another regulatory official. In this case, public office holders have to deal with this official in the same way that public companies have to deal with the Ontario Securities Commission or the Alberta Securities Commission.

If the goal of the Conflict of Interest Act, which was originally part of the Federal Accountability Act, is to foster accountability for the exercise of public power and to create an ethical environment in public office holders so that the public increases its confidence in public officials, then I think there are other ways you can do this that are more cooperative and are more positive than necessarily levying very large fines for non-compliance.

[*Translation*]

The Chair: Thank you.

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

[*English*]

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

And welcome, Adam, for being here today.

I'd like to have a little chat about the accountability guide for ministers.

It is exactly that, a guide. “Maybe I'll follow it, maybe I won't follow it.” There are really no teeth to it. I find it quite amusing when I read the guide and it says that ministers must answer all questions to the best of their ability in the House of Commons. We don't see them following that rule. Very often they get up and speak on their talking points.

Is there anything else in the guide that we should take out of the guide and put right into legislation?

Prof. Adam Dodek: Unfortunately, I didn't bring the guide with me and I didn't address myself to looking specifically at that issue. There are many things in the guide that are accepted practice, again by governments of various political persuasions, that have risen to the level of accepted practice or, let's say, constitutional convention that could be put into legislation without getting into a debate as to whether they are accepted or not. So the principle of non-interference with judicial matters is just one of them. I apologize, but I don't have other examples.

● (1600)

Mr. Scott Andrews: With the non-interference with judicial and quasi-judicial, are you suggesting that apply to all MPs, not just ministers and cabinet ministers?

Prof. Adam Dodek: I think the problem with that principle, and the distinction between an MP's role representing their constituents and an MP's role as a minister or a parliamentary assistant or minister of state, is, again, the public has difficulty distinguishing between those roles. They rightly see a person who represents a constituency, a geographic constituency, a riding, who also happens to be the minister with responsibility for a particular portfolio. I don't think that the problem is cured by a minister signing something as an MP instead of as a minister. In some ways it might be beneficial to MPs if they were able to just say to their constituents, “You know what, I'm sorry, I really would like to help you, but I can't. I'm prohibited by law from doing this.”

I think that probably most MPs know that writing a letter on behalf of a constituent to a quasi-judicial...or certainly in a court proceeding is likely not going to have much impact, if any. In some ways it could get MPs off the hook from that.

I would favour probably a broader prohibition than even the one that exists now in the accountable government.

Mr. Scott Andrews: I think you're dead on the money because people don't see the difference between MPs and ministers; they see them as politicians. The politicians should know that just because they don't put minister before their name and MP is after their name, they are still ministers when they sign a letter. People don't distinguish between the two. It's not something people would recognize. You are still a minister of the crown, whichever way you try to cut it.

When you were talking about shame and increasing the monetary penalties, you made reference that you hoped the Prime Minister would respond to the Ethics Commissioner on what course of action they would take. We don't see any response or acknowledgement when it does happen.

How would you compel the Prime Minister to take action on something that came from the Ethics Commissioner?

Prof. Adam Dodek: As I envision it, and as I would propose it, the minister responsible for the public office holder, or in the case of ministers of the crown, the Prime Minister, would be required to deliver a written response within a certain time period to the commissioner, which would be made public.

It may be that the response from the Prime Minister or from the minister might be, “I've spoken with the minister. He understands what he did was wrong, and certainly he won't do this in the future”, or—

Mr. Scott Andrews: That's the system we have now. That's how it unfolds now.

Prof. Adam Dodek: I think with the system now, no response is required. By requiring a response, I think it at least requires the person responsible for that public office holder to publicly be accountable for that public office holder.

Mr. Scott Andrews: The Bar Association made reference to wanting a different penalty regime and making it criminal in nature, and setting the bar for politicians the same as they would for any other public servant.

Do you see that as problematic, or is that something we should look at? We should be setting the bar to every other public servant, and it should be criminal in nature if you don't follow the rules.

Prof. Adam Dodek: I think there are some activities that could be violations of the existing Conflict of Interest Act which could also be violations of the Criminal Code. If they are that serious in nature, then they may be something the commissioner should simply refer to the police for investigation.

Again, I am hesitant to recommend making the Conflict of Interest Act more criminal or quasi-criminal in nature. I think the best work that can be done in fostering an ethical environment in the exercise of public power is to be more supportive rather than punitive.

One of the buzzwords in regulatory administration these days is "ethical infrastructure". Whether it's in law firms or accounting firms, or I would say in public office as well, it's about creating structures to foster ethical decision-making and the ethical exercise of power. I think that involves things like giving the commissioner more resources to be able to do more educational work, to spend time personally with public office holders, to issue opinions or interpretative bulletins on what constitutes a conflict of interest under section 9 of the act, again, to give notice to public office holders and to members of the public as to how the act is going to be interpreted and how to avoid getting into difficulties under the act.

I know the commissioner does that already, but in my mind expanding those works of the commissioner under the act is the way to go rather than expanding the punitive nature of the act.

● (1605)

[*Translation*]

The Chair: Thank you.

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

[*English*]

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Mr. Chair, and thank you, Mr. Dodek, for being here today.

You mentioned that prior to your current employment, you were the chief of staff for the Attorney General in the Province of Ontario. I want to ask you some questions about the post-employment provisions of this and get your feedback because you've been there. You've lived it, not under the federal rules but as someone who has worked within government as a chief of staff. Had you been a chief of staff to a federal minister, you'd be covered by those post-employment provisions.

From what you see in the current legislation, what's your view of those rules? As I understand in most cases, it's a five-year prohibition from literally any interaction with government regardless of whether it was the ministry in which you were involved or any other involvement you had. I think one of the goals of this committee in doing the five-year review of the act is to determine how we can make the act better, more relevant. What have we learned in five years, what can we learn to make the act fairer, stronger, and more transparent?

Have you got any comments about the whole post-employment issue, whether you think we've struck the right balance under the current rules or whether you've got any other advice for the committee?

Prof. Adam Dodek: I would start off with the caveat that in my case, my post-government employment was in academia. Leaving government service was very easy for me. Whether it was a one-year prohibition in Ontario, I had no involvement with government.

In my mind the five-year prohibition is too strict, too severe. I think that unfortunately in Canada, we don't value public service. We don't value running and serving in elected office or working in a minister's office or in the public service the way that some other countries do. I think it is a challenge to recruit good people to run for office, to serve in a minister's office, and to work in the public service.

I think it is appropriate to maintain a permanent ban on lobbying in any case in which a public office holder had confidential information or personal involvement, but things change very quickly in government, and government, as you certainly know, is very big. So the idea that somebody who may have worked in one ministry would somehow be given an unfair advantage in lobbying another ministry, I think may be more marketing to clients than reality.

So I think the five-year ban is probably overly broad in striking an appropriate balance between the need to recruit good people to run for office and serve as public office holders and fairness to those people in what they do after leaving public office.

● (1610)

Mr. Brad Butt: You mentioned that your post-employment was academia. You didn't really have any direct interaction with the provincial government after you left their employ, but should former reporting public office holders be prohibited from going to work for what I would call non-partisan agents or officers of Parliament?

We're always having difficulty with this distinction over who you go to work for after you leave here, and are there differences? If you're going to work for a "big lobby firm" with big commercial contracts, is that different from going to work for an NGO or becoming an independent officer of some agency?

Can you give us any advice from your perspective? Can we make those distinctions or is that just too difficult to do; it's just better to have this as the rule? You said five years is maybe too long. Let's say, two years is the rule and that's it, it keeps things clear and simple, or do you think, if the committee proposes recommendations to the government for amendments to the current legislation, we can write legislation that might be able to distinguish different areas as to what reporting public office holders would do in their post-employment?

Prof. Adam Dodek: It is probably challenging, but you could probably do that. Again, I don't have an example offhand that I can think of, but you could certainly draw distinctions between lobbying government generally, and a broader or a longer restriction on any involvement with the ministry or the office that one used to work for or was responsible for.

Mr. Brad Butt: This is the last question I'll ask, because I know my time will probably be up, Mr. Chairman.

I realize this act is about certain reporting office holders; it's not regular MPs like me, it's cabinet ministers, and parliamentary secretaries, and other people. One of the things we are struggling with is this whole gift issue and the right level for gifts and what are appropriate gifts and not appropriate gifts. We've heard from Mr. Angus about all the snow globes he has in his office and so on. We all struggle with what is acceptable and what's not acceptable, what money level is right or not, but, as a backbench MP, for me, it's not really the same as a reporting public office holder, not that I get many gifts at all, which is probably not surprising.

Having said that, the commissioner has suggested lowering the disclosure threshold on gifts to as low as maybe $30 from $200. You mentioned a $500 penalty, and that it is not really about the money but is more the disclosure and the public reporting of stuff. Do you have any views around this whole issue of gifts and the levels? Have you any advice for the committee?

Prof. Adam Dodek: Sure. I have a number of comments about the issue of gifts. First of all, we spend too much time talking about gifts. From my observation of the federal level and certainly what I saw at the provincial level in Ontario, I don't think it is a major problem. I would like to see the committee, and the act, and the commissioner spend more time on prevention, creating the ethical infrastructure sorts of things that I talked about.

Second, there is a problem that I believe the commissioner identified. The act prohibits public office holders from accepting any gifts that are meant to impact, or to attempt to impact, upon the public office holder's decision-making, but a different provision of the act requires the disclosure of any gifts that cumulatively are more than $200. In effect, they get meshed together and many public office holders think they can accept any gift under $200 and anything over $200 has to be disclosed. The public office holder doesn't want to disclose it so he won't accept a gift over $200, which I don't think is necessarily the intent or the design of the act.

Last, I don't support the commissioner's recommendation for disclosure of all gifts of $30 or more for a number of reasons. One relates to a point—

● (1615)

[*Translation*]

The Chair: Mr. Dodek, you have 30 seconds left.

Prof. Adam Dodek: Thank you.

[*English*]

Very quickly, I don't believe in further bureaucratizing the act and bureaucratizing the work of public office holders so that you have to file disclosures on every ball cap that you get, as I believe Mr. Angus mentioned at a previous committee. Also, I simply don't think that if I were to invite any of you or a minister to come to speak at the University of Ottawa and gave a University of Ottawa hoodie it could be seen by a reasonable member of the public as somehow influencing you.

Possibly I would look at reducing the $200 amount to something more reasonable, to a lower number, not $30. For a point of comparison, in the American legislation—and we know that now the Canadian dollar is at par or higher than the American dollar—it is $100.

[*Translation*]

The Chair: Thank you for your answer.

Mr. Boulerice, you will begin the second question period. You have five minutes.

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

Indeed, if we had to declare all of the baseball caps we received, I think that our colleague Peter Stoffer would have a few problems in his office.

Mr. Dodek, thank you for being here with us today.

In a paper entitled *Conflicts of Interest and Ethics in Government*, which could translate into French as *Conflit d'intérêts et gouvernement éthique*, you wrote this about the British Columbia model:

[*English*]

Under the British Columbia act, any member of the public who has reasonable and probable grounds to believe that a provision of the act has been contravened can request that the commissioner inquire into the matter.

[*Translation*]

Do you think a similar measure should also be put forward by the federal government?

Prof. Adam Dodek: I think it is a good idea to give members of the public the opportunity or the right to file a complaint concerning something an elected official has done, if the commissioner thinks that that complaint meets reasonable criteria. Ultimately, we are talking about the public interest and public trust in the government's sense of ethics.

Mr. Alexandre Boulerice: We want to avoid a bureaucratic bottleneck or a plethora of complaints. What measures should be put in place to prevent frivolous or groundless complaints?

Prof. Adam Dodek: There has to be a criterion that the complaint must be a reasonable one if the commissioner is to accept a complaint from a citizen.

Mr. Alexandre Boulerice: Thank you.

In a paper you published which is entitled *Conflicts of Interest and Ethics in Government*, you wrote the following:

[*English*]

> In effect, the greatest sanction that the commissioners have at their disposal is political condemnation. If the commissioner finds that a member has violated the act, this may result in a political price on the affected member.

We know about this. We have used that in life.

[*Translation*]

Under a British Columbia act, the commissioner may recommend a $5,000 fine. Moreover—I am now going back to the sanctions—in the United States, people who are found guilty of being in a conflict of interest may be fined or even go to jail.

You said that the current fines of $500 were not very serious since the amount is not very high. You also stated that you do not believe very much in the effectiveness of monetary penalties or fines. However, you suggest that a formal reprimand—that is our translation—be sent to the Prime Minister's Office.

I don't quite understand what you mean by that. To me, a formal reprimand makes me think of a note in my child's schoolbook when he misbehaves in school and the teacher wants to let me know. Is that sufficient? Should there not be much more severe penalties?

● (1620)

Prof. Adam Dodek: I think there are a few possibilities. My recommendation to the committee is one of them. There are also other suggestions, such as giving the commissioner the power to recommend that there be a reprimand and a debate in a committee or in the House of Commons. I don't think any minister wishes to see a debate in the House of Commons on his activities, nor does any minister wish to entertain questions on a reprimand from the commissioner.

In short, there are other possibilities that are in my opinion more effective than a $500 fine.

The Chair: Thank you, Mr. Boulerice. Your time has expired.

I now give the floor to Ms. Davidson, who has five minutes.

[*English*]

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

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

One thing I want to go back to is the post-employment issue. I believe, if I understood you correctly, you felt it was perhaps too strict, that there were some changes that could be made there, things that we could look at.

Have you ever thought about a sliding scale, or would you support something like that, because of the different levels of people who are captured under this legislation? We have parliamentary secretaries who have access to a certain amount of information. We have ministers who have access to all of the information, hopefully. We have staff members who have access to a fair amount of information. But they don't all have the same level of involvement with issues.

Is that something we should look at, or could look at?

Prof. Adam Dodek: Certainly, that is definitely worth looking at.

Part of the challenge under this legislation is that it captures so many different public office holders. There are very different concerns in being a minister of the crown, in being a staffer in that minister's office, and in being a public office holder somewhere else in government. Concerns about influencing government or appearing to improperly influence government may differ depending on the circumstances.

If somebody has their first job out of university, working for six or eight months in a minister's office at a low level, I don't think there are concerns about potential conflict of interest if they leave government and work for a private sector firm that ends up lobbying another area of government. Those concerns are not the same as a minister of the crown or the head of a public agency leaving and then going back and lobbying government.

You have to look at some of the different concerns.

Mrs. Patricia Davidson: How do we differentiate between perceived and real conflicts, or do you think we should? Should we be treating them both the same? We've heard from some people that we should be, and we've heard from others that we shouldn't. We've heard of dangers to individuals, to personal reputations, to causing some very real damage, when it's been a perceived conflict that's being pursued.

Do you have any comments on the perceived end of it?

● (1625)

Prof. Adam Dodek: I would recommend maintaining the standard of being concerned about perceived conflicts of interest as well, not just real conflicts of interest.

Ultimately, in my mind, one of the purposes of this act is about ensuring public confidence in ethical government and ensuring public confidence in the fair exercise of public power. If the standard is only a real conflict of interest, I don't think that will create a lot of public confidence in the exercise of public power. If the explanation was, "Oh, well, they may have tried to improperly influence government decision-making, but they had no chance of doing that for this, this, and this reason, so they're not in a conflict of interest."

You need to have that prophylactic rule of perceived conflict of interest or apparent conflict of interest in order to protect the integrity of public confidence in government. You have to try to come up with fair and clear standards for public office holders so that they're aware of that. As you've said, the reputation and the integrity of public office holders is on the line. When there is a complaint, an investigation, or even an allegation, that's a very onerous and a very serious thing.

[*Translation*]

The Chair: Thank you.

Thank you, Ms. Davidson.

Mr. Dodek, this puts an end to your testimony.

On behalf of the committee, I thank you sincerely for having been with us and for having giving us your time.

Prof. Adam Dodek: Thank you very much.

● (1630)

The Chair: I am going to suspend the meeting for a few minutes so that we can prepare to hear the Conflict of Interest and Ethics Commissioner, who will be appearing during the second hour.

● (1630)

(Pause)

● (1630)

The Chair: We shall now resume our hearing.

Today we have the good fortune of welcoming three people from the Office of the Conflict of Interest and Ethics Commissioner, and they are the Commissioner Ms. Dawson, Ms. Bélanger, who is the General Counsel, and Ms. Plouffe, who is the Manager, Advisory and compliance.

As usual, there will be 10 minutes for the presentation. Afterwards we will be able to put some questions regarding the Conflict of Interest Act.

Ms. Dawson, I now give you the floor for 10 minutes.

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Mr. Chair, I thank the committee for having invited me to appear today. This afternoon, I am accompanied by Nancy Bélanger, General Counsel, and Annie Plouffe, Manager, Advisory and Compliance.

This is my second appearance before this committee in the context of the review of the Conflict of Interest Act. In my first appearance, I outlined eight broad priority areas that are supported by many of the individual recommendations reflected in my written submission dated January 30, 2013.

[*English*]

I have followed with interest the testimony of other witnesses and the committee's questioning of them. I just missed the last witness by half an hour. I have noted in those discussions several areas where there appears to be some confusion or divergence of opinion and will address some of these today.

I note that in previous meetings the act was often confused with the conflict of interest code for members of the House of Commons. The only members that the act applies to are ministers and parliamentary secretaries.

Most members are subject only to the members' code, which is being reviewed separately by the Standing Committee on Procedure and House Affairs. I provided a submission on the code to that committee, and appeared as a witness before it last May. While some of the recommendations I have made for changes to the act and the code are similar, my remarks today focus exclusively on the act.

You've heard a broad range of opinions about the act's treatment of gifts and other advantages. The rule in the act is that any gift that may reasonably be seen to have been given to influence a public office holder is not acceptable. In addition, the act requires reporting public office holders, including ministers and parliamentary secretaries, to disclose and report publicly any gifts with a value of $200 or more.

This is simply a reporting threshold and has nothing to do with whether or not a public office holder may accept the gift whatever its value. As I have noted before, there is a commonly held misconception that gifts worth less than $200 are automatically acceptable. This is because many people confuse the idea of the reporting threshold with an acceptability threshold. There's no acceptability threshold and I'm not proposing one.

Because of the continued confusion between the acceptability of gifts and the requirement to report them, I've recommended lowering the $200 dollar reporting threshold, to a minimal amount; I suggested $30 dollars.

This amount seems to have become the focus of attention and has distracted from the main issue. The main issue is this: a lower reporting threshold could enhance transparency and trigger public office holders to contact my office, which in turn, would allow us to advise as to whether a gift is acceptable.

To be clear, I'm not recommending any changes to the acceptability rule. Public office holders would still not be able to accept a gift that could reasonably be seen to have been given to influence them regardless of its value. Some witnesses have commented that Canadians would not have an issue with elected officials accepting gifts worth $200 or even more. I disagree, particularly if a gift is given by someone who's a stakeholder. I expect the average Canadian would consider a $200 dollar lunch paid for by a stakeholder to be excessive and inappropriate, and would be unlikely to believe that it was offered without an intention to influence.

Some committee members have criticized my proposed threshold and come up with extreme examples of how it might be applied. I assure the committee that whatever the amount of the reporting threshold, ministers and parliamentary secretaries would still be able to accept gifts that pass the acceptability test, as well as true courtesy and protocol gifts, including many dinners and receptions, and even snow globes, usually.

Another area that I want to touch on is the act's divestment rules. Reporting public office holders are not allowed to hold controlled assets, whether or not a conflict of interest exists. I have recommended limiting the absolute prohibition and its related requirement to divest to apply only to those who have a significant amount of decision-making power, or access to privileged information, including ministers and parliamentary secretaries, chiefs of staff, and deputy ministers. It would only apply to other reporting public office holders if holding the controlled assets would constitute a conflict of interest.

● (1635)

Now, one witness suggested that the absolute prohibition should continue to apply to ministerial staff who are frequent targets of lobbying. Given the witness's first-hand knowledge of ministers' offices, I am inclined to accept his assessment and would have no problem with the absolute prohibition applying to them. I note, though, that many ministerial staff, especially those in junior positions, tend not to hold controlled assets, so divestment would rarely be required in any event.

I have found that Governor in Council appointees to certain boards and tribunals are most negatively and unnecessarily impacted by the current rule. An absolute prohibition could be retained for certain boards or tribunals according to their functions, but this would need to be clearly identified in the act. I believe that divestment in the case of most Governor in Council appointees should be required only if a conflict of interest exists.

The need to strengthen the act's fundraising prohibition is another area that I believe requires further comment. The act allows all public office holders, including ministers and parliamentary secretaries, to personally solicit funds if the activity does not place them in a conflict of interest. I have noted my concern about the potential for current and future conflicts of interest when ministers and parliamentary secretaries engage in fundraising, and I have recommended stronger rules in this area. It has been suggested that an absolute prohibition might be appropriate for ministers and parliamentary secretaries. I would be comfortable with that. I would not recommend any change to section 16 for other public office holders.

Another witness suggested writing into the act the fundraising guidelines currently annexed in "Accountable Government: A Guide for Ministers and Ministers of State". This idea has merit, but these guidelines would have to be adjusted in order to serve as rules of conduct.

Post-employment is an area of the act most witnesses have indicated they would like to see strengthened. I would agree with this. I have recommended introducing reporting requirements for former reporting public officer holders during their cooling-off period. This would include requiring them to report any firm offers of employment received during their cooling-off period and to report on their duties and responsibilities in relation to their new employment.

It has been suggested that the cooling-off period be structured on a sliding scale according to various criteria. I do not see the need for such an amendment. There's already a one-year and two-year distinction, and I also have the discretion to reduce the cooling-off period when it's in the public interest to do so.

It's been suggested that the lobbying commissioner and I have made contradictory findings in relation to investigations. We have two different regimes that regulate the behaviours of two different groups of people: public office holders, and lobbyists. Our respective investigations of one particular case, the involvement of lobbyists in a political fundraising event, looked at the same set of facts but from different perspectives.

My focus was on whether a minister had contravened the gift rule by accepting the volunteer services and monetary contributions provided by the lobbyists. The lobbying commissioner focused on the conduct of the lobbyists and whether their actions placed the minister in an actual, potential, or apparent conflict of interest. The lobbying commissioner has interpreted conflict of interest to include conflicts with private interests, consisting of such things as political advantage.

However, I have found—in a different case altogether from the one that people think there's a problem with—that given the wording of the Conflict of Interest Act, political interests are not captured by the act's definition of private interest. In order for a political interest to be covered, the act would have to be amended.

● (1640)

[*Translation*]

Mr. Chair, this concludes my opening statement.

I am now at your disposal to reply to the committee's questions concerning certain points that have been raised, or any other matter pertaining to the Conflict of Interest Act.

The Chair: Thank you for this presentation.

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

[*English*]

Mr. Charlie Angus: Thank you, Madame Dawson, for coming again. It's very helpful that you've come, for a second time, to give us your views on the various testimony we've been hearing.

One of the previous witnesses you were not able to hear talked about building an ethical infrastructure, in terms of ensuring that designated office holders, public officials, have the support they need. The Ontario commissioner said she spent a good deal of her time actually meeting with individual MPPs.

Would you support a change like that, so there's a better understanding and a better back and forth in terms of where the lines should be and where they are?

Ms. Mary Dawson: Yes, indeed. In fact, I've recommended mandatory meetings and I think I've gone to some length in explaining that we've spent a lot of time advising and putting on presentations and explaining the act.

Mr. Charlie Angus: Certainly you've been great with our caucus, and I want to thank you for that.

I wanted to take you up on your comments about the issue that had come up with Madam Shepherd and her review in 2010 of McSweeney and Stewart, lobbyists whom she found in breach of rule 8 for having placed the minister in an apparent conflict of interest. According to her, they did so by helping to organize and sell tickets for a fundraising event for a minister's electoral association. They were at the same time lobbying the minister. She said:

> 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.

As she pointed out, you found that the minister hadn't breached any rules.

If we are going to merge and bring greater clarity, would you support where the lobbying commissioner is coming from on this, that the issue of the apparent conflict has to be recognized?

Ms. Mary Dawson: I've had things to say about "apparent" before. I feel a number of sections in the Conflict of Interest Act already include an apparent conflict of interest, so my caution is I don't have a problem with putting that word in. I note that Mr. Fraser from B.C. suggested the cow is out of the barn, or whatever the expression was he used, and that everybody would want an apparent conflict of interest. My caution is if an apparent conflict of interest is put in, be careful which sections it applies to. I took a look at the B. C. legislation and I see there are sections that do not include apparent conflict of interest and there are some that do. So it would be very important, if you're going to stick that word in, to take a look at how it will affect the whole act.

The minister we're talking about in relation to those apparently contradictory rulings put a conflict of interest screen in place, in consultation with us, after we had looked at the case, which again I reiterate had to do with a gift. That, it seems to me, is evidence that there's no real reason why the lobbying rules and my act rules have to be identical—and even if they were put together, they would not necessarily have to be identical—because her overlay was whether the actions of the lobbyists placed the minister in a conflict of interest, or a potential one. And, indeed, we thought they may well have, but we couldn't foresee the future.

So I think one has to be very careful about what you're doing with the exact wording in each of those instruments. But I don't have a problem in most cases with applying “apparent”. It may not apply appropriately in all sections of the act.

● (1645)

Mr. Charlie Angus: Thank you.

Our previous witness spoke very much on the importance of section 9: to take it out of the code and put it into the rule of law that ministers must not attempt to intervene with a judicial body or a semi-judicial body. You were very clear with us the last time on the importance of that rule.

The issue we're seeing here is the arbitrariness of how that rule is applied. We had Minister Flaherty, whom you reprimanded for breaching that rule, and then we had Minister Duncan who resigned recently. Do we need to have a clear set of rules so it's not loosey-goosey? You can't just decide when you're going to apply it and when you're not going to apply it. If the rule is there, it has to be followed.

Ms. Mary Dawson: At the moment, there's nothing in the act to establish any follow-through after a report is made. I would suggest it's up to the government at this stage, given the way the act is now, to decide what to do about each individual case. That's pretty well all I can say about that.

Mr. Charlie Angus: Were you speaking with Minister Duncan before he resigned? Was it because of an investigation that you brought forward? This seems to have been sitting out there for four years. It came as quite a surprise to people.

Ms. Mary Dawson: I don't think I should comment on individual cases.

Mr. Charlie Angus: Okay.

I want to go back to the issue of the gifts. Certainly it's generated a lot of interest in our committee and from our witnesses, but it's because we're hearing about bringing together the various codes, bringing together the act itself, and whether we should be including members or parliamentary secretaries.

The question that was brought by our previous witness— and I'm referring to him because he had some very interesting and sometimes provocative thoughts—was he felt we were over-bureaucratizing the issue, as opposed to dealing with the more substantive issues, which is where you are really attempting to influence somebody, and whether the $30 threshold is taking us off the track of focusing on more substantive issues. What do you think of that?

Ms. Mary Dawson: I think there is something to be said for that. I knew that the $30 limit would be pretty noticeable. I did actually give that as an example of a limit. I said a smaller amount than the $200.

As I tried to say in my introductory remarks, the issue is that there continues to be a misconception and there continues to be a belief that anything under $200 is okay, and it isn't. I'm just trying to get people to recognize that.

Mr. Charlie Angus: Where is it not okay? For something that's a $100 gift, let's say, at what point would you intervene and say, no, that is not acceptable?

Ms. Mary Dawson: It always depends upon where the gift came from. If your friend gives you a gift worth any amount of money and is not a stakeholder in any way in whatever you're doing, it's perfectly all right, but if you receive a gift from somebody who is looking for you to make a decision in his or her favour in the near future, then it's probably not all right if it's $50. It depends upon the circumstances.

[*Translation*]

The Chair: Thank you.

I now give the floor to Mrs. Davidson for seven minutes.

[*English*]

Mrs. Patricia Davidson: Thanks very much, Mr. Chair.

Thanks, Commissioner, for being back with us again today.

We've been getting some answers but we've also been getting some more confusion involved in the situation. I don't think there is anybody sitting on either side of these tables who doesn't believe it is the right of any individual MP or organization to request a potential investigation.

Where the issue arises is how we handle it from there on, once the request is made. The process right now, in my understanding, is if I am making a request to you for an investigation, I can also release publicly that I'm doing it, and I think that is very harmful. We need to look at that portion of it. I'd like you to talk a bit about that. I know you've made some recommendations.

As well, once I have made the submission it's my understanding that you can broaden the aspect of what I have put forth in my submission. So you can add to that; I'd like to know under what circumstances you do that, and how that unfolds. Then if it's kept in confidence that there's an investigation going on, is there always a release tabled at the end of the investigation? Do people then know that, yes, in fact this was a frivolous investigation, or know that in fact this had merit to it?

It all boils down to how we protect the ministers and the reporting officers from frivolous and partisan attacks. I'm not saying it's one party against another. It can happen to any party. I just want to know how we can do that.

● (1650)

Ms. Mary Dawson: Okay, that's about four questions all wrapped up but I'll try to answer them.

Basically I have recommended that there be a prohibition against members who have requested an investigation making that public until I've had a chance to receive the request and let the person who has been complained about know. Then I would immediately let the person who complained about it know and then he's free to talk.

There is a distinction between the investigations that are done on request and the investigations that are self-initiated. Sometimes if a member comes in and requests what is called an investigation under the act be instituted, it would be possible for me to join that in any particular case with some other infraction that was related, that I might also investigate at the same time. Occasionally that happens in some of my investigations.

Mrs. Patricia Davidson: Can you give me an example? I'm not quite sure I understand that.

Ms. Mary Dawson: Off the top of my head, I don't know. If a member comes in and says a person has fundraised in contravention of the act, in the course of looking into the matter I may see very quickly that not only have they fundraised but they have voted in the House where they shouldn't have or something. That's not necessarily related. I can't think off the top of my head, but sometimes in the course of looking into something very quickly it will become apparent that there is more involved than just the one thing that has come to my attention.

Mrs. Patricia Davidson: So it's usually quite apparent? It's not an issue of delving in and looking for something else, or trying to find something else. It's usually sitting out there?

Ms. Mary Dawson: Probably in talking to the person complained against, it might come to light. They might not even realize they had contravened another section. Just looking at the act I might see some other thing that ought to be dealt with. It could happen in a number of ways. It doesn't happen that frequently, but it does happen from time to time.

You were also concerned about reporting on the examination. The rule is I must release a report on an examination in all cases, but in the case of an examination I have initiated myself, I can discontinue that without issuing a report. If I discontinue one that was requested, I must issue a report.

I think there's quite a rational reason for that because if I self-initiate something that nobody has requested, and I find there's nothing to it, then why would I put out something and suggest where there's smoke there's fire? Usually those things come to me from the media or from private citizens. In some cases I would not release a report, but those are the only cases. If a member or a senator requested it, a report would come out.

Mrs. Patricia Davidson: You said—

Ms. Mary Dawson: —if it were a valid request.

Mrs. Patricia Davidson: You said you are recommending a prohibition against publicly notifying or publicly giving a press release if I had initiated a request to you. I shouldn't be sending that out at the same time as a press release or whatever.

Would that be something where we would need to have more penalty involved, such as, if you do that the case gets thrown out? It becomes frivolous. It is seen as frivolous. Or do you think just saying, “thou shalt not do it” is enough with no penalty?

● (1655)

Ms. Mary Dawson: I had added if some administrative monetary penalties were established beyond failures to meet deadlines, that would be a perfectly good example that could have a penalty attached to it.

Mrs. Patricia Davidson: Don't you think it would be more effective though if it were a penalty that says, “if you do that, we throw it out”? It becomes of a frivolous nature.

Ms. Mary Dawson: Both things would probably happen.

Interestingly I have never found a frivolous request to date. There's always something there to look into; the possibility is there. I've never found there was something seriously silly, enough to say it was a frivolous request.

[*Translation*]

The Chair: Thank you.

Mr. Andrews, you have the floor. You have seven minutes.

[*English*]

Mr. Scott Andrews: Thank you very much, and welcome back, folks.

I'd like to go back to Minister Duncan's conflict of interest for a quick second. I know you don't want to comment specifically on the case, but could it possibly be that this could be one of the areas where, when it came to your attention, not through a member of Parliament or such, you would never have to have reported on it?

It seems as if that particular circumstance has gone on for a long time. No one knew about it until the minister himself declared he had been in this conflict of interest.

Couldn't that have gone on in your office without your reporting on it, if it hadn't been initiated by a member?

Ms. Mary Dawson: Yes, it could have, I guess, but things happened so quickly in that particular case that by the time he resigned there would have been no purpose in carrying out an investigation.

Did you ask me whether I was investigating?

Mr. Scott Andrews: Were you asked to investigate?

Ms. Mary Dawson: No. I didn't....

Mr. Scott Andrews: I didn't think you had.

Ms. Mary Dawson: No, I did not initiate an examination on that.

Mr. Scott Andrews: And the facts on that only came out after the minister had self-declared he was in a conflict.

Ms. Mary Dawson: Yes.

Mr. Scott Andrews: I'd like to go to the Canadian Bar Association. I know you have said you have reviewed a lot of the recommendations.

They had 18 or 19 recommendations. Are there any in there that you think we should look at? I'll have questions about a couple of them if they come up.

Ms. Mary Dawson: Gosh, I can't remember what those 18 recommendations were in that case.

Do you have one in mind?

Mr. Scott Andrews: Yes.

I do have a couple in mind, recommendations 15 and 16, regarding monetary penalties. They actually suggest giving the commissioner the authority to impose an administrative monetary penalty for any contravention of the act, and the second part is that it should be increased to a maximum of $25,000.

You haven't given us any values. What do you think of their recommendations?

Ms. Mary Dawson: I'm much less turned on by penalties than I am by public reporting. I think I've said that before. I think what's important is the public report and the light being shed on whatever has been done wrong.

I think there is a place for administrative monetary penalties in the case of people who simply don't get their reports in on time, and it would be another mechanism to deal with contraventions where it wasn't worthwhile doing a full investigation. If somebody admitted they'd done something wrong, it would be an easy way to deal with it expeditiously.

I made a distinction in my last submission between administrative monetary penalties and penalties for things that were found to be a contravention. I recognize it seems that there's a 50-50 split out there as to whether big penalties should be imposed when somebody is found to have contravened. Personally, I don't think they're that important, but some people think they're really important.

The other issue is that it would become a different system, I think, if there were serious big penalties. It would become a criminal offence probably, and there's a question as to whether that belongs in the type of office that I now have.

In the context of the act that I'm now administering, I don't think penalties are necessary with the contraventions.

● (1700)

Mr. Scott Andrews: You mentioned criminal and major contraventions. We have had that suggested to us. Correct me if I'm wrong, but the witness implied that it does apply to other public servants—criminal in nature—but it doesn't apply to us.

Ms. Mary Dawson: Sorry, I missed that.

Mr. Scott Andrews: A criminal offence. If you're caught in a conflict of interest—

Ms. Mary Dawson: Yes.

Mr. Scott Andrews: —it applies to other people, but it doesn't apply to politicians.

Ms. Mary Dawson: Oh, yes, but the criminal offences are dealt with by full courts, not by commissioners like me. I think there's a question as to who ought to be dealing with it, if something is made into an actual criminal level offence.

Mr. Scott Andrews: Should we be looking at that?

Ms. Mary Dawson: Should we be what—?

Mr. Scott Andrews: Should we be looking at making it a criminal offence?

Ms. Mary Dawson: I'm not promoting that. I'm not pushing for that. I think the important thing in an act like the one I'm administering is the public.... I'm a great believer in transparency in public reporting.

There are issues around what happens when a person has contravened the act, and people have commented that not much seems to happen. That's, I think, for the government to deal with. People have suggested that perhaps there should be something in the act about notifying somebody or something, and that wouldn't trouble me. Although, I think there may be some privacy issues there, and one would have to be careful as to whom one was notifying about stuff.

I mean, there are complicated questions and one has to decide what kind of a model we're in.

Mr. Scott Andrews: Thank you.

[*Translation*]

The Chair: Mr. Mayes, you now have the floor. You have seven minutes.

[*English*]

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

I don't want to get hung up on the dollar value. I appreciate what you said about the $200 being just a figure, and that anything below that, if you felt it was a conflict of interest.... That threshold is really not the important thing. The important thing is the determination of whether it's a blatant conflict or an apparent conflict, or not a conflict at all. I have a bit of difficulty with that because what I consider a blatant breach of conflict might not be the same for you.

You're going to be the judge of this. That's a very difficult role because you're determining what is a blatant conflict. I could go out with somebody for dinner who I happen to know has an interest, and I think, well, there's no conflict here, then all of a sudden I'm hearing from you that it's a conflict.

How are we going to make that determination, and how are we going to do it with respect to each other's position?

Ms. Mary Dawson: The first thing to note is that gifts have nothing to do, as such, with the concept of conflict of interest, it's only in parallel they do. The rule with gifts is if something's given to you that could reasonably be seen to have been given to influence you. And that's similar to a conflict of interest, but it's not..... It confuses the situation to talk about a gift putting you into a conflict.

There is a test that can be applied, it seems to me. If somebody gives somebody a gift worth $150 or something, and lobbying them to make a decision in favour of some contract that the government's going to give, it seems to me that's not appropriate. It's very clear to me that's not appropriate.

I think, yes, somebody—I happen to be the person right now—has to make a decision on those cases. Would it be better to have no rules?

Mr. Colin Mayes: I'm just wondering if it would be better not to have any threshold.

Ms. Mary Dawson: Pardon?

Mr. Colin Mayes: I agree with your statement, but would it be better to not have any threshold at all?

Ms. Mary Dawson: You're getting close to what I'm saying. What I'm saying is the reporting requirement is $200, but the accountability requirement has no level. One could say that a gift worth less than $20 or $30 probably wouldn't influence you. I know that many people say that a gift of $150 wouldn't influence them, or a gift of $1,000. But the fact of the matter is we have to have some kind of assurance to the public that our ministers and public office holders are not being bought.

Mr. Colin Mayes: We're looking at ethical behaviour and that's something we shouldn't have to teach people who get elected.

● (1705)

Ms. Mary Dawson: Yes.

Mr. Colin Mayes: There are judgments that you have to make and we have to respect them as coming from the commissioner, but also we have to recognize that maybe we don't all agree with those judgments. I'm sure you've experienced that in the past.

Ms. Mary Dawson: I have guidelines on what is an appropriate gift, that I put up for the act.

Mr. Colin Mayes: Under what conflict of interest provisions or legislation do agents of Parliament, those who are not included under the actual Conflict of Interest Act, find themselves governed? Do they fall under this category, as well, in your position? Is that correct?

Ms. Mary Dawson: Actually, it's officers of Parliament who are excluded. There's a lot of confusion as to the difference between an officer and an agent of Parliament. I talk a little bit about that in my report. At the moment, if you look at our website, you'd see that all the agents of Parliament are covered by the act. The only people who are excluded are the officers of Parliament. That's the difference. Because agents of Parliament are often called officers of Parliament, sometimes they think they should be excluded as well. To date, they have accepted that they're under the act.

My recommendation is that those particular entities should be listed so it's clear.

Mr. Colin Mayes: You've mentioned having interviews to make sure that you educate office holders as to what their obligations are in terms of conflict of interest, and you've discussed even penalties, and all this is going to take people and time. Has your office looked at the costing of implementing some of your amendments to this act?

Ms. Mary Dawson: No, not specifically. The fact of the matter is we do a lot of counselling and presentations now, so I don't think it would be that much more onerous. I would envisage each time a new person comes in they would have a one on one, in one way or another. It could be by phone or it could be in person, preferably in person. That's a detail that could be worked out.

I'm not too concerned about the budget in that area. We do lots in that area anyway. But we get to explain the act to the people who already understand it and who want to come to see it. It's the people we never hear from who I'm trying to ferret out.

Mr. Colin Mayes: Thank you.

[*Translation*]

The Chair: Thank you, Mr. Mayes.

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

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

I want to thank you, Ms. Dawson, for appearing before our committee once again.

It was very useful to review what we heard and to hear your comments on that topic.

According to one of the witnesses, you do not have sufficient resources to perform post-employment follow-ups. I'd like to hear your comments in that regard.

Do you consider that your resources are sufficient to do that? Once a person finds other post-employment work, is the follow-up during the prescribed period sufficient?

[*English*]

Ms. Mary Dawson: I don't think I ever said I didn't have enough resources. I'm not concerned, no.

Ms. Nancy Bélanger (General Counsel, Office of the Conflict of Interest and Ethics Commissioner): She said another witness said that.

Ms. Mary Dawson: Oh, yes, I do remember another witness said that, and I thought, no, where is he coming from? I have never complained about the resource level. I think we're doing okay.

We do so much with each particular public office holder that a little more isn't going to make much difference.

[*Translation*]

Ms. Charmaine Borg: We did not talk a great deal about your recommendation that there be easier access to documents. In your report, you write that it is sometimes difficult to obtain certain documents in connection with an investigation or the preparation of a report.

Could you give us more information about that?

[*English*]

Ms. Mary Dawson: Yes, I think I talk about it in my report. There has always been a reluctance to freely give cabinet documents to me, and I think the act contemplates that I get to see cabinet documents if necessary. I don't usually need to see them with respect to public office holders.

Sometimes I also would like to have access to, for example, people's e-mails, ministers' e-mails within the parliamentary precinct. A couple of years ago I had a case when it was made cumbersome for me to get that. It was decided that I could only get it after the person who was complained against had gone through the documents and then they were sent to me.

I had no way of knowing.... I'm not accusing that person of having taken anything out of the documents and I don't think she did, but some of the documents—if they had been a complete set—I got from elsewhere. So I knew some were missing. Whether they were missing because of the House administration or because of the member or whoever, I don't know.

So I'm just saying that it seems to me, to do my job, I would need access to e-mails in the parliamentary precinct, for example.

● (1710)

[*Translation*]

Ms. Charmaine Borg: It would make sense that you be able to do your work properly.

Another witness suggested that the total number of complaints should be published. What do you think about that?

[*English*]

Ms. Mary Dawson: We do publish the total number of complaints. It was a witness...I remember that one too. I said I thought we could probably do more, and I think in our next annual report, we may give some idea of the kinds of requests that came in that were not pursued, so at least you will have an idea of the sorts of things we didn't pursue.

I thought that was a good suggestion.

[*Translation*]

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

The Chair: You have a little time left.

Ms. Charmaine Borg: Very well. Thank you.

When the Commissioner of Lobbying testified, she explained that the post-employment regulations differ, regarding the possibility of doing lobbying post employment. Indeed, there is a grey zone that allows people to devote 19% of their time to lobbying.

What do you think of that? Do you have any ideas as to how that grey zone could be eliminated?

[*English*]

Ms. Mary Dawson: You'd eliminate the 20% rule.

But that's not my bailiwick. That's the lobbying commissioner's act, but I think it's a question of whether every bit of lobbying gets reported, or the cut-off is 20%.

[*Translation*]

Ms. Charmaine Borg: Does the fact that your regulations differ not constitute a problem?

[*English*]

Ms. Mary Dawson: No. My post-employment rules have nothing to do with that five-year rule, the prohibition against lobbying. My rules are broader and narrower in different ways. My rules relate to making representations, for example. That's the way my act reads...it doesn't need to be a lobbyist.

So whereas it's useful sometimes for us to check the lobbying register to see what's going on there, any number of other kinds of representations could be being made, not just those by a lobbyist.

[*Translation*]

The Chair: Ms. Dawson, thank you for your answers.

I will give Mr. Carmichael the last word.

[*English*]

Mr. John Carmichael: Thank you, Chair, and thank you, Commissioner, for joining us again today.

I think you have helped to clarify some of the confusion we've talked about over the last few weeks, but I think as we go through this, we're all very conscientiously trying to find solutions that truly give us a better act, and your recommendations have been helpful.

On the post-employment period, regarding your suggestion that reporting public office holders report on their new duties beyond their cooling-off period, help me with the timeframe. A minister finishes his role in Parliament and he is then subject to a five-year cooling-off period?

Ms. Mary Dawson: No, no. He's subject to a two-year cooling-off period.

Mr. John Carmichael: He's subject to a two-year period. Okay.

So within that two-year period, then, your recommendations 5-6 and 5-7 in your book, on page 57, read:

> That the Act be amended to require former reporting public office holders to report any firm offers of a contract of service, an appointment to a board of directors, a partnership relationship or employment during the cooling-off period, within seven days of the offer.

Then 5-7 carries on,

> That the Act be amended to require former reporting public office holders to report on their duties and responsibilities in relation to their new contracts of service, appointments to a board of directors, partnership relationships or employment during the cooling-off period, including a description of their duties and responsibilities and information on any measures taken to ensure compliance with the Act.

Are you satisfied that within the cooling-off period—and we have a two-year cooling-off period that is the most stringent of the cooling-off periods—that you can manage that disclosure, that this disclosure will be as transparent as you are expecting from this and that you will be able to manage it?

You know where I'm going with this.

● (1715)

Ms. Mary Dawson: Yes. If I found out they hadn't disclosed, I would investigate or do something.

The existence of a rule certainly goes some way in having it complied with. What I don't want is a situation of people keeping mum about possible offers and they get one week out and there are no obligations under the act for them to tell me anything. I'm just trying to plug a couple of little loopholes there.

It is a short period of time, and for most public office holders it's only one year. But I still think it would be useful to have a rule like that to draw their attention to the fact that they have these post-employment obligations.

Mr. John Carmichael: Thank you.

Going back to the confusion issue, then, as you know, in part of the testimony and the discussions we had with some of the different witnesses, we bounced between this act and the Lobbying Act. We found the term "designated public office holder", which is housed within the Lobbying Act, and we have "reporting public officer holder" within this act.

My question for you is, should they be aligned more closely? If so, how do we do that?

Ms. Mary Dawson: Well, that's a difficult question because that doesn't necessarily flow from putting both those rules under the same act. You could still have a different group of people you were applying it to. There are some people under "designated public office holder" that my office has nothing to do with; it goes down further into the bureaucracy than my office. My office is just Governor in Council appointees, deputy ministers.

There is a dissonance between who's covered, so that's one of the difficulties of putting all the rules under one act. By the same token, it's not an insurmountable issue; it just means that one rule will apply to a different kind of group of people than the other rules.

Mr. John Carmichael: Right.

We're coming to the end of this study now, as you know. Are there any definitions in the act that concern you as still being too broad? With all the recommendations and all that we have to review once we're done, are there any areas within the act that you would say are definitions that you need to tighten up?

Ms. Mary Dawson: I certainly have a number of recommendations—

[*Translation*]

The Chair: You have a minute and thirty seconds to reply.

[*English*]

Ms. Mary Dawson: Okay.

My recommendations are in my report, and there are a number of definitions that I thought were problematic. I can't remember if they were too broad, too narrow, or what, but—

Mr. John Carmichael: They're in there.

Ms. Mary Dawson: —they're in there.

Mr. John Carmichael: Terrific.

Thank you very much.

[*Translation*]

The Chair: Very well. This concludes all of the testimony regarding this review.

I thank you once again for being here with us, and for having discussed everything that has been said since your last appearance before this committee.

We are going to suspend the meeting for a few moments, and then we will return to discuss another item on the agenda.

Did you have a point of order, Mr. Warkentin?

[*English*]

Mr. Chris Warkentin (Peace River, CPC): I want to ensure we're moving in camera for that committee business. We need to go over a number of things that relate to future planning as well.

[*Translation*]

The Chair: The agenda did not mention sitting in camera, but if you want to introduce a motion, we can always do that.

[*English*]

Mr. Chris Warkentin: I'll make a motion to do that.

[*Translation*]

The Chair: There is a motion before the committee asking that we continue the hearing in camera.

Since a recorded vote has been requested, I am going to let the clerk hold the vote.

(Motion agreed to: yeas, 6; nays, 4)

● (1720)

The Chair: We are going to suspend the meeting for a minute or two before we continue in camera.

[*Proceedings continue in camera*]