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# **Subcommittee on a Code of Conduct for Members**

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**EVIDENCE**

**Monday, February 2, 2015**

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**Chair**

**Mr. Joe Preston**



## Subcommittee on a Code of Conduct for Members

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•(1530)

[*English*]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** We will get started.

Thank you all for being here.

Monsieur Denis and Monsieur Parent, welcome here as guests today. Hopefully, with some of your great advice, you can help us out and help this committee move forward a little bit.

I believe, Monsieur Denis and Monsieur Parent, that you have an opening statement together.

Monsieur Denis, please go ahead and help us out. We'll ask you questions afterwards.

**Mr. Richard Denis (Deputy Law Clerk and Parliamentary Counsel, House of Commons):** Thank you very much, Mr. Chair and members of the subcommittee. It's a pleasure to be here today.

Thank you for the invitation to appear before you and to provide some assistance in your study of the consideration of policy options for addressing complaints of harassment between members of the House of Commons, and the possible implementation of a code of conduct for members.

[*Translation*]

I am accompanied by my colleague, Mr. Pierre Parent, Chief Human Resources Officer for the House of Commons, who will also be able to greatly assist, considering his wide experience with the drafting, the implementation and the application of harassment policies. He contributed to the implementation of the policy on the prevention of harassment in the workplace for the House of Commons Administration and was recently involved in the development of the House of Commons Policy on Preventing and Addressing Harassment adopted by the Board of Internal Economy on December 9, 2014.

Through your clerk and the analyst, we were able to get a general sense of the questions that your committee is faced with. I will admit that these are complex issues and that any proposed solution to a question such as harassment requires thoughtful consideration, particularly in the parliamentary context.

[*English*]

In our preparations for today, we looked at what is done in other jurisdictions, as well as at how the House itself has handled perceived situations of harassment that have occurred on the floor of the House during past debates.

My presentation will outline the legal issues that may be taken into consideration when dealing with allegations of harassment between members, the main one being the unique work environment of members of Parliament by reason of their constitutional role, and the application of parliamentary privilege.

In the parliamentary environment it is not possible to have a single regime to address harassment issues. As you know, many groups of people are present on the Hill every day: members of Parliament, senators, employees of senators, employees of members, Senate personnel, House of Commons personnel, media, and the public at large. I also point out that in the case of employees of senators, they are employees of the Senate, whereas employees of members are employed by each member individually. All these people interact on a regular basis in an environment that can easily cause stress, friction, or difficult situations.

In the case of the House of Commons, there are at least three distinct groups of individuals who share the same work environment: first, the employees of the House administration; second, employees of individual members, House officers, and research officers; and finally, members themselves.

Two distinct employment regimes currently apply, one for the House administration and one for members' employees. Therefore, two distinct harassment-prevention policies have been adopted.

In the third case, now before you, between members themselves, one particular concern is how any code or policy could apply to or interact with proceedings in Parliament without curtailing or placing limits on the privilege of freedom of speech of members during debates.

•(1535)

[*Translation*]

To begin with, members are not employees of anyone in a legal sense. But, of course, they are accountable to their electors.

The House of Commons is a body of 308 individually elected individuals, who are summoned to form the House of Commons for a particular parliament. Therefore, any process to address harassment between members must be premised on, and respect, the unique constitutional role, functions and status of members of Parliament and the House of Commons itself, since members are equal among themselves.

As members of the subcommittee know, the House of Commons is separate and independent from the Senate, the executive and the courts. The Constitution Act, 1867, and the Parliament of Canada Act recognize that the House of Commons and its members hold, enjoy and exercise certain privileges, immunities and powers.

By virtue of parliamentary privilege, the House itself has exclusive control over its membership and the discipline of its members. This exclusive jurisdiction to discipline members includes the ability to regulate their behaviour or to limit what can be said or done in the Chamber. Here you can think for example about how certain rules of debate come into play, what is considered to be unparliamentary language, the use of cell phone or props in the House, etc.

[English]

Constitutionally, the House and its members are not subject to oversight by any outside person or entity. The House as a whole is the only body with the legal authority and responsibility for policing its membership. Since these rules are self-imposed by the House as a whole, their application cannot be considered to be a breach of the privilege of free speech.

The same would be true for a regime to address potential harassment between members. Any member who feels they are subject to unparliamentary or unacceptable behaviour or language on the part of another member may rise on a question of privilege and ask the Speaker to rule on the issue. Often the Speaker will be able to deal with the issue right away, but at other times the Speaker will find a prima facie case of privilege and open the matter to the House for debate. More often than not, such matters are referred to the Standing Committee on Procedure and House Affairs, which will look into the matter and report back to the House for adjudication. The House then has access to a range of penalties for dealing with those situations, including suspension or, in extreme cases, even expulsion.

In the development of a code of conduct to address potential harassment complaints between members, it is therefore up to the House, if it so desires, to decide what type of conduct it considers improper, offensive, or otherwise reprehensible and would qualify as harassment, and which process should be used for raising these issues.

Finally, the development of a code of conduct for members or any other process for dealing with harassment should ensure that: the claimant and the respondent have the right to a fair process; issues are resolved at the earliest opportunity; independent third parties are available to assist the members involved, and the House if necessary, with finding a satisfactory solution; and finally, confidentiality is protected throughout the process.

[Translation]

Thank you for your attention.

We look forward to your questions.

[English]

**The Chair:** Thank you, Monsieur Denis.

As a reminder to the committee, we are in public today and televised. Whenever we have witnesses, we try to do that, so here we are.

My list starts with you, Mr. Warkentin, for seven minutes, please.

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

Thank you, gentlemen, for coming this afternoon. We appreciate your insight on this difficult subject.

Mr. Denis, on the paragraphs that you just read with regard to the member's right to seek some type of remedy as it relates to a question of privilege or an attack on one's character, obviously we have the right now, through a number of provisions within our Standing Orders, to request that the Speaker rule on that. But in relation to paragraph 21, you outline that any process should be a confidential process. Obviously, there's a contradiction with what exists today and what we might desire in that there be a confidential process.

It seems to me that probably we're dealing with two different issues. One is an issue of harassment, the other is the issue of sexual harassment, and obviously there can be a blending of the two. I guess my question would be that if we could exclude issues of sexual harassment and deal only with issues of harassment in terms of... Well, we don't know how we even would define that, I guess. Obviously, the House has provision.... Does the House have a provision to deal with an issue that is perceived harassment and relates to conduct that doesn't happen in the chamber, if it happens somewhere else in the precinct? What is the provision that the House has as oversight as it relates to something that's perceived as a harassment issue that would happen somewhere else in the precinct?

• (1540)

**Mr. Richard Denis:** At this point, there is no provision that deals with anything that would happen outside of parliamentary proceedings, or outside of the precinct. What we're dealing with are really the internal rules the House has in how it deals with its own proceedings, but nothing specific about harassment at this point. What you have are the rules that relate to debate, to unparliamentary language. As I said in my opening remarks, these are self-made rules. The House itself—and that's what you're faced with today—has to decide, if it wants to intervene, how it wants to define harassment and what kind of behaviour it wants to deal with or not.

**Mr. Chris Warkentin:** The House has the ability to have provisions that relate to obviously inside the chamber, but also we have the right to have codes that address issues in the precinct as well. We also have provisions that relate to the rights of members if it involves having....

It seems to me that the Speaker has ruled in the past over issues that relate to things that are said in people's households, or the inability to get to a vote on time because of some other provision on the precinct. So it seems that the House has ruled in some of these cases that may or may not involve harassment.

How does that differ from what you just talked about? It seems to me that the Speaker has ruled in the past. There has been a parliamentary prima facie case of—maybe not harassment—what could be defined as harassment when something gets said in a household that somebody doesn't like.

**Mr. Richard Denis:** Yes, there have been lots of situations. I'll start with inside the House. As you can imagine and easily remember, we did go over the debates going back 20 years, and we found all sorts of situations for members in terms of altercations or threats or comments that were felt to be unacceptable. On all sorts of behaviour members rose on points of order and asked the Speaker to see whether or not there were prima facie cases. In most of the cases, there were not. Sometimes there would be, but most often these issues were either dealt with right away by the Speaker or else members would talk to each other and come to resolution. Apologies were made, situations were clarified, and things moved forward.

In terms of householders or outside the precinct, there have also been situations where members have said things in their householders. The famous one was Mr. Pankiw in a householder. That went to court. The decision was made, however, that the Canadian Human Rights Act did not apply because a householder was not considered to be a service according to section 5, I think, of the act, and therefore the courts had to intervene to look at it. In this case there was not a specific case of harassment.

My point is that, as you yourself will know, there is a wide range of things that members can do or say that might not be acceptable to some but will be acceptable to others. What you're faced with is a situation where the House itself has to look at these cases, which is what you're doing right now, and ask what it is we're talking about. You started with this definition of sexual harassment versus harassment versus what could be other things. What do we do about it? Do we need a definition? How far do we want the House to go in dealing with it, as well? There are other ways.

• (1545)

**Mr. Chris Warkentin:** On a separate note but equally important, it has been said in some places that the people in the House of Commons, members of Parliament, are not subject to criminal sanctions if they engage in criminal activity while in the House. My understanding is that this is not true; a criminal investigation could take place on the precinct if in fact criminal allegations surfaced.

**Mr. Richard Denis:** Yes: the Speaker is the guardian of the privileges of the House, and all matters that relate to access to the precinct must first be approved by the Speaker. Without getting into anything specific, first, in any kind of suspected criminal activity, assuming there are reasonable grounds to believe a criminal offence has been committed by someone, access to the precinct has to be given by the Speaker. If that's given based on the facts presented, then arrangements can be made for further investigations. But the precincts themselves in terms of access are protected by the Speaker.

**The Chair:** You have about five seconds left, sir, so I'll stop you there, if you don't mind.

**Mr. Chris Warkentin:** Okay. Thanks.

**The Chair:** Ms. Crowder.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you, Mr. Chair.

I want to thank you, Monsieur Denis and Monsieur Parent, for coming before the committee today. I appreciated your testimony, in particular your closing statements, where you were talking about a couple of things: the right to a fair process and independent third parties. I think generally speaking Canadians would expect, even

though we're in a unique set of circumstances, that we would have some fair, impartial process.

I want to turn just for a moment to O'Brien and Bosc, page 215 in the English version, with regard to the conflict of interest code for members. Of course I won't read the four objectives, but I want to touch quickly on them. In part (a) it says "maintain and enhance public confidence", and in part (b) it says "provide a transparent system by which the public may judge this to be the case". They're talking about members not putting their private interests ahead of their public interests.

Do you think we could use something like the conflict of interest code for members, not the conflict of interest code itself but the mechanism of having a third party process, appended to the Standing Orders to make sure there is that fair, transparent process so that Canadians could actually judge if how we're investigating ourselves is done appropriately?

**Mr. Richard Denis:** The answer is yes, in the sense that the process that would be put in place—looking for fairness, objectivity, a third party—would somehow be developed involving someone who could look at the situation and have the confidence of everyone.

However, once the process was gone through and a decision and a recommendation had been made, this recommendation would have to come to the House, because ultimately it is only the House that can make a decision about its membership and the right to sit. Ultimately if a member were found to be guilty of having committed something reprehensible against a code of conduct, the House would have to be made aware of it and make a decision.

This also brings up issues that perhaps Monsieur Parent may want to comment on in terms of how we are able to keep the confidentiality of the process when in fact the guilty plea comes to the House for adjudication, because that would bring about other questions. If I'm voting on someone's right to sit—for example, assuming we're talking about extreme cases—I'd like to know the facts. Are we prepared to see all this dealt with in public?

In our thinking, we're looking at whether there are alternative ways the House could have a process to look at these issues but still keep the confidentiality and impartiality. These are not simple issues, as I said, but I just want to bring that to the committee's attention in terms of consequences.

But on your question about a third party process to look at the process and the questions and investigate, sure, that could certainly be put in place.

**Ms. Jean Crowder:** If I have time I might come back to what the other process was, because I think there is another matter in terms of what harassment is. In the order of reference it doesn't talk about it. It simply says, "...a code of conduct for Members for the prevention and resolution of harassment in the workplace".

I spent some quality time again with O'Brien and Bosc this weekend, going through privileges and immunity. Of course, there is no definition of "harassment" there but it has language such as "freedom from obstruction, interference, intimidation and molestation." There are many other ways that language comes through.

I understand that members are different from staff and administration. When I turned to the Treasury Board definition of “harassment”, it has two definitions, one for “harassment” and one for “sexual harassment”. Under “harassment”, it says it is behaviour that:

...demean[s], belittle[s], or cause[s] personal humiliation or embarrassment, and any act of intimidation or threat.

When I turned to the House of Commons document it says:

It comprises any objectionable conduct, comment or display made either on a onetime or a continuous basis that demeans, belittles or causes personal humiliation or embarrassment to an employee.

That's for employees and that's for administration and other staff of the House of Commons.

I struggle a bit with why we would try to have a different definition of “harassment” for members of Parliament from what we would have for staff or employees. Surely we should be able to uphold a standard that all Canadians could respect, instead of saying that you can't harass an employee but you can harass a member of Parliament in the same way.

I also understand that Parliament can make its own rules. We are in charge of making our own rules so there is nothing to prevent us—or is there?—from adopting a definition of “harassment” that's similar to the Treasury Board's or to the House of Commons' definitions of “harassment”. Is there anything that actually prevents us from making those rules?

• (1550)

**Mr. Richard Denis:** No, nothing prevents you from making those rules. As I said earlier, this committee can recommend to the House any kind of definition for what you feel a harassment situation would be, but it is really up to the House itself to decide.

However, when coming up with a definition, you have to think also of all the permutations or situations that members are faced with in the course of a normal debate. You might be dealing with the extreme cases, which you want to cover, but any kind of definition would become an imposition on the behaviour of members. This is fine but it could also curtail certain situations that right now are part of the normal life of parliamentarians—debating, arguing, sometimes getting angry, and those kinds of things.

A definition would have to take into account its consequences on the free speech that members also expect to be able to exercise.

**Ms. Jean Crowder:** We have only 30 seconds left. That's a whole different conversation, which I won't be able to get into in 30 seconds, but thank you very much.

**The Chair:** Ms. Bennett, you have seven minutes.

**The Honourable Carolyn Bennett (St. Paul's, Lib.):** Thank you very much.

I'm going to return to the point that caused us some difficulty last week. Do you think there are any gaps right now that need to be closed to deal with behaviour within the House?

**Mr. Richard Denis:** What do you mean, exactly—gaps in the rules and policies?

**Hon. Carolyn Bennett:** I mean the rules of privilege and the process. I think what we've really been asked to do here is to look at

the behaviour outside the House. That seems to be where the big gaps would be.

Maybe you can just let us know later if there's anything that needs to be tightened in terms of behaviour in the House in order to make people feel it's a safe workplace. Otherwise I think the work of this committee deals mainly with things outside the House, because of, as you've just demonstrated, what's going on there.

I think we've decided we will need some cases of normal politics, and we would love if you had any anonymous examples of cases that you think would be troubling under the normal process within the House, things that maybe would be referred to some third party. Maybe the behaviour in the House is related to something that's happening outside the House, or there's a context that needs to be confidential, or something like that.

We're really interested in finding some cases. We know tough cases make bad law, but somehow, in order for us to get it right, we do need to know what we're dealing with in terms of a code of conduct.

When we looked at the definition from the House of Commons policy, the abuse of authority section didn't seem to really apply, and there were a number of things in the sexual harassment definition that didn't seem to apply: “if there was an opportunity for training or promotion”, we couldn't quite see how that would apply to members of Parliament. I think the analysts are going to try to take out those bits that seem to be mainly about an employee-employer relationship rather than a member-to-member relationship.

If we struggle with the definitions, we then have to sort out training and enforcement. We're probably going to have to sort out process on our own.

In terms of training, it seems that the Speaker has no real power to tell members of Parliament, “You'd better get yourselves trained in terms of the way you deal with one another or deal with employees”. As I explained to committee members last week, in order for me to keep my privileges at the hospital, I have to do a 40-minute e-training, e-learning session on harassment. I have to pass that test and know where to go and what to do if I'm going to keep my privileges.

I'm not aware that there's any power the House of Commons or Speaker could have, unless they could withhold our monies or our budget. What happens if people just refuse to get trained once we design a training program? Again, what power does the House of Commons have to enforce whatever process it comes up with? Particularly, if confidentiality is so important, if somebody goes all the way through this process promising to be confidential and then it isn't, do we, as the House of Commons, have any power? We're not like the Senate, in which people are employees.

One other gap I was asking about is that when we finish our work here, there will still be a gap regarding any misdemeanours or accusations between the two chambers. If it's a senator and an MP, I don't think we know quite how we could finish this work without actually having that sorted out.

•(1555)

**Mr. Richard Denis:** In terms of enforcement, this is the same situation I explained before. It's the House, ultimately, that will have to decide what kinds of sanctions it wants to impose in the specific circumstances. It will have to analyze and decide. The Speaker himself is in no position to impose a sanction, specifically in a case where we're talking about harassment, for example, outside the parliamentary context. Anything that would be personal or happen outside of work would have to be considered by this committee.

Do we want to go that far in terms of dealing with these situations, or not? If you look at the code in England, it specifically excludes anything that deals with the conduct of a member in their private or personal lives. There's an exclusion right there saying that anything that's personal is not covered by their code of behaviour or code of conduct.

**Hon. Carolyn Bennett:** So if we wrote a code of conduct and it's viewed that in a process somebody has breached that code, it would then have to come back to the House of Commons for a decision on what to do about it.

**Mr. Richard Denis:** The code itself would say that in this situation, such and such sanction would apply, and then depending on the gravity, if you wish, it would be exponential in terms of gravity for the member. By putting in a code, it would now be the House deciding what kinds of sanctions it wants to impose. If not, based on a situation.... But if you have a code, then at that moment the House would have to decide based on—

**Hon. Carolyn Bennett:** The code of ethics that we signed tends to deal mainly with Elections Canada and those kinds of things.

**Mr. Richard Denis:** And conducting personal business.

**Hon. Carolyn Bennett:** So if there was a code of conduct on behaviour.... There's an ethics commissioner who is supposed to make sure we're behaving ourselves on the ethics side. Would it be the third party? Again, it would have to be somebody other than the House of Commons that enforced any breach in the code of conduct.

**Mr. Richard Denis:** Just to be clear in terms of a code of conduct, what we see in codes of conduct typically is more about general behaviour of members. I have the one from England here. It's a concept of selflessness, integrity, objectivity, accountability, openness, honesty, leadership—personal behaviours that are expected. Here the mandate of this committee, as I understand it, is dealing just with harassment. So if you were to deal with a code of conduct, it would have to deal only with the question of harassment.

The problem we see in this context is that members of Parliament are, as I said, independent. They're equal, so it's theoretically one against a person at the same level. You don't have this employer-employee relationship on which all the different policies typically are based. That's why you would have an employer who has sanctions.

Here you're amongst equals, so you have to decide what—

•(1600)

**Hon. Carolyn Bennett:** Let's go back to the beginning. Is there anything right now that you think—

**The Chair:** Ms. Bennett, thank you. You're past time. I let it go longer because we were getting a good answer.

We'll go on to Ms. Crockatt, for a four-minute round, please.

**Ms. Joan Crockatt (Calgary Centre, CPC):** Thank you very much, Mr. Chair, and thank you very much, Mr. Denis, for your testimony today.

I think my colleague Mr. Warkentin keyed in on one of our challenges here, and that is providing some distinction between harassment in general, sexual harassment, and I think there's a third one, which is sexual assault, that may come up. Obviously, the third, sexual assault, is a criminal matter. We've chosen to start with the definition of “harassment”, which I think is actually the thorniest challenge of the three of these issues.

I'm wondering how you would define harassment for members of Parliament as being different from how you might define harassment for members of the general public.

**Mr. Richard Denis:** Again, I'll ask Monsieur Parent to intervene after this, but you're talking about equals. You don't have a relationship of hierarchy. So that's one thing that creates a difficulty in terms of what harassment is or could be. You are not dealing with situations of, for example, an employer and an employee, where there's the hierarchy, there's the perceived threat of consequences if harassment happens.

In this case here, by being equals, it's the House itself or this committee making a report proposing solutions in terms of what the consequences could be. For us that's a big difference in terms of defining what “harassment” is, because of the rules of debate and things that are said and done in the context of your jobs. There are a lot of things that happen by the pure nature of the work. You're looking at the extreme situations that you'd like to define. We could probably help you with a definition if you want to go that far, but with any definition, as always—we draft laws all the time—it's difficult. But that might be the only way for this committee to come up with something that's concrete enough.

I don't know if Pierre wants to add something.

**Mr. Pierre Parent (Chief Human Resources Officer, House of Commons):** I think one of your greatest challenges in the dealings of the subcommittee is that you're dealing with definitions that were meant and designed for a relationship between an employer and its employees. It is difficult. I think you hit it right on the nail that there's an absence of a single figure of authority that would represent the employer that could impose the sanctions or disciplinary action. Basically, these definitions were designed in an employment relationship. Now you have the challenge to transpose that into a context where you're all equivalent, and there's no one to make a decision and to take sanction.

The question you may want to ask yourselves is whether that definition is the right one, rather than starting with the definition. I was heavily involved in the drafting of this policy, and I admit that I did a lot of copy and paste, mainly on our own in the House administration, where we manage the harassment prevention policy. The policy we have at the House administration is heavily modelled on the Treasury Board and other employers. So that's the context. It's an employer-employee relationship, and that policy was designed in that context.

**Ms. Joan Crockatt:** Very quickly, we've got charter rights too, obviously to protect freedom of speech. Is there any way to actually draft an effective policy that protects free speech and still fully censures harassment?

**Mr. Richard Denis:** Yes. Again it would be an exercise in drafting it. But just in terms of the charter, we need to be aware of something unique about members of Parliament and the charter. The Supreme Court has said that the charter, which has constitutional status, and privilege, which has constitutional status as well, are equivalent. One cannot override the other. You are dealing with two equal constitutional rights here: the right of members of their privileges versus the charter. Typically the charter would not apply. So again, what do we do? We come up with a definition or concept and that's where you put the rules that you would like to apply.

• (1605)

**The Chair:** Thank you.

Your chair is smiling because with each question I am getting deeper into the abyss of "holy crap, what are we dealing with here?"

Ms. Freeman, four minutes for you please. See how deep you can dig the hole.

**Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP):** I'd like us to get back to the importance of confidentiality. There seems to be some thought around...if we were to build it out of the standing orders and have a code of conduct that stood like a code of ethics. How would we then come back to imposing some kind of sanction if we took that kind of model?

Have you given any thought to what a confidentiality process would look like? Thinking about that brings up for me how important it is going to be for us to have formal disciplinary measures that then come to the House or that can then be sent to the police and having a different option where we could stay confidential to the end, where it would be something more informal. If you could both talk about your thoughts on that it would be helpful, I think.

**Mr. Richard Denis:** Yes, we certainly have thought about it. I'll go back to what I said earlier. Any formal process, whether it's an independent assessment done by a third party with a recommendation that would end up on the floor of the House...has the risk that the information and facts would come out.

What we see as a possible solution is what we see for example in the policy on the Senate side, especially with parties. It is the whips internally who become the persons, following an investigation with a recommendation or report, who are given the report. They are tasked to deal with the internal discipline of the member in their party, assuming you have two whips. In the case of independents, you could have someone like the Clerk of the House or the chief human

resources officer who could run that process, so you would have a system that at least allows you to keep the confidentiality. If you end up with a neutral third party doing the analysis and the recommendation, fairly listening to both parties, and making sure we have a clear process and everyone has confidence in them, then you come up with a recommendation that goes to the whips. The whips between themselves can deal with the issue, decide on the sanctions, and move on.

That way you keep confidentiality and hopefully discussions between the whips helps things move on.

**Ms. Mylène Freeman:** I'm sure that Carolyn will want input on this too.

For me there is a concern around making it a whip-driven process. Is there any way that we can give an option to the complainants to remain confidential at all times and perhaps to deal with it? I think it makes all of us uncomfortable and members uncomfortable to think there would be different ways of dealing with it, depending on whether you are in a party or an independent, and whether the person you are now having a problem with is independent or not.

Is there a way we could have a confidential complainant-driven process that would be not whip-driven at all and could see no official complaint process or discipline afterwards? Are there ways of doing that, that would be safer for the complainant?

**Mr. Pierre Parent:** We struggled with that very question when we did the harassment policy for members as employers.

The compromise that we came up with is that the complainant can go to the member as an employer, the whip, or the chief human resources officer. It is the choice of the complainant. Once the complaint has been filed with one of these three persons, it is clear in the policy that the responsibility to keep the complaint confidential is with one of these three persons, whoever that person would be.

That could maybe be one of the solutions. I agree with Mr. Denis on having a clear process and the responsibility of those who receive the complaint, whoever that person would be, to keep it confidential.

**The Chair:** Thank you.

Thank you, Ms. Freeman.

I will go to Ms. Block for four minutes, please.

• (1610)

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** Thank you very much, Mr. Chair, and thank you as well for joining us today.

I'm going to take us back to some of the challenges. I agree with the chair. As I've listened to your answers to the questions of my colleagues, it appears this is a greater challenge than I think we thought at first. It is a very challenging issue to be taking on.

Given what we currently have in place, defined through parliamentary privilege and contempt of Parliament, and given what most have highlighted in all the documents I've read with regard to the unique aspect of Parliament, do you have any suggestions on how we construct a code of conduct that recognizes this uniqueness and that can interface well with what's already in place when it comes to parliamentary privilege and contempt of Parliament?

**Mr. Richard Denis:** Again, by looking at what we found in other jurisdictions, for example Quebec, western Australia, and I was referring to England and the Senate—not the Senate specifically—you will have a code of conduct dealing with more than harassment, as I explained, but essentially the same principle, where everything in there is still subject to the rules of parliamentary privilege. All these rules continue as they exist except you have a process as well to deal with specific situations of harassment.

The process would be there maybe to try to solve the issue, come up with a recommendation and hopefully a solution, yet the member and other members keep the right to raise the issue on the floor of the House if they feel, for example, that they were wrongly accused. That's always a privilege of members: to rise on a point of order and ask the Speaker to rule specifically on this. That reservation, subject to clauses in the code on parliamentary privilege, might be a way to explore this question.

**Mrs. Kelly Block:** Given your answer, is there anything defined in parliamentary privilege or contempt of Parliament where there would be gaps when you look at constructing a code of conduct that may include harassment? Can you foresee or identify any gaps in the rules we currently have?

**Mr. Richard Denis:** Going back to what we said, the whole issue of dealing with parliamentary proceedings, what happens in Parliament—you're doing your role in the chamber of course, in committees, sometimes outside in public—there's a line somewhere that you have to trace. How far do we go into people's personal life or into situations that are outside of your role as parliamentarians? We certainly see that gap as a big one.

The other one is anything that you put in place should not conflict with all the rules that already exist. Essentially, as we've mentioned before, you look at O'Brien and Bosc and pretty much everything in the book has been considered at some point, except that right now harassment is obviously a very sensitive and difficult topic to deal with. How do we integrate all of this into the rules? Keeping the tradition and what exists versus being able to deal with a complex situation, that's the challenge. I'm not saying it cannot be done, but it warrants some thought.

**The Chair:** Thank you, Ms. Block.

I'll move to Mr. Warkentin for four minutes.

**Mr. Chris Warkentin:** Thank you.

I think this is what concerns all of us. Obviously we want to build an environment in which harassment doesn't happen or where sexual harassment doesn't exist, but we have to consider that any rules that might constrain on one level may constrain on another. The major constraint that I'm concerned about is the right to free speech. While things we say can be offensive to one another—that happens on a regular basis—I think that's probably something Canadians are well aware of. We wouldn't want to constrain that because that, of course, is the bedrock of the democracy we purport to defend.

Is there a way to conduct ourselves, to have a policy that would protect in large part from...I should just back up a little. A significant portion of the discussion surrounding harassment can involve what is said to one another, both in formal and informal settings inside and outside the House. This is a place of debate, as a courtroom would be

a place of debate. There aren't a whole lot of other workplaces that are quite the same. If you're going to engage in debate, the possibility is that you will offend one another. I think we would like to have a definition that would ensure we would protect people from harassment, but still preserve absolutely without question the right to free speech. In your opinion, is that possible?

● (1615)

**Mr. Richard Denis:** It would be very difficult because of perception. You arguing a point might be perceived by the person across as offensive, as unacceptable. From your point of view, it's totally fine, and you have 307 people, except the Speaker, who have their own opinion about it. How do we reconcile all of this? Freedom of speech, of course, is one of the most fundamental principles of privilege and it's the reason Parliament can function.

Limiting it in any way is certainly potentially dangerous, so any limit to free speech has to be done with a consciousness about the consequences. There are still possibilities for how you could define where the line is and how far you can go in what you say or how it's perceived. Then again, it's a question of definition for this committee to consider. But it's possible.

**Mr. Chris Warkentin:** So you're not offering us the answer?

**Mr. Richard Denis:** I will not—

**Some hon. members:** Oh, oh!

**Mr. Richard Denis:** —purposely.

**Mr. Chris Warkentin:** We appreciate that.

**Mr. Richard Denis:** I'm certainly looking forward to, if possible, working with the committee and at least exploring it in detail.

**Mr. Chris Warkentin:** I've identified that we work in a unique jurisdiction. I think that lawyers in a courtroom would have a similar responsibility to conduct themselves in a debate.... But really, there are very few workplaces where the fundamental privilege of free speech is necessary, and also the ability to continue to maintain all of the provisions of free speech. The only jurisdictions we can really look at that would be comparable would be other Westminster parliaments. You've spoken generally about the possibility of different provisions in different jurisdictions. Is there anything you know of that we should look to?

**Mr. Richard Denis:** Are you talking about the definition of harassment or just the—

**Mr. Chris Warkentin:** Harassment policies, or if it's not a harassment policy, the provisions within a standing order that would ensure that there would be comfort that issues surrounding harassment can be dealt with in a different way than what we do already.

**Mr. Richard Denis:** We have looked at quite a few other jurisdictions in Westminster's model. They're quite general, in the sense that their codes of conduct don't deal specifically with harassment. Certain policies do, but not in a specific code of conduct. Westminster has a policy that deals with harassment, but again, it's subject to parliamentary privilege. It's clearly said that whatever is developed is subject to privilege.

**The Chair:** Thank you, Mr. Denis.

Ms. Crowder, you have four minutes.

**Ms. Jean Crowder:** Thanks, Mr. Chair.

It seems that a lot of this hinges on the whole notion around free speech. Again, to go back to O'Brien and Bosc, on page 89, they talk about free speech. In part, they're talking about members not raising "trivial matters as matters of privilege or contempt" and they say that members "should not use the privilege of freedom of speech to be unfairly critical of others in debate".

As well, on page 62, O'Brien and Bosc talk about the dignity of the House and say, "Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed, is referred to as a contempt of the House."

The reason I raise this is that on the one hand there is a parliamentary right around freedom of speech, but I also would argue that there should be parliamentary responsibility around freedom of speech. It seems to me that there is a responsibility around freedom of speech. In part, we need to be conscious of the fact that when we speak, we could well impede a member's ability to do their duty because the comments are so outrageous, or harassing, or sexually harassing that they do impede that member's ability to do their job. In part, that may be subjective, but there's also some language in some of the harassment guidelines that have been developed about "should have known" or the intent behind a particular comment.

In your view, is there anything to limit us in terms of looking at the dignity of the House and whether or not the language is so over what a Canadian norm would be? There is nothing to limit us from coming up with a definition that looks at that, is there?

• (1620)

**Mr. Richard Denis:** No, there is not. In fact, what you're talking about here specifically is free speech, but it falls a little bit into this debate about decorum in the House right now that we've seen happen lately in terms of how people behave. Certainly, it touches on what people say and how they conduct their business. We've seen attempts to define and deal with it. This might just be another way by the House itself to try to come up with something.

**Ms. Jean Crowder:** And although we are in unique situations, in terms of.... I mean, there is a hierarchy here, whether we acknowledge it or not. There are people with different positions of power, but they are not an employer-employee relationship, so it doesn't make it easy to deal with.

In harassment codes, there are provisions for employee-on-employee harassment. My understanding is that the complaint is usually filed against the employer, but it will be in the context of employee-on-employee harassment, so there are mechanisms to deal with that.

Monsieur Parent.

**Mr. Pierre Parent:** It's because the responsibility rests on the employer to provide a workplace that is free of harassment, so if there's employee-to-employee harassment, it's filed with the employer. It's the responsibility of the employer to investigate and then to take any action that the employer requires.

That's why it's a little different, because, again, you have the single figure of authority who can actually take action.

**Ms. Jean Crowder:** The only reason I raised the point is that harassment doesn't just take place in hierarchies. The mechanism is different, and I understand that, but it's just to raise the point that it does take place among equals.

Mr. Chair, do I still have time?

**The Chair:** If you can do it in 10 seconds, asked and answered.

Nine—

**Ms. Jean Crowder:** I just want to point out there were a number of reports going back to 1974 and 1976 that raised the issue around parliamentary precinct and suggested that we needed to expand the definition because House of Commons committees travel.

There's probably not a response to that; it's just a comment.

**The Chair:** Great.

Do you have a short answer to that, Monsieur Denis or Monsieur Parent?

**Mr. Richard Denis:** Quickly, precinct is essentially where parliamentary business is conducted, so it could be anywhere where you have parliamentarians. Travelling committee proceedings are part of the precinct.

**The Chair:** Ms. Crockatt, four minutes, please.

**Ms. Joan Crockatt:** Thank you, Mr. Chair.

I think what we're really trying to come up with is a 2015 workplace in an organization that has maybe not dealt with these kinds of issues before.

We want this process that we're coming up with to be one that despite the occupations we have as MPs, which I think are inherently adversarial—that's what politics is all about.... In fact, we call this exchanging attacks every day. That is somewhat different than the public have in their normal context, or that is in the normal context of most workplaces.

We want to protect people, especially women, from harassment or sexual harassment. That's particularly important to me because I want to see more women in politics. We have an onus here.

When we look at the Westminster system that you have talked about, I think it specifically excludes one of the main areas we need to get into, which is what happens in your personal or private life.

I wonder if you could comment on how you see a harassment policy extending beyond the workplace into your private life, and whether MPs actually even have a private life.

**The Chair:** I will await the definition.

**Mr. Richard Denis:** It's a difficult question to answer, but it's also difficult to say that the definition of harassment would expand to the private life of members because of all of the permutations in situations that could arise. It could probably still be considered by the committee, but you have serious implications in going that far. Typically what we're dealing with is between members in their parliamentary context, parliamentary work.

If you want to extend that to any kind of behaviour outside that would not be considered acceptable for parliamentarians, you would have to be pretty specific about the circumstances, first of all, to identify the facts. Then you have to have some sort of reporting mechanism that would allow for a fair evaluation of the situation and be able to listen to the parties involved. You would also have to look at what kind of process to analyze, and then what kind of recommendations, who would implement them, and what kind of sanctions you would have.

Again, if that's the wish of the House, it could be done, but when you look at other jurisdictions specifically, probably for that reason, they totally exclude it. Yet, they still have codes of conduct that reach or touch on all of the things that members have talked about today, about behaviour and establishing standards and principles of conduct, and rules that deal with respect for each other, and how certain behaviours are unacceptable.

But there's a line there between the personal and the professional that is probably risky to cross.

• (1625)

**Ms. Joan Crockatt:** Thank you.

One other part you've touched on, and I think deserves more exploration—probably a lot more, but I'll just ask you one question—is the idea of there needing to be an employer or some authority to whom these things are reported, and who has an opportunity to rule on them.

How do you see parties as being employers in the political context, or do you not?

**Mr. Pierre Parent:** It all depends on the level of authority. Again, we've had these debates in the drafting of the other policy. I think the whips are key to a certain extent, because they're already responsible for the discipline within their party. It does raise the question of what to do when it's an independent member or an unrecognized party.

I think the key is to have a figure of authority who actually can take sanctions. We know that the party can exclude members from the caucus, so that is a sanction. The bigger piece is if it's bigger than the party. What if it's between members of different parties? Then you get into a bigger debate.

I think the key is who will be the person who will make the decision and have the power to make a sanction against a member.

**The Chair:** Thank you.

We'll move to Ms. Block for four minutes, and then Ms. Freeman will finish this off.

**Mrs. Kelly Block:** Thank you very much, Mr. Chair. I'm not sure that I'm going to take the four minutes.

Just to recap, I think I heard you say that the perception of harassment or being offended is somewhat subjective. What I may consider to be perfectly respectful or certainly within my rights as a parliamentarian to say to another... It depends on how that other person may receive it. You've also said that the absence of a single figure of authority is an issue when it comes to how we might go about dealing with those who contravene any kind of harassment policy or code of conduct we have in place. Also, there's a gap in

regard to contempt of Parliament when it comes to defining the reach. How far can a policy or a code of conduct reach into a person's personal or private life?

Given some of these challenges you've highlighted—and maybe I don't have them completely right, or not all of them—where would you suggest be a starting point for this committee moving forward with the work we need to do?

**Mr. Richard Denis:** I would suggest, Mr. Chair, one thing that probably everyone could agree on is the process we should put in place if a complaint of harassment comes up.

The definition is a starting point. You might not have to have a final definition, but there are certain things you could all agree on, that you accept or do not accept, as your working definition. If the issue is raised, if harassment has happened, how do we want it to be dealt with? Do we want a third party appointed, someone who, with the agreement of all the parties, will do the investigation? Maybe you can agree on that. How do we find that person? What do we expect from this person—a recommendation? What do we do with the recommendation? Then where does it go? There are probably a few things that you can start building on.

Then you get into this question I was touching on earlier, which is whether the recommendation would go to the whips, and be kept confidential. Do we escalate it to the House? If so—I was talking about the risk of making the facts public—is there a way around it, for example, that we manage somehow to vote without having all the facts? I'm not sure.

Then again, I think you can put some building blocks. There's probably a base of things that you could at least start working with, and go from there. I understand this is a process that's evolving and you just started looking at it.

As I say, the more you think about it and talk about it, the more it raises questions. This is certainly a difficult one.

• (1630)

**Mrs. Kelly Block:** Do I have any time left?

**The Chair:** You have a minute left.

**Mrs. Kelly Block:** Then I do want to just go back to something I thought I heard you say. In the drafting of the policies we've been looking to use as the basis for defining “harassment”, I thought I heard you say that this might not be the right definition because it was developed to identify the process between employer and employee.

Do you have any recommendations in terms of a definition, a starting point for us, where we could begin to put a definition together for members of Parliament?

**Mr. Pierre Parent:** Yes. Probably step one would be to define what you are trying to fix. For instance, if you exclude open parliamentary debate and private life to a certain extent, there is a zone in the middle that needs to be defined. Once you know what remains and what you are trying to fix within that zone, there might not be a lot because we've had that debate among ourselves. If you exclude private life and parliamentary debate, what's left? There's probably little left for interaction but it's what you are trying to fix.

**The Chair:** Thank you.

Ms. Freeman, you have four minutes, please, and then we'll finish.  
[*Translation*]

**Ms. Mylène Freeman:** Thank you, Mr. Chair.

On this topic, we really have to talk about real things. We aren't talking here about what goes on during debates in the House of Commons. We are not talking about the language that is used there, because there are already rules in place to govern these matters.

Would it be possible to have rules regarding what we do in the exercise of our parliamentary duties? Would that make any sense? Could this come into conflict with the existing rules that apply to us?

**Mr. Richard Denis:** Mr. Chair, I would say that we could have such rules.

I am thinking, for example, of a Senate policy on conflict of interests.

In schedule B, there is a guide on what constitutes harassment. Questions are asked to help you identify what represents an unacceptable situation. Is someone's behaviour inappropriate or offensive? Would a reasonable person consider that behaviour inappropriate or offensive? Does that behaviour diminish, undermine, humiliate or embarrass someone else? There are a series of questions like that. It is a tool to help identify those situations.

**Ms. Mylène Freeman:** If we talk about what goes on in the exercise of our duties, would that make sense?

**Mr. Richard Denis:** Yes, indeed, such rules could discuss the context or framework of the duties of a parliamentarian.

**Ms. Mylène Freeman:** They would also apply when we travel with a committee and are not in Ottawa.

**Mr. Richard Denis:** Yes.

**Ms. Mylène Freeman:** You offered to help us with drafting the definition. Would you be able to submit something to this committee on the definition of harassment, and sexual harassment, more specifically?

When more studies have been carried out on this matter, I would also like you to come back to verify whether what we have prepared does not come into conflict with existing rules.

**Mr. Richard Denis:** I would be very happy to do that, Mr. Chair.

**Ms. Mylène Freeman:** I think that would be very good.

Mr. Chair, I don't know if I have enough time left, but I would like to speak to Mr. Parent.

These situations are complex. We are talking about behaviours that can be perceived in a negative way, and when we are in a very political context, that is, of course, even more complex.

Can you tell us to what extent it is appropriate for experts to manage such a situation, and understand the importance of avoiding the political angle? I think this goes hand in hand with the confidentiality aspect. What are your positions in that regard?

• (1635)

**Mr. Pierre Parent:** In any organization, when we face situations like this that involve human resources and are complex, it is always good to get advice, since we do not face these situations on a regular basis. So I think it is appropriate to do so.

This was included in the other policy regarding how members should behave as employers. The human resources service may provide advice to members as employers. I think that in such cases it is a good thing to have access to internal or external resources that can provide advice.

**Ms. Mylène Freeman:** Mr. Denis, do have something to add?

**Mr. Richard Denis:** This also gives the process credibility, because these are neutral, competent persons who deal with these situations on a regular basis. We can rely on them and we know that we will be getting the best advice. Since the result of the investigation can sometimes be difficult to accept, it is important to have a process you trust.

**Ms. Mylène Freeman:** Yes, indeed, all of the members have to have confidence in the process.

[*English*]

**The Chair:** Thank you.

[*Translation*]

**Ms. Mylène Freeman:** Thank you very much.

[*English*]

**The Chair:** Mr. Denis and Mr. Parent, thank you for coming and helping us today.

I thank Madame Freeman for helping us with that last question. I was going to ask you for your gracious help in making definitions for us. Even if there are other working documents we can go from—you said it—we should define first and move forward. I'm with you on that one. That's what we tried to do.

Please, if you can give us a little help on that and get it to us it would be helpful even in another case. I also loved that you offered to return to help us with our work as we near its completion. We've got a little ways to go on it yet, but we thank you.

Committee, we're going to go in camera to discuss our next route.

[*Proceedings continue in camera*]







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