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Chair

Mr. Leon Benoit

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● (1540)

[*English*]

The Vice-Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): Good afternoon, everyone. I am pleased to call this meeting of the government operations committee to order. We are meeting on an examination of sections 14 and 15 of the Parliament of Canada Act, but with specific attention to the study of the contract of lease for 550 de la Cité, Gatineau. As we know, we're particularly interested in the conflict of interest code as it applies to members of Parliament and contracting real estate leases.

I'm glad to welcome as witnesses, Richard Denis, deputy law clerk and parliamentary counsel; and Greg Tardi, from the office of the law clerk.

I presume the witnesses will have a presentation.

Would you like to proceed, Mr. Denis?

Mr. Richard Denis (Deputy Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chair and members of the committee.

My name is Richard Denis, and I am the deputy law clerk and parliamentary counsel of the House of Commons. The law clerk and parliamentary counsel, Rob Walsh, was unavailable to appear before you today and has asked me to appear in his place.

I understand that the motion of the committee calling for our appearance initially called for the appearance of the law clerk and parliamentary counsel of the Senate, but that after discussions it was agreed that a representative from the House of Commons would appear before you.

I'm joined by Greg Tardi, senior legal counsel, who will also be available to assist the committee.

I'm pleased to be here to discuss issues relating to sections 14 and 15 of the Parliament of Canada Act, dealing with conflict of interest of senators, and answer the questions you may have. I must point out, however, that as a legal adviser to the House of Commons, it is somewhat delicate for me to give opinions that relate to the operation of certain rules in the other place. Nevertheless, I will give you an overview of the legal framework of sections 14 and 15, but without discussing their application to any particular facts or speculating on their potential interpretation or implication.

[*Translation*]

I will begin with an overview of the legislative framework of sections 14 and 15 of the Parliament of Canada Act.

Sections 14 and 15 of the Parliament of Canada Act set out the rules governing conflicts of interests of senators. It is interesting and important to note that sections 14 and 15 will be repealed by section 1 of the Act to amend the Parliament of Canada Act (Senate Ethics Officer and Ethics Commissioner) and to make consequential amendments to other acts, the former Bill C-4 and now Chapter 7 of the Statutes of Canada, 2004. Section 1 of the act has not yet come into force.

Section 2 of this same act establishes the position of Senate Ethics Officer by enacting sections 20.1 to 20.7 of the Parliament of Canada Act. Section 2 of the act came into force on April 1, 2005.

● (1545)

[*English*]

Section 20.5, now part of the Parliament of Canada Act, provides that:

> The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

In practice, those duties and functions will take the form of the conflict of interest code for senators, which, interestingly, was tabled in the Senate yesterday by the Honourable Senator Smith, as the third report of the Standing Committee on Rules, Procedures and the Rights of Parliament.

Therefore, sections 14 and 15 still define the rules applicable to possible conflict of interest for senators, but one can assume that they will be repealed and replaced by the conflict of interest code for senators once the code has been debated in the Senate and adopted by it.

[*Translation*]

I would now like to consider the legal framework of these two legislative provisions. I refer you to the copies of the sections in question that I have distributed to members.

[*English*]

I had a sheet of the two sections available for everyone on the committee, relating to the provisions.

Subsection 14(1) provides that:

> No person who is a member of the Senate shall, directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

[*Translation*]

The English version reads as follows:

> 14.(1) No person who is a member of the Senate shall, directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

[*English*]

Subsections 14(2) and 14(3) specify that the penalty for the contravention of subsection 14(1) is $200 per day during which the contravention continues and that it is recoverable by anyone in any court of competent jurisdiction in Canada.

[*Translation*]

Subsection 14(4) sets outs the exceptions to the principle stated in subsection 14.(1). The main exception, as outlined in subsection 14 (4)(a), is a shareholder in any corporation having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work.

The other two exceptions provided for in subsections 14(4)(b) and (c) pertain to a person who has been a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition, or has been a contractor in respect of the purchase or payment of the public stock or debentures of Canada, on terms common to all persons.

Finally section 15 states that proceedings for the recovery of any forfeiture may be instituted at any time within but not later than one after the time where the forfeiture was incurred.

[*English*]

Sections 14 and 15 have never been considered by the Canadian courts except for a few exceptions that I will mention today. Therefore, their interpretation can only be made by referring to other cases in which the relevant principles of sections 14 and 15 were considered.

There are provisions of subsection 14(1) that warrant clarification. I have identified the following.

The first is in subsection (1) where it says that no senator shall directly or indirectly be a party to a contract. This refers, of course, to the signing of a contract by a senator as a party to an agreement. It also broadens the meaning of "party" by referring to the concept of "indirect party" to the contract. This has the effect, in my view, of widening the definition of "party to the contract", but it is not clear how far or distant the senator must be from being the party signing the contract.

A case that may help shed some light on this issue is a case of the Supreme Court of Canada from 1979, *R. v. Wheeler*. I'll give you a quick summary of this case. The Moncton Consolidation Act of 1946—it was an old section—provided that no person was qualified to be elected or serve as mayor or alderman while he or she, directly or indirectly, had an interest in any contract with the city, other than as a shareholder in an incorporated company. This provision is somewhat similar to section 14, under review.

At the relevant time, Mr. Wheeler was the mayor of Moncton. He also happened to be a shareholder and director of four companies and an officer in two of them—president and treasurer. At least three of these companies entered into contracts with the city. At no time did Mr. Wheeler try to conceal his association with the companies. In fact, he obtained a legal opinion from both the city solicitor and the provincial Solicitor General, who directed him to file a declaration of conflict of interest, which Mr. Wheeler did. He also removed himself from the discussions and votes concerning dealings with the companies. It was also found that he signed contracts, both as mayor and as a representative of the companies.

The Supreme Court found that:

> It is unrealistic to believe that as a general principle of human conduct, a director or officer of a contracting company does not have at least an indirect interest in the company's contracts. On the facts before this Court, the provision has an even clearer impact. A director or officer of a construction company or of a service company must, in ordinary parlance and understanding, have an interest, albeit indirect, in the welfare of the company as it relates to or results from "contracts".

The court also stated that an officer is interested in his or her company entering into profitable contracts, and in certain corporate situations this is perhaps his or her only real interest in conducting the affairs of the company.

The court concluded that although there was no evidence of any attempt on the part of the mayor to be deceptive in the form and mode of disclosure chosen by him, "Nonetheless, the rigours of the Statute must be met."

As a result, there was writ of *quo warranto* issued and the mayor was removed from office.

In summary, the court decided that Mr. Wheeler, either as a director or as an officer of some companies having contracts with the city, had at least an indirect interest in the companies and could not hold the office of mayor, even though he had declared his interest in the companies according to the rules and had sought legal opinions as to what to do. In the end, it was the link, albeit indirect, between the mayor and the contracts that the court considered the deciding factor.

Again, in subsection (1), the word "knowingly" is used. This refers to the knowledge, or the level of knowledge, a senator would have about the contract. The courts have interpreted this expression to mean actual knowledge, or a good reason to know about something. Also, the expression used is "knowingly and wilfully". "Wilfully" can be equated with intention or mere intent. The courts have stated that it can be interpreted as meaning intentionally, knowingly, and deliberately.

It is interesting to note that the English version uses "knowingly and wilfully", whereas the French uses *volontairement*. There may be arguments that technically there are differences in meanings, but in my opinion, taken in context, both the French and English versions refer to the same thing, that is, knowing what to do and wanting to do it, "knowingly and wilfully".

● (1550)

Another part of the section that I would just like to briefly comment on is again in subsection (1), where we say that a party shall be "a party to or be concerned in any contract". In French, this is translated as:

[*Translation*]

"y être mêlé d'aucune autre façon."

[*English*]

In my opinion, “concerned in” has the same meaning as “interested in”, and the discussion regarding the Wheeler case above about “interested in” would apply here in the context of “concerned in”. In fact, an argument would be made that the French version is even more far-reaching when it uses:

[*Translation*]

“y être mêlé d'aucune autre façon.”

[*English*]

Any remote connection with the contract would be caught by this section.

In the exception in paragraph 14(4)(a), which says, and I'm just paraphrasing, that a senator cannot be a shareholder of any company that undertakes a contract for the building of any public work, I was interested in looking at what is meant by “public work”. I have reviewed the meaning of “public work” *en français*, either *travaux publics* or *ouvrages publics*.

This expression is defined in the Department of Public Works and Government Services Act. It is used in about 24 occurrences in the federal statutes, always referring to this definition of “public work” as meaning “any work or property under the management or control of the Minister”. So we see that it's a very large-encompassing definition that covers a wide array of works and must, in my view, be given a very wide definition or interpretation.

I have also noted that previous definitions of public works in previous versions of the statute included very long lists of works such as bridges and buildings, etc. It appears that the actual definition of public works is an attempt by the legislator to cover as many meanings as possible without having to list each and every one of them individually.

Those were the comments I had to make about this section. Mr. Tardi and I will both be pleased to answer any questions you may have.

Thank you.

● (1555)

The Vice-Chair (Mr. Pat Martin): Thank you very much, Mr. Denis. That was really interesting. It's exactly what we wanted from you, I believe, if I can say that.

For a round of questioning, it's an odd situation we find ourselves in. Most of the questions will be from our government-side colleagues, I think.

Madame Marleau expressed an interest, first of all.

Hon. Diane Marleau (Sudbury, Lib.): As you know, we're dealing with the case of someone—I don't know if he actually signed the contract—who was a shareholder of a company that signed a contract to lease a building to the Government of Canada prior to the person becoming a senator. Does the conflict of interest in any way direct itself in a case like this, where it was a prior act? I gather he's still a shareholder, but I don't know that much more about it.

Mr. Richard Denis: I'm not aware at all in fact of the particular situation you're looking at, or even the facts. In my interpretation of this section, what you have to do is look at it in the present tense. If you have two conditions that are met, essentially—that a person is a senator and has a contract or is a shareholder at the present time—that's what you look at. It doesn't matter when the person either became a senator or when a contract was entered into.

Hon. Diane Marleau: In other words, he probably shouldn't have become a senator if he was a shareholder in a company that had signed a contract with an agency of government, is what you're saying.

Mr. Richard Denis: I'm not necessarily saying that, because subsection (2) provides in fact for a recourse if someone finds this situation or claims that the person should not be a senator. There is a recourse, which is a civil suit for a penalty of $200 per day for the time during which they claim this occurrence took place. In other words, there's a court that has to be apprised of the situation in order for that to be waived.

Hon. Diane Marleau: We've adopted this conflict of interest guide, but the Senate has not. How does that impact on the Senate, or is it an automatic?

Mr. Richard Denis: I have not studied the rules of the Senate, but I'm aware of them, and I can tell you that in what will be the conflict of interest code for senators there will be of course new rules applying, but what you'll be looking at to replace sections 14 and 15 will be essentially sections 22 to 28. I will quote section 27, dealing with pre-existing contracts, which says the rules in sections 22, 23, and 24—which are essentially similar to what we're looking at—“do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension”.

The new rules will specifically say that when you become a senator, the rules apply the moment you become a senator but not to the past, whereas for the rules in sections 14 and 15, it's certainly not as clear as to whether they apply now.

In terms of this section not being clear, I just want to point out that the other case where these sections were applied was an old case from 1935 called *Kelly v. O'Brien*. It's where the judge, referring to these sections on the conflict of interest of a senator, specifically said “The statute is not an easy one to construe”. Even in the interpretation of it there have always been differing versions as to how you look at it and what it means.

My point before was that by looking at the provisions, you're getting maybe an opinion as to what they may mean, but ultimately it's up to you to decide what it said.

Hon. Diane Marleau: Where does this particular page come from? Is that from you or from them?

Mr. Richard Denis: This is a page I prepared myself.

Hon. Diane Marleau: It says under number 4:

> This section does not render any person liable to forfeiture by reason only that the person is a shareholder in any corporation having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work;

Mr. Richard Denis: That's right. In fact, the rules of the House of Commons as they stood before we had our own ethics commissioner were similar to the ones the Senate has now. In other words, being a shareholder in a company is an exception here: unless the company that undertakes the contract is building a public work. That's why earlier I looked into what exactly was meant by "public work", concluding that it's a very wide definition, meaning pretty much anything that is owned by the federal government.

Just to be clear, I'll say being a shareholder is not in itself an exclusion, it's an exception. It doesn't prevent the senator from being—

Hon. Diane Marleau: It doesn't prevent it.

● (1600)

Mr. Richard Denis: No.

Hon. Diane Marleau: It's not clear in my mind whether the senator is in conflict or not. I don't think it's clear in any of our minds that—

Mr. Richard Denis: Again, I'm not familiar with the facts, and those would have to be analyzed. Being a shareholder is one thing, but what kind of shareholding are we talking about? Is it direct or indirect? Is it through a trust? There are so many possibilities that it would have to be assessed by someone in terms of what we're looking at exactly, but from our point of view, we certainly cannot comment on the specific facts at hand.

Hon. Diane Marleau: My understanding is that it's a lease for a building that was signed a number of years ago, when the person was not a senator, but he then became a senator. He was I think a director of the company; I'm not sure.

You may know more about it than I do.

The Vice-Chair (Mr. Pat Martin): Yes, I do, but since we decided to do this in public and not in camera, maybe we have to stay away from some of those specifics. It isn't any secret that a CEO and director, an officer of the company, is different from, I suppose, a shareholder, and someone with a $30 million equity share in the company is a substantial officer of—

Hon. Diane Marleau: But is that still the case now?

The Vice-Chair (Mr. Pat Martin): That's our information, yes.

Hon. Diane Marleau: I wasn't aware whether that was the case then and now isn't.

The Vice-Chair (Mr. Pat Martin): No, that's the status as we know it presently.

Hon. Diane Marleau: I don't know enough about it.

I can't say it's much clearer, to be honest. It's a difficult thing for us. I'm not a lawyer by profession, so it's difficult for me to know exactly whether he really is in conflict or not. It's not for us to decide, right?

The Vice-Chair (Mr. Pat Martin): Not at this stage, at least.

Mr. Richard Denis: Our analysis is that these sections are not clear, but I think they have to be given fairly wide interpretation because of the many qualifiers you find and the possible interpretations.

Just going over what I looked at before, where you have "directly or indirectly", what does "indirectly" mean? How far do you go? What does "knowingly and wilfully be a party to or be concerned in any contract" mean? Even looking at the jurisprudence, you might find different interpretations.

Looking at the exception is one thing, but even the French version is open to wide interpretation. These are sections that date from a long time ago. Being the Parliament of Canada Act, they were drafted a long time ago, and maybe the language is not as clear as it could have been. Of course, that's probably one of the reasons why it's being replaced.

The Vice-Chair (Mr. Pat Martin): Madam Marleau, your seven minutes are up.

Perhaps somebody else would like to ask a question.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): I'm sure I don't have seven minutes, but I'm willing to share my time if there are other questions.

[*Translation*]

I'm looking at the translation. Is this the official translation?

Mr. Richard Denis: Yes, it's a copy of the act.

Mr. Marc Godbout: Subsection 14(4)(a) reads as follows in French:

> a) est actionnaire d'une personne morale et liée par contract ou marché avec le gouvernement fédéral, sauf dans le cas d'exécution de travaux publics;

As far as the translation goes, that's quite a stretch from:

[*English*]

"undertakes a contract for the building of any public work".

[*Translation*]

Mr. Richard Denis: In terms of comparing the two versions, that is the French and English versions, it comes down to a matter of legislative interpretation. It's quite likely that the Act was drafted in English originally and then translated into French. However, the fact remains that under the Official Languages Act, both versions carry the same weight. A judge would have to look at both versions and rule in a manner that is consistent with the interpretation commonly given to these provisions.

Again, it can be argued that using the words "exécution de travaux publics" to render in French the expression "building of any public work" reflects a very general approach.

By the same token, it can also be argued that this provision is vague and ambiguous.

● (1605)

Mr. Marc Godbout: I just want to be certain that I understand you correctly. Theoretically, this would mean that a person who has or has had a contract with the Government of Canada would forever be excluded from serving in the Senate, if that contract is still in force.

Mr. Richard Denis: Except if that person is a shareholder. But yes, that is the conclusion one would arrive at after analysing the situation and the facts, as I did earlier by applying the provisions of the act. This means that a person who has entered into a contract could, by virtue of a very broad interpretation of this provision, be covered by this provision. Therefore, a person who meets these two conditions would theoretically never be eligible to be a member of the Senate.

Mr. Marc Godbout: Continuing on in a similar vein, if a person declares that he has a contract with the government, whether before or after being appointed to the Senate, can that person — and I'm asking the question for my own personal information, not because I'm interested in a Senate position — declare that conflict to put some distance between his duties and his personal assets?

Mr. Richard Denis: In my opinion, no. Firstly, section 14 sets out a number of conditions. A person who meets the conditions listed is automatically deemed to be in a conflict of interest.

If we compare your hypothetical case with the Wheeler case, we note that the circumstances are identical. The Supreme Court ruled that despite the mayor's efforts to declare his interests — that is asking questions, seeking a legal opinion from the city's legal counsel, meeting with the provincial attorney general to get his opinion, doing everything he was told to do — ultimately is was all for naught. The conditions set out in this provision apply and if a person is deemed to satisfy the conditions, then that person is automatically excluded from holding this position. That was the determination in the Wheeler case.

Mr. Marc Godbout: Was the mayor a shareholder or...?

Mr. Richard Denis: Four companies were involved and the mayor owned shares in three or four of them. He was also an officer, that is a director of one company, and secretary-treasurer of another. This case involved virtually all of the positions of authority within a corporation.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): This is a complex matter and I'm trying to get a grasp of the issue. Let me give you a hypothetical situation and you can tell me whether or not a person in this situation would be eligible for a Senate posting.

At one point in time, a person had entered into a contract with the government, either as an individual or as a senior officer of a company. Currently, this person is no longer a shareholder in this company. Is that person eligible to become a senator?

Mr. Richard Denis: I'll let my associate Mr. Tardi answer that question. I believe he also wanted to comment further on this matter.

[*English*]

Mr. Gregory Tardi (Senior Legal Counsel, Legal Services, House of Commons): Mr. Chairman, if I may, I'd like to answer the question generally in the same vein as Monsieur Denis has answered, perhaps giving a slightly different form of explanation.

My practice is really to take a larger situation and try to break it down into its component legal elements. The line of questioning seems to relate to whether an individual who may or may not have a difficulty under section 14 can become a senator.

In response to that, what I'd like to suggest to you as a possible way of thinking about this is that the criteria for becoming a senator are not the legal elements aimed at by sections 14 and 15 of this particular statute. Becoming a senator—eligibility to join the Senate, to be elevated to the Senate—pertains to the text of the Constitution Act, 1867.

I don't have the text in front of me, but if memory serves from law school, the two criteria are being 35 years of age and holding property in the sum of $5,000. That's it. Anyone who meets those criteria, whether that person has a contract, is a director, is a shareholder, or conducts business in any other manner—any such person—is in my view eligible to become a senator.

Where sections 14 and 15 kick in, in my respectful view, is in how one manages one's business affairs once a call to the Senate has been received. If the person invited to join the Senate has conducted business with the Government of Canada, I'd like to suggest that the proper view is it doesn't render the person ineligible; it simply means that person has to rearrange his or her affairs so as to avoid any, as the title of the group of sections says, conflict of interest.

The version of the Parliament of Canada Act that includes sections 14 and 15 specifically deals with the handling of money and the property that goes with the money. The legislators could have taken a different view. They could have prevented individuals falling into this category from voting on issues that concern them. They could have taken yet another view. They could have said such individuals are at risk of loss of their seat in the Senate, and that would have been pretty much a self-defeating proposition. You don't get appointed to the Senate just to lose your position. What's important in light of sections 14 and 15 is to arrange your business affairs in such a manner as to avoid any real or potential conflict of interest.

I'm almost tempted to say that the newly appointed senator should seek the legal advice of the law clerk of the Senate in determining how to do that. My colleague said that sections 14 and 15 themselves have hardly ever, if ever, been interpreted by the courts. That's because the law clerk of the Senate has or seems to have given appropriate legal advice to these people.

I wanted to draw your attention to this difference between eligibility for the Senate and management of one's affairs once a person is invited to join.

● (1610)

Mr. Francis Scarpaleggia: Thank you very much. That was very clear.

I'd just like to follow up on a point you made. You seemed to suggest that the Parliament of Canada Act could have been written in such a way that a person who becomes a senator could be forced to resign after the fact, after he or she has become a senator, if that person doesn't meet certain conditions under a new, revised Canada Parliament act.

Let's say there was a condition that was created in the Parliament of Canada Act. In other words, could the Parliament of Canada Act, if it were so drafted, almost override the eligibility criteria in the Constitution—not override them, but make them almost irrelevant? Could you say, you have $5,000 of property and are over 35 years of age, so you're eligible, but you worked for a company that signed a contract with the federal government and therefore, under the new Parliament of Canada Act, you're going to have to resign your seat?

● (1615)

Mr. Gregory Tardi: Mr. Chairman, sorry, but I may not have expressed myself clearly enough on this point.

Among rearranging one's business affairs, having the ability to vote on issues where the individual is concerned, and a third option of losing one's seat, we should take the view that the solution presented by the Parliament of Canada Act is the least intrusive one.

Mr. Francis Scarpaleggia: It would force you to rearrange your affairs in a certain manner, and then it would be up to you to do that or resign.

Mr. Gregory Tardi: The "or resign" part isn't even there. In a sense, it's understood.

But the general policy of the provision seems to be that there is a prohibition on using the political system for self-dealing or for unjust enrichment, or however you want to designate it. Once you become a senator, it is up to you—no matter how you have enriched yourself in your previous life—to shield yourself and avoid engaging in any conflict of interest by doing business with the Government of Canada.

Mr. Francis Scarpaleggia: That should be a fairly easy condition to meet. You could still remain a shareholder in a company that does business with the government, but you could arrange your business in such a way that you would not communicate with anybody from the company on that issue—have a blind trust situation. You could still maybe sit on a board of directors but recuse yourself when the issue was...so that's all open. Those are all fair ways to deal with this situation.

Mr. Gregory Tardi: I believe that's right, Mr. Chairman.

The Vice-Chair (Mr. Pat Martin): Okay. We've been kind of loose about the questioning because there's no reason to be otherwise. Unless anybody else has something, I have a few questions I'd like to ask.

Hon. Diane Marleau: The only thing I wanted to add, if I may, is this. In the case of Wheeler, as the mayor, he actually is the person who signs the contracts for the municipalities. In the case of a senator, he would not be the one signing any contract for anything having to do with the government because signing a contract is not a legislative function. The contract would be under Public Works, the responsibility of the Minister of Public Works and of the bureaucrats in Public Works.

Would that make a difference? That's why I'm asking, using the case of Wheeler, where the mayor, de facto, is the person who signs or gives the authority to sign.

Mr. Richard Denis: I'm not sure it would necessarily make a difference. In Wheeler, the facts were related to the provision as it stood, which said that no person could be a mayor if he or she had the interest.... Here we have a comparable situation, but that's as far as you can go in terms of parallels, I think.

Hon. Diane Marleau: I just wondered because there is a difference between being mayor of a municipality and being a senator.

Thank you.

The Vice-Chair (Mr. Pat Martin): Thank you.

The obvious questions have been asked. This is helpful, though. We've chosen to do this in two steps, as I understand, by agreement at the last committee: we would call you in now and get this general overview; then, if we see fit, we'll even call the senator in and ask some specific questions about what he held, and when, and what direction or control he may have over the operations of this business, etc. I'll try not to get into that side of it.

Just for my own information, let's say I own shares in Bombardier, for instance—which I don't. The government may buy something Bombardier makes for the air force, for instance. As a senator, I don't suppose just owning shares in that company would put you in a conflict of interest.

Mr. Richard Denis: No, not at all. That's covered in paragraph 14 (4)(a).

The Vice-Chair (Mr. Pat Martin): That's what's contemplated there.

Mr. Richard Denis: Yes. It says:

> 14(4) This section does not render any person liable to forfeiture by reason only that the person...is a shareholder in any corporation having a contract or agreement with the Government of Canada....

● (1620)

The Vice-Chair (Mr. Pat Martin): Okay. So that's clear; that's not the kind of thing we're talking about.

In the case of a building like this, though, 550 de la Cité, it could be that it was made necessary because of the amalgamation of the National Archives and the National Library, which was a government decision back in 2001-02. That's exactly when Paul Massicotte started building this building on spec. It was finished in 2003 and then became, by a happy series of coincidences.... To build an office building on spec and then get the Government of Canada—almost tailor-made, custom-made for that purpose—as an anchor tenant for a long-term.... With the connection as a senior fundraiser for the Liberal Party, etc., you can see why people start asking questions. And then to be made a senator.... You really have to wonder if it's legal. Is it moral and ethical? Those are questions I hope we can address if we go further.

Hon. Diane Marleau: Wouldn't it depend on how the contract was signed and all the rest of it? That part is separate. He was outside of government at that point. I don't know in this case what happened. I couldn't say.

The Vice-Chair (Mr. Pat Martin): I think the reason.... We can't help but ask these questions when Mr. Massicotte's name keeps coming up at the Gomery commission, for heaven's sakes. I mean, Mr. Gaudet—

Hon. Diane Marleau: Did it come up? I didn't hear it.

The Vice-Chair (Mr. Pat Martin): Over and over again. The people say, we couldn't raise any money in Quebec for the Liberal Party because Mr. Massicotte and Mr. Lalonde always got there first and shook the bushes, so there was no money left to fundraise. This is the context in which his name keeps coming up as the senior fundraiser.

Hon. Diane Marleau: I didn't hear that.

The Vice-Chair (Mr. Pat Martin): You can see why.... I didn't raise this issue to be studied at our committee, but I certainly understand why.

I guess my question is with the term "party to or be concerned in". You tried to speak to that a little bit, Mr. Denis: "party to or be concerned in" any contract where the senator may have an interest. Just how remote can that connection be?

As an officer of a company or the CEO of a company, I guess you have a more direct opportunity to benefit from—

Mr. Richard Denis: Even that, Mr. Chair, is open to interpretation. In being a party, obviously, there's no problem. Maybe looking at subcontracts could be included, but then again, you'd have to look at the specific facts and almost draw your own conclusions. How far does it go? Maybe I would have to look further into the cases. There certainly may be an issue of remoteness, in other words, in how far you could go in that connection between the contract and the person.

I cannot give you a clear answer here, but that's one of these other provisions that is very wide in terms of its interpretation. It would be almost left to your appreciation of the facts whether you consider it to be "concerned in" or indirect enough. It really becomes a question of your own interpretation of the facts.

I can give you some legal basis or interpretation, but at some point it's really outside of our own field, if I may say so.

The Vice-Chair (Mr. Pat Martin): I have one other technical question.

Do you know if the fine of $200 a day has ever been updated? Was the $200-a-day penalty put in place at the same time as the $5,000?

Mr. Richard Denis: If I refer to the previous case of *Kelly v. O'Brien* of 1935, they talked about the penalty of $200 for every day during which the senator...etc. My understanding is these are provisions that were imported from other Commonwealth jurisdictions, so I couldn't tell you if the amount was comparable, if it was raised at some point.

We could look into that, but from my understanding of these provisions, they were never or very rarely amended at all, so this dates back a long time.

The Vice-Chair (Mr. Pat Martin): I was just thinking that the penalty of $200 a day isn't that onerous when you're talking about $100 million over a 10-year contract. It's almost worth just paying the fine and carrying on with the status quo, isn't it? It's hardly a deterrent for a large-scale contractor who will benefit anyway.

● (1625)

Mr. Richard Denis: It's not for me to comment.

The Vice-Chair (Mr. Pat Martin): Those are the only questions I had. Are there any more questions for the witnesses, or can we let them go?

Thank you, Mr. Denis and Mr. Tardi. That was very helpful.

The meeting is adjourned.

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