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Tuesday, October 20, 2009

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Chair

Mr. Paul Szabo

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•(0905)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): This is the 31st meeting of the Standing Committee on Access to Information, Privacy and Ethics.

We have two orders of the day. One is a very brief one, namely committee business dealing with the steering committee report to the full committee; and the second is to consider the annual report of the activities of the Conflict of Interest and Ethics Commissioner in relation to public office-holders under the Conflict of Interest Act for the fiscal year ended March 31, 2009, referred to our committee on Wednesday, June 17, 2009. The commissioner is with us.

Colleagues, what I would like to do first is to deal with the steering committee report. You have had circulated to you prior to this meeting a calendar of outstanding or pending work, or matters that have occurred subsequent to our return. The committee has reviewed all of those matters and slotted them in. We had a very good meeting—it didn't take very long—and we were unanimous that this would be a good starting point.

Now, as the members know, the committee at any time can propose amendments to its scheduled work, depending on the evolution or development of any other area, as well as any new items. I'm not going to go down the list, but I would indicate to you that there are five meeting days that have no business currently scheduled. They are November 26 and 30, and December 3, 8 and 10. So we do have room for additional work, or maybe amplification of work that is already listed here.

Are there any questions with regard to the steering committee recommendations to the full committee?

If not, is it agreed that we adopt this report?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you very much.

Our witness today is Mary Dawson, the Conflict of Interest and Ethics Commissioner.

Welcome, Commissioner. It's very nice to see you again. As you can see, we have a couple of new members on our committee. We thought it was important to bring before us all of our commissioners with whom we have matters in common, first of all, to deal with the business at hand, and secondly, to allow the members an opportunity to meet and hear you and to ask you some questions.

Today we're here with regard to your 2008-09 annual report on public office-holders, as referred to our committee.

I understand you have some opening remarks for us. I would first invite you to introduce the colleagues you brought with you and, second, to proceed with your brief statement.

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you very much, Mr. Chairman.

I'm Mary Dawson, the Conflict of Interest and Ethics Commissioner.

With me today is Nancy Bélanger, our general counsel; Lyne Robinson-Dalpé, our assistant commissioner, compliance and advisory; and Eppo Maertens, acting assistant commissioner, learning and communications.

The Chair: Welcome to all.

[Translation]

Ms. Mary Dawson: Mr. Chair and members of the committee, thank you for inviting me to appear before you today. I am pleased to have this opportunity to speak about my 2008-2009 annual report relating to the Conflict of Interest Act and the work of the Office of the Conflict of Interest and Ethics Commissioner.

[English]

In my annual report I refer to the past year as one of consolidating and strengthening the foundation. Emphasis was placed on applying the act fairly and consistently and on communicating its requirements to public office-holders. My annual report addressed, as well, a number of areas of the act that present challenges. I will briefly outline some of the initiatives undertaken by my office in relation to these areas, but before doing so, I want to summarize our regular day-to-day accomplishments over the past year.

The bulk of the work of my office involves helping reporting public office-holders comply with the act on appointment and remain in compliance throughout their time in office. Some 950 individuals assumed new responsibilities as public office-holders in the last fiscal year, including about 500 reporting public office-holders. New reporting public office-holders go through an initial compliance process that involves submitting a detailed confidential report to my office. These reports are reviewed by staff, who discuss potential conflicts of interest risks with them and outline the steps they must take to comply with the act. Often advisers assist reporting public office-holders with complex arrangements, such as those involving trusts and outside activities. In addition to the initial compliance process, the act requires a formal review of compliance arrangements on an annual basis.

Over the past year, my office contacted over 900 reporting public office-holders to review and, where necessary, update the arrangements they had made previously to comply with the act. Reporting public office-holders are also required to make confidential disclosures and public declarations as needed throughout the term of their appointments. These are required in connection with the receipt of certain gifts, recusals, employment offers, and material changes to matters that need to be reported under the act. In addition, my office regularly receives phone calls, e-mails, and letters from current, former, and potential public office-holders with questions on the application of the act to specific situations.

Responding to these requests for advice is among the most complex aspects of our advisers' work, as most of the questions raised with my office involve situations in which the application of the act is not immediately apparent and for which there are no precedents. I'm particularly proud of the advisory work done by advisers in my office, and I believe it accounts in large measure for the infrequent need to conduct investigations. Between April 1, 2008 and March 31, 2009, I reported findings on three examinations relating to public office-holders. There were four other instances where members of the House of Commons raised concerns with me about possible contraventions of the act by a public office-holder. In each of these cases, I clarified for the members the specific requirements of the act in relation to the questions they raised, and they did not proceed with a formal request.

As noted earlier, one of my priorities over the past year has been to communicate to public office-holders the requirements of the act. My office developed a guideline and several information notices that have been posted on our website. We also held information sessions for ministerial staff and other public office-holders. We redesigned the website to make it more user-friendly, and we improved the public registry that contains the summary statements and public declarations of reporting public office-holders. We've implemented administrative procedures to assist reporting public office-holders who regularly receive gifts. In particular, my office has made formal arrangements with a number of offices, notably ministers' offices, where protocol gifts are frequently received, for regular reporting of gifts every few weeks.

In my annual report I identified a number of areas of the act that present challenges. These include sections relating to monetary penalties, divestment, post employment, and self-initiated examinations.

The act allows me to impose penalties of up to \$500 for failures to meet a number of reporting requirements. After developing appropriate processes, including a system of reminder notices, my office implemented the regime in November 2008. Our approach reflects the intent of encouraging compliance with the act's reporting requirements rather than seeking to punish.

● (0910)

In September 2008 I issued one notice of violation, but I did not ultimately impose a monetary penalty in that case. Earlier this month I imposed an administrative monetary penalty for a failure to report the holding of an office in a corporation. I note that there is no penalty in the act for violations other than those involving a failure to report.

With respect to divestment, a second issue addressed in my annual report involves the act's divestment requirements. I noted my ongoing concern about what appears to me to be an over-breadth of the provisions that prohibit reporting public office-holders from holding controlled assets. The prohibition applies to all controlled assets held by a reporting public office-holder whether he or she is a minister, a ministerial staffer, a senior public servant, or a full-time member of a federal board or tribunal, and whether the controlled assets are held personally, in a joint account with a family member, as a trustee for a beneficiary, or as an executor of an estate.

My main concern with this prohibition is that it applies regardless of whether or not the controlled assets in question could place the reporting public officer-holder in a conflict of interest. It would appear that it goes beyond what would be needed to meet the act's stated purpose of minimizing the risk of conflict of interest. The breadth of the prohibition results in a significant number of difficult situations, such as trusts, executorships, and joint accounts.

The third issue I raise in my report involves the act's post-employment provisions. In particular, I note that it's difficult to assess whether reporting public office-holders are meeting their post-employment obligations and, more generally, how effective those provisions are, given a lack of reporting requirements.

A fourth issue I discussed in my annual report relates to my power to self-initiate examinations under the act. This would usually result from information coming to my attention through media reports or sometimes from private individuals. In cases where I consider launching an examination but ultimately decide not to, I cannot make known my reasons for not proceeding. This serves to protect the privacy of public office-holders. However, in cases involving well-publicized and controversial allegations, I find it unfortunate that I'm limited in my ability to make public my reasons for not pursuing a matter.

One last note on that before we begin, though, is that there are a number of complaints brewing. I can only confirm whether I have commenced an investigation under the act and can discuss no details of an investigation while it's ongoing. The report at the end is made public.

Finally, although it's not related to the Conflict of Interest Act, members may wish to know that this Friday, October 23, I will offer an information session on the recent changes to the members' code, which is not what we're talking about today. It was approved last June, but it affects all of you around the table. It will be part of the Library of Parliament's seminar series.

● (0915)

[*Translation*]

Mr. Chair, I appreciate the committee taking the time to review my report and examine these issues. I am happy to answer any questions you may have.

[*English*]

The Chair: Thank you kindly, Commissioner.

After two years of getting the situation in order, you have made a great deal of progress. I noted particularly that your website updates are a little more user-friendly, and I know that the members will appreciate the other initiatives you have embarked upon.

To questions now. We will begin with Mr. Wrzesnewskyj, please, for seven minutes.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you.

Thank you, Madam Dawson, for appearing before the committee once again.

Madam Dawson, as you and all Canadians are aware, there is an ethical debate taking place, raging in the country, that calls into question the very trust that people have for public office-holders, and the public is turning towards us here to find a way to resolve this particular issue. I understand from your commentary that although your title includes the word “ethics”, the mandate of the act, the rules by which you govern your investigations do not encompass that particular area.

You're quite aware of the debate that's taking place around these misrepresentations around phony cheques. You must have looked at this. Is it within your mandate to do an investigation into this particular matter?

Ms. Mary Dawson: I will be undertaking an investigation with respect to this matter. How I will undertake it, I'm not quite certain yet. Apparently there are about 50 things coming in to me; about 10 have arrived. I am going to take a look at the 50 when they arrive, if they arrive, and figure out how to handle them. I may well handle them with one general report.

● (0920)

Mr. Borys Wrzesnewskyj: I see.

You will be facing some particular challenges as well with the way the current act is written. In your report, do you foresee addressing that particular issue, that perhaps the act needs to be looked at to strengthen the ethical component of what people in the public assume is part of your mandate?

Ms. Mary Dawson: I'm not sure what I'm going to say at this point. I haven't even really started with an investigation yet. I'm still waiting for all the requests. But I have made observations elsewhere in my annual report—which is probably the appropriate place—about the fact that while “ethics” appears in my title, it does not appear in either the act or the code. So it's quite unclear as to the extent to which my mandate extends into ethical issues that are not expressly referred to in either the code or the act. In fact, one would wonder whether it extends there at all. Now, in matters of ethics, the lines are very blurred. One person's ethics are not another person's ethics.

So those are very difficult questions, and I'm still determining exactly what I have to say about that matter.

Mr. Borys Wrzesnewskyj: And that gets to the nub of the matter here. It seems the government has become quite blurred, in its own particular manner, in the way it proceeds when it comes to ethics. Because there appears perhaps to be a void in the act the way it's currently written.... No one could have foreseen that a government would so abuse its position. Perhaps it may be the role of this committee. Parliamentary committees, after all, do decide the destiny of their investigations and this committee is a committee of ethics. The expectation would be that we would look into ethical lapses. This, in fact, is more than just an ethical lapse. Over 50 of our colleagues on the government side seem to be implicated in this particular matter.

I know we decide our own mandate, but would you make recommendations to our committee on ways that we could strengthen the act so that in the future you would be able to look into these sorts of ethical challenges on the part of elected officials?

Mr. Greg Rickford (Kenora, CPC): I have a point of order, Mr. Chair.

The Chair: On a point of order, Mr. Rickford.

Mr. Greg Rickford: The member just alleged that there were—

The Chair: First of all, in this committee we state what the nature of the point of order is. Is it relevance, is it...?

Mr. Greg Rickford: Yes, it is relevance, sorry.

The Chair: Okay, on a point of order on relevance, please.

Mr. Greg Rickford: He just mentioned that there were as many as 50 charges. Is he talking about public office-holders for the purposes of the act?

The Chair: I'm sorry, that's not a point of order. We have to be careful about using points of order to get the floor to just make some points. We'll have some questions and you can raise it—

Mr. Greg Rickford: I'm not using it to make a point.

The Chair: It's not a point of order.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I do have a point of order.

The Chair: On a point of order, Mr. Poilievre.

The nature, please?

Mr. Pierre Poilievre: Yes, relevance.

You have ruled that only questions pertaining to public office-holders can be discussed before this committee. That's your ruling. Are you going to consistently apply that ruling, or are you going to do so selectively?

The Chair: The member raised this in the context of public office-holders.

• (0925)

Mr. Pierre Poilievre: There are not 50 public office-holders in the government.

The Chair: I understand the nature of the investigation. The member is posing some comments and questions. His facts speak for themselves. He may or may not be correct, but that's not for us to decide. Members can make statements if they wish.

I don't think it's a point of order, in all fairness. He may not be accurate in his facts, but it's not my role to correct members in what they say.

Mr. Pierre Poilievre: You have already corrected members by saying that the committee can only discuss public office-holders.

The Chair: No, right now, the item before us is the annual report of this commissioner with regard to the Conflict of Interest Act and its relevance to public office-holders. That is the order of the day. Members should try to keep to the matter before the committee.

Mr. Pierre Poilievre: Thank you for clarifying that. I trust the member will take the matter under advisement.

The Chair: I apologize for that.

Mr. Pierre Poilievre: Apology accepted.

The Chair: We have two minutes left in your slot.

Mr. Borys Wrzesnewskyj: I would like to address the point of order before the clock starts.

The Chair: It's not a point of order, so you have two minutes.

Mr. Borys Wrzesnewskyj: A very important point has been raised here. The responsibility on ministers of the crown, on public office-holders, is great, as are the expectations that the public places on them. Unfortunately, in this situation, ministers of the crown or public office-holders are in fact implicated. We at this committee might have the onerous task of having to hear from those ministers, and to hear how we've come to this situation.

Madam Dawson, if members of a committee have in fact been implicated—if their signatures are on these phony cheques—do you think it's ethical for those committee members to take part in debates and investigations? The committee would be investigating malfeasance on their own part.

Ms. Mary Dawson: I have to restrict myself to the act and the code. When I'm looking at these complaints, I have to see whether there's any grounding in either the code or the act. I'm free to make whatever remarks I feel like in my reports, but I haven't the faintest idea at this stage what remarks I'm going to feel like making, because I haven't even received all the complaints. So I think that's about all I can say with regard to the situation we're facing now.

With respect to the broader question of my ethics mandate, as I said, I'm free to make whatever comments I want to make in whatever forum I choose. But it is a bit unclear just what my role is with respect to the broader mandate of ethics. I'm not prepared to

make a particular recommendation at this stage about what ought to happen.

The Chair: Mr. Wrzesnewskyj, your time has expired.

I want to remind all honourable members and let new members know that under the Standing Orders of the House of Commons, the mandates of committees are laid out in section 108. Our committee deals with public office-holders. If it has to do with members of Parliament, it goes to the procedure and House affairs committee. These persons do not have to appear before our committee, and they can't be subpoenaed.

The commissioner has indicated that this issue may have many iterations, but it's still the same issue. The commissioner has said clearly that there are considerations going on, that no decision has yet been made. I think both the procedure and House affairs committee and this committee would have to determine whether, if there's a formal investigation going on, our dealing with this adds anything to the public interest and whether we would have sufficient resources to have people come before us who would be prepared to testify.

So let's be careful about proposing too many things here. I think we should be careful. Let's try to stick as close as possible to the annual report of the commission. That's the reason she is here today.

I will move on now. *Madame Freeman, s'il vous plaît.*

• (0930)

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Thank you, Mr. Chair.

Thank you, Ms. Dawson, for appearing before us today to present your annual report.

I would like to obtain some additional information in the light of what my colleague said earlier. These days, unethical behaviour is an issue that is often raised, whether here or elsewhere. It is becoming an issue on a number of fronts. We should be concerned by people's behaviours, the image that we project and the actions that might lead to confusion.

Your title indicates that you are responsible for ethics, among other things. You refer to your role, which is set out in the act or the code.

First, I would like to know what exactly your role is. Second, what role do you wish to assume in terms of ethics? We are talking about issues, including those that were raised by my colleague. Ethics are becoming a major issue that we can no longer avoid. We will no longer be able to pretend not knowing who is in charge of what. We will have to be accountable to and forthright with our fellow citizens regarding our actions and the responsibilities of elected officials and public office holders. We will have to be accountable. Canadians are truly concerned about ethics.

I will continue by asking you what role you would like to play. What are the limits of your current mandate? We get the impression that you are the ethics commissioner in title only, but that you have no power. That is what I would like you to clarify for us today, if you will. Am I making myself clear?

[English]

Ms. Mary Dawson: Yes.

If you don't mind, I think I will answer it in English.

[Translation]

Mrs. Carole Freeman: That is fine. Please proceed.

[English]

Ms. Mary Dawson: It is an area of unclarity, to begin with. My title has the term “ethics” in it. Nothing in the act or in the code refers to the word “ethics”. However, I'm in a context of ethical issues and I'm cognizant of ethical aspects of the matters that are provided for in the code and in the act.

In any specific case, I'm not sure how far I would go to comment on an ethical aspect of a matter, but nothing stops me from commenting on an ethical matter. But my mandate is to administer the act, and I'll just talk about the act since this is the forum that I'm in.

My mandate is to administer the act, to assist public office-holders to comply with the act, to advise and to report and to carry out investigations. But I have to ground myself in the provisions of the act, which is not to say that I cannot comment around a situation, but I cannot recommend actions that go beyond the provisions of the act.

[Translation]

Mrs. Carole Freeman: I apologize, Ms. Dawson. Allow me to interrupt. I am simply looking for some clarification.

Your mandate is set out in the act, which is entitled the Conflict of Interest Act, as well as in the related regulations. The Conflict of Interest Act is something you are very knowledgeable about because it circumscribes your mandate. It does not contain any reference to ethics. The legislation basically sets out the requirement for members of Parliament, ministers and public office holders to submit reports on their assets and holdings and to update their declarations. Beyond the gifts that they receive and those kinds of things, you can only impose penalties to sanction a failure to disclose controlled assets. Your powers therefore are quite limited.

To Canadians, you are the ethics commissioner, but the Conflict of Interest Act, which is the enabling legislation that sets out your mandate, limits your ability to deal with the current situation. I would not call this a crisis, but all Canadians share the concerns that have been raised.

• (0935)

[English]

Ms. Mary Dawson: Yes, my mandate is limited, but it's not as limited as it might first appear. The fundamental principle in the act is that you can't use your public office for private interests. The question of how that applies to a specific case is a difficult one. Very often my investigations involve that very question as applied to a specific case.

In large measure, whether a private interest is being furthered by some action of a member or a cabinet minister is a question of interpretation. It's a question of fact, but it's largely a measure of interpretation. No case I've dealt with has been black and white. As I

look at these issues, I gradually develop what I think the act covers. So there's no black and white answer.

[Translation]

Mrs. Carole Freeman: In fact, Ms. Dawson, in order to be very clear about your mandate, when you talk about public office holders—the only people over whom this committee has jurisdiction—the only problems that you have had to deal with have been conflicts of interest concerning individuals' assets and not MPs' recent actions. Is that right?

[English]

Ms. Mary Dawson: Right, or other people's personal interests.

[Translation]

Mrs. Carole Freeman: And only that. Therefore, you are not actually mandated to deal with the type of situation that my colleague described earlier. Is that so?

The Chair: That is correct.

[English]

Would you like to respond?

[Translation]

Mrs. Carole Freeman: Is my time up?

The Chair: Yes, you have had 7 minutes and 30 seconds.

Mrs. Carole Freeman: Thank you, Ms. Dawson.

[English]

The Chair: Mr. Siksay, please.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair.

Thank you for being here again, Commissioner Dawson, with your colleagues.

Commissioner, you've talked about the difficulty of doing ethics generally. I think we all recognize that in the context of Parliament it has its extra challenges, perhaps, with the partisan nature of the work we do, which I suppose is an extra layer on the task of doing ethics. You've been talking about how the law that you take your mandate from doesn't specifically talk about the term “ethics” in the mandate. Are there other models in other countries or in other institutions you've seen that address that issue in a different way that you think might be helpful for us to know about or to consider, that perhaps make that kind of mandate more explicit or take a different approach than does your office and the legislation we have here in Canada?

Ms. Mary Dawson: My first comment is that there's a difference between an act and a code. Acts usually are fairly precise, and it's an act we're dealing with for the public office-holders, which isn't to say that the acts are not infused with some ethical principles. Most of the rules—in fact, all of them—should be underpinned by an ethical philosophy. Every country has a different system, but many countries have codes rather than acts, to begin with, or statements of values. Off the top of my head, I can't give you a dissertation on that subject today, but it's one that interests me and that I continue to dig around to see.

• (0940)

Mr. Bill Siksay: In your discussion this morning you talked about how you can't publicize your decision not to initiate an investigation. Is there any exception to that? If the complainant, the person who was the subject of the investigation, gives permission, is that possible, or is there no question of the possibility of permission to release that information?

Ms. Mary Dawson: When I take a look at a matter that's raised, sometimes—in fact, frequently—I will write a letter to the individual concerned. It's always open to that individual concerned to release the letter, and that has happened on occasion. But aside from my annual reports with general comments or if I take an investigation to its completion, I don't have another way of releasing information about why I do not carry on an investigation, because I'm not allowed to talk about it except in my report.

Mr. Bill Siksay: In the report you issued on the Colin Watson case, one of the issues you identified was to try to determine the definition of "friend". Could you say more about that? Is that something that needs our attention? Are there better definitions out there that would make that kind of determination easier? Could you say a bit more about that issue you faced in that particular investigation?

Ms. Mary Dawson: Ultimately, I was satisfied with how I came down on that report. I thought it was an unusual case, because Mr. Watson kept referring to somebody as his friend, but I determined that in that particular case it was really a manner of speaking as opposed to a reality, for the purpose of the act.

I'm not desperate for a further definition; let me put it that way. I think I can work with where I'm at.

Mr. Bill Siksay: In your annual report you talked about some concern about reprisals against people who make complaints or provide information. I wonder if you could say a bit more about that. Has that been a serious concern, in your experience? Is offering protection to people who request action something that needs attention?

Ms. Mary Dawson: No. I think it was probably a comment—I've forgotten exactly when I made that comment—made in the context of why information is protected. I only release information on what needs to be released for the purposes of my report. I don't go out of my way to put people in situations where they could.... It's similar to the whistle-blowing kind of philosophy. I haven't had difficulty as such. I think I discussed that in the context of the rationale for rules.

Mr. Bill Siksay: An agreed compliance measure, I noticed, is a feature of the reporting you do. I gather that it comes about as a result of some interaction you've had with the public office-holder. Have you issued many of those? Can you tell me something about the process of coming to the point of issuing an agreed compliance measure?

Ms. Mary Dawson: I can't remember exactly how many there have been. I've issued just a couple. It is somewhere in the order of one, two, or three. You will probably see them a little more frequently. I'm getting used to the act at this point.

One of my philosophies is to make things as transparent as I can. I personally think that disclosure is probably the most important tool

in this kind of regime. I had a recusal that I made public under section 29.

What was the thrust of the question?

Mr. Bill Siksay: Have you done many of them? What is the process involved in coming to one of those?

Ms. Mary Dawson: They can be made public, but they don't have to be made public. I like the idea of making them public when it will shed some light on what I'm thinking about or on what is happening. You will probably see a few more of those section 29 decisions being made public.

Generally, they are usually come at when I have discussions with the individuals. It boils down to a sensible solution to a situation.

Mr. Bill Siksay: They don't come about as a result of an investigation process; they come about as part of the regular operation of your office in consultation with public office-holders.

• (0945)

Ms. Mary Dawson: That's right.

Mr. Bill Siksay: One of the other issues you raised is the problem of being notified of appointments so that you can make the appropriate approach to those appointees. Can you tell us what is happening on that front? Is there any improvement in that process?

Ms. Mary Dawson: We're taking steps to remind people that they should tell us in a timely way.

Lyne, could you add to that at all?

Mrs. Lyne Robinson-Dalpe (Assistant Commissioner, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): Yes. Basically what we've done is establish a mechanism with PCO, because they're the ones who make the Governor in Council appointments. They provide us with a weekly report on future appointments and on those whose mandates are terminating so we can inform them of their post-employment measures or obligations.

As for ministers' offices, we follow up with them regularly so they can inform us of appointments and departures.

The Chair: *Merci.*

We'll have Mrs. Davidson, please, for seven minutes.

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

Thank you very much, Commissioner, for appearing before us today, along with your staff members.

I'm new to this committee, so this is the first time I have heard you present. I must say, as you're going into your second year, I think that things have moved along fairly well.

I was glad to read your report. I know we are never there totally and we need to make sure we can keep evolving and have a process in place that allows us to do that. I think your report pointed out some very good things.

We've had a fair amount of discussion already this morning on the ethics portion of your comment that was in your report. I wanted to ask you briefly one further question on that.

You had reported that the title includes the word “ethics”, as we've discussed already this morning. But you then went on to say that you don't believe you have the mandate to address all ethical issues.

I know you've told us how you're free to comment on different things and determine what extent that goes to, but are there specific ethical issues that you do not believe you have a mandate to address that perhaps would be beneficial if you did?

Ms. Mary Dawson: I couldn't pinpoint one in particular at this time. The statement is a broad one. Ethics is much broader than the matters that affect people, as members or as public office-holders. I would never investigate an issue about the ethics of abortion or something like that. It has nothing to do with where we are. And as I also said, ethics does underpin the majority of the provisions of the act.

But on the spot, I couldn't name an ethical issue that I want to be able to investigate, although as I look at issues I may make comments as I go along. But nothing comes to my mind right now.

Mrs. Patricia Davidson: So was the statement made in the context of a general statement more than a specific one?

Ms. Mary Dawson: Yes.

Mrs. Patricia Davidson: Okay, thank you. That answers that. We had a lot of discussion, but I didn't know if there was a specific issue that was of concern.

Ms. Mary Dawson: No. Thank you.

Mrs. Patricia Davidson: Now, when I was going through the financial attachments that were here, I noticed that in your report you had stated that there's an office budget of \$4.5 million for salaries, if I'm reading it correctly. Is that correct?

Ms. Mary Dawson: Yes.

Mrs. Patricia Davidson: Okay.

And then in your report on page 22, you talk about having 47 positions, eight of which are vacant, and that you had trouble recruiting top-notch talent. So I'm looking at the \$4.5 million for 47 positions, and that works out to probably around a \$95,000 salary.

What presents the problem, then, recruiting and retaining talent with that kind of salary range? What other issues are we looking at that we need to be addressing?

Ms. Mary Dawson: Everybody has trouble recruiting the people they want, and there are always people moving around. It's the normal churn of employees that are available.

The other thing is that we face competition from the public service. They also have trouble sometimes filling all their positions. I think the point is no bigger than that, really.

• (0950)

Mrs. Patricia Davidson: So there are no specific issues that we need to be concerned about at this level.

Ms. Mary Dawson: No, I don't think so. As a matter of fact, I've made quite a bit of progress in recent months on staffing my positions. We have five vacant positions now out of 46 positions; that is what we're now saying we have. We must have eliminated a position. We're gradually filling our positions, and I think the office is stabilizing.

Mrs. Patricia Davidson: You talk quite a bit about compliance and how it has improved, and you talk about your education program, your notice of obligations to the public office-holders, and the reminders after 30 days and 50 days. I think those are absolutely good things to be doing, and it does take all of us a bit of time to get used to procedure that we haven't been following in the past.

You also point out that compliance is weakest when a person's situation changes. They may have made their disclosure under the act; they've changed position, and then they or you find that they're not in compliance. I would think that if they had made disclosures previously, they probably are very inadvertently missing this next step.

How can you improve awareness of this situation so that people are more in compliance?

Ms. Mary Dawson: It is just by contacting them or educating them in one way or another. We try to look for opportunities. We frequently send our advisers to give presentations, for example, to different boards that have lots of members, and I look for opportunities to give presentations myself.

The biggest thing we find is that people are supposed to report material changes to their holdings, for example, and we usually find out about them at the annual report stage. They don't do the reporting within 30 days. We ultimately find out about it, but the act isn't always top of mind when people are buying new shares or something.

It's an administrative issue. We just have to keep reminding people, and we look for opportunities to remind people.

The Chair: Thank you.

Time goes fast, but carry on.

Ms. Mary Dawson: For example, when people are in final compliance, we've added a couple of paragraphs to our letter reminding them about the interim things they have to watch for until their next annual report. We try in different ways.

The Chair: Thank you.

I'd like to raise, in the context of this first round, this whole idea of dealing with the ethical matters. One thing hasn't been mentioned. Commissioner, maybe you could enlighten the committee on the force and effect of *Accountable Government: A Guide for Ministers and Ministers of State*, 2008, which is under the Privy Council Office. These are the guidelines for ministers and ministers of state, which include annexes G and H on...interesting things.

The letter from the Prime Minister describes this document by saying, “These measures complement the Conflict of Interest Act”—which is what you operate under in your mandate—“and establish the most rigorous conflict avoidance regime in Canada.”

If the Prime Minister believes that this guide for ministers, plus the Conflict of Interest Act, are the whole package, and you can't deal with some of the nuances in the Prime Minister's package, who would a member make a complaint to on an item that's under the guidelines instead of the act?

Ms. Mary Dawson: The Privy Council Office is the administrator of the guidelines for ministers.

The Chair: Okay. I knew that, but I wanted members to know it too. There is another option here, and it may be the Privy Council Office. Members who are interested in pursuing this matter should consult them.

I also note here that it says, "Compliance with these Guidelines is a term and condition of appointment. Before appointment, a public office-holder shall certify that he or she will comply with these Guidelines." It would appear that in these guidelines there is a letter of resignation, undated, for each minister. Is that correct?

• (0955)

Ms. Mary Dawson: I couldn't confirm that, but I'm sure it's correct.

The Chair: Okay.

Go ahead, Madam Simson, please, for five minutes.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you, Ms. Dawson, for appearing again before the committee. I've found it very educational whenever you've appeared.

I'd like to get back to the question of staffing for a moment. You say you have five of 46 positions vacant. How many of your staff members are charged with vetting the submissions from public office-holders, from ministers?

Ms. Mary Dawson: I think it is in the order of about 20. We have eight advisers and then their managers. There is a total of 18 in that section, the compliance and advisory section.

Mrs. Michelle Simson: Okay, there are 18 people who would vet the submissions that they send in.

Ms. Mary Dawson: Yes.

Mrs. Michelle Simson: On average, how long does it take to get those vetted and back to the public office-holders?

Ms. Mary Dawson: It depends on the complexity, but I will let my compliance assistant speak.

Mrs. Lyne Robinson-Dalpe: All in all, they have 120 days to comply with the act, so in most cases we receive the information within 60 days. That's the timeline for them to submit their report, so technically we have 60 days to make sure the public office-holder is in compliance with the act. Depending on the nature of the information we receive, it can be two days for somebody to be in compliance with the act or it can take up to the full 60 days, and sometimes it extends because of the nature of the obligations and the assets they have, or sometimes they have to step down.

Mrs. Michelle Simson: Are they notified in writing when you've signed off, as it were, when you've found them to be in compliance?

Mrs. Lyne Robinson-Dalpe: Yes, they all receive a final letter once they're in compliance, saying they are in compliance with the act and, therefore, to remain in compliance with the act they have to inform us of these ongoing obligations.

Mrs. Michelle Simson: When I was first selected for vetting, I submitted my financial report and it took 10 months to get a letter back saying that I was in compliance. I was just wondering if that was the case with respect to ministers, and perhaps that could be an issue.

I wasn't out of compliance. I chased that letter to get it. Is there a possibility that there are omissions, because people do file on time and things do change, but they haven't even gotten a sign-off on their original submission?

Mrs. Lyne Robinson-Dalpe: I must apologize because in the context of members of Parliament, under the code, there are no such obligations for members to be in compliance within the 120 days, and because we've had a number of turnarounds in the advisory role, unfortunately, some of the members' files had been put aside and were not the priority because we had the 120 days under the act. I apologize for that. As I mentioned, under the code there is no timeline for being in compliance, whereas under the act there is a specific requirement of 120 days.

Mrs. Michelle Simson: Thank you. I didn't want an apology. I was just curious how long it took to vet it.

Ms. Dawson, you noted there is no penalty for violations under the act other than failure to report. If you were to extend penalties for violations, in what areas do you think it would be most beneficial for you and your office to do the job you'd like to do, or enhance it?

Ms. Mary Dawson: I hate focusing on penalties, because the objective of the act is to get people to comply. As I said, I'm not looking to penalize people. I noted the irony that it's for the somewhat less serious infractions that there are penalties and there aren't penalties for the more serious infractions, but in no sense is it an irony that I'm not necessarily looking to fill the void with....

I continue to think that the most important remedy against failure to comply is disclosure. The public should be aware when their representatives are not complying with the ethical rules or the conflict of interest rules. I'm not necessarily looking for penalties for those other infractions.

• (1000)

The Chair: Thank you.

Mr. Rickford, please.

Mr. Greg Rickford: Thank you, Mr. Chair.

Thank you, Ms. Dawson, for being here today, and to your staff with you.

I can appreciate the fact that you don't want to focus on penalties. I share the common belief and goal that this is really a process of getting to disclosure and leaving it at that. However, penalties do come up for discussion and I just want to flesh that issue out a little bit.

You mention in your annual report that you had implemented a penalty scheme provided for by the act and that you concentrated initially on compliance within 60- to 120-day deadlines for initial declarations by reporting public office-holders. In the next fiscal year, how do you plan to expand the penalty scheme to apply to the other requirements of the act? What are your priorities in these areas?

Ms. Mary Dawson: It's extremely difficult to be sure you know what you don't know with respect to gifts, recusals, offers of other employment. There are about six or seven things for which penalties are available. The only two we have a way of checking on, because there's a reporting requirement, is the 60-day and the 120-day. The other reporting is, in a sense, voluntary.

What we've done is to make sure that when we've done our compliance letter we list those things that people are supposed to be reporting to us within 30 days. Increasingly, I think we're trying to set up arrangements with particular offices, as I mentioned, with respect to gifts, so that there's a regular reporting of gifts. But if somebody doesn't tell us that they've had an offer of employment and they don't end up taking it, the chances are we will never find out about it. That's a problem.

Mr. Greg Rickford: Let's develop that a little bit. Which section or group within your organization would actually administer the penalty scheme? To finish out that line of questioning, do you feel you have sufficient resources to discharge this part of your mandate, given that you—

Ms. Mary Dawson: Yes, I do.

If somebody misses their 60-day deadline, it's at my discretion whether to impose a penalty or not. If they have a reasonable reason why they missed it by a week or two, I'm unlikely to impose a penalty. It's more in the flagrant cases that I impose it. The thing about the penalty isn't so much the money, it's the disclosure, because they're all reported.

Again, I've drifted a bit and I think I've lost your question.

Mr. Greg Rickford: Go ahead.

Ms. Mary Dawson: Similarly, with the 120 days it is even more so. Sometimes it's because our office is trying to work with that individual to figure out how they can best comply, and sometimes there are estates involved and so on. So the only time we would impose the penalty for missing the 120 days is when the person is simply not working with us or not complying.

Mr. Greg Rickford: So it's a lack of communication between the two offices.

Ms. Mary Dawson: Yes, when we're trying to proceed and they're impeding us from proceeding, then we may move to a penalty. But it's not the money, it's the disclosure and the way of seeing that the act is complied with.

Mr. Greg Rickford: Very briefly to finish, though, you do mention you have the power to assign penalties for non-compliance. I think it's up to \$500, is that correct?

Ms. Mary Dawson: Yes.

Mr. Greg Rickford: You say you plan to assess more fines for missed deadlines in the year ahead possibly?

Ms. Mary Dawson: Well, it's a hard thing to say. We hope that people comply, and if they comply, we won't be imposing any fines. I think the thing we really did well this past year was to get virtually everybody putting their report in within the 60 days.

You see, it was very important to me that we not unfairly impose penalties on certain people we found out about when others.... I

wanted the system to be clean, that we were imposing penalties fairly, so that's what we worked on last year.

How to go about dealing with the gifts remains a bit of a chasm, because the only way we find out about gifts is if somebody tells us. If they've come and told us past their 30-day deadline, I feel kind of bad imposing a penalty on them because they've come and told us, whereas the people who haven't told us, we don't know about. I have to figure out how to handle that.

• (1005)

Mr. Greg Rickford: I can appreciate that.

Thank you.

The Chair: Okay, we'll move on.

Monsieur Desnoyers, s'il vous plaît.

[Translation]

Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ): Thank you, Mr. Chair.

Ms. Dawson, in your report you state that you do not have the mandate to resolve all ethical issues. As a new member of Parliament, I must say that your answers leave me somewhat confused. I do not feel that you have much of a role to play in terms of ethics. You hold the title, but the act does not contain the powers needed for you to fulfil your mandate as the ethics commissioner. I feel that I must come back to this issue because it would be important to rectify the situation. Earlier, my colleague asked you whether you had any recommendations to make in order to strengthen the act and clarify your mandate. This is something that is clearly addressed in your report. I am a bit confused when I hear you speak, even though I understand that you are not in an easy situation.

My second comment is on the post-employment. How can you carry out your mandate? It must be almost impossible to assess whether people are meeting their post-employment ethical obligations. What we have is wishful thinking, especially given the staff rotation in senior positions. It all becomes extremely complicated. I am wondering whether you have sufficient staff to carry out that work. Monitoring has to cover all public office holders in order to ensure that they meet their post-employment obligations, but I doubt that you can carry out that part of your mandate.

[English]

Ms. Mary Dawson: Starting with the second question first, on post-employment, I think my suggestion is that it would help if there were some kind of reporting requirement.

The problem with post-employment is the same as it is with the offers of employment that I was just talking about. For post-employment, they go out the door and that's the end of any reporting requirement. As with gifts or recusals, we have no way of knowing unless somebody comes to us deliberately. What we have done is put the post-employment requirements in our letter that we always write when somebody's leaving.

There's another thing we've done. When we do see an article in the papers suggesting that somebody's doing something they shouldn't be doing, we'll contact them and talk to them about it. Usually what they're doing doesn't come under our act, but it will trigger us to see whether it's related to something that is under our act.

With respect to strengthening the mandate, the word "ethics" is there. I don't think I would ever propose that it be defined in any particular way. The only way you'd strengthen the mandate, I think, would be to add additional specific provisions. It works both ways. The person has to know what it is they're responsible to do. I think whatever I did with respect to the broader ethical area would be to suggest, but not necessarily find or observe.

I don't know if that helps, but that would be my answer.

[*Translation*]

Mr. Luc Desnoyers: Do I still have some time left?

The Chair: There are still 2 minutes on the clock.

Mr. Luc Desnoyers: Very well.

With regard to post-employment issues, there is of course the Commissioner of Lobbying. She could probably give you a lot of information concerning those who... I imagine that many people engage in lobbying activities. Do you consult her on a regular basis? That could help you in your investigations or inform you of whom the lobbyists are. There are surely many people who lobby the government.

• (1010)

[*English*]

Ms. Mary Dawson: We're not entitled to discuss our clients with anybody, and that would include the lobbying commissioner. But we do have access to the public reporting requirements under the Lobbying Act and we have had occasion to check those when we've dealt with some situations.

For example, if you see something in the press about somebody, it would be quite logical to take a look—and we do—at whether they are in fact registered lobbyists and at the reports made under the Lobbying Act. But with respect to commissioners comparing notes, I think that's not permitted under the act.

Lyne.

[*Translation*]

Mrs. Lyne Robinson-Dalpé: I simply wanted to add that the vast majority of public office holders are subject to the Lobbying Act, which sets out that they cannot lobby the government for a period of five years following their mandates. In other words, people who leave their positions must not engage in lobbying activities for a period of five years.

Mr. Luc Desnoyers: Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Poilievre.

[*English*]

Mr. Pierre Poilievre: Thank you for coming.

The Conflict of Interest Act has now been in effect for roughly two years. Has it been a success?

Ms. Mary Dawson: I don't know. It depends on who is asking, I guess. It's too broad a question for me, I think. But I think it's working. I feel that we're now working with it, it's now in place, and we're under control.

I mention all the time things that are difficult to enforce, as I was just discussing about the requirement to notify us within 30 days of certain activities. There's no way to know if somebody doesn't notify us of it, and the only remedy we have or the only recourse.... And actually we don't know; maybe everybody is telling us about their gifts. I don't know how many gifts are being received.

Each year we progress a little bit further on advancing our enforcement of the act, or our administration of the act. As I mentioned, this past year we've proactively gone out to a number of ministers' offices and said that every three weeks or whatever you must give us a report on any gifts you have received, which has expedited our finding out about them immensely, but now we might look at some other groups. I don't know what groups get gifts, but we're beginning to look at what types of people get gifts, and then perhaps we'll approach people who are the same as them. We're trying to find methods like that.

We're also trying to find opportunities to just tell people about it. As I mentioned, we're doing a session at the end of the week for MPs, and of course some MPs are ministers, so there is an overlap in the two instruments. We send our advisers out sometimes to see specific groups to tell them what their responsibilities are. We have information on the website. We'll increasingly have material on our information notice spots.

So education and a little bit of proactive searching is about all we can do.

Mr. Pierre Poilievre: Which tools that you have observed around the world in different ethics or conflict of interest regimes would you like to import into our Conflict of Interest Act in Canada?

Ms. Mary Dawson: We're in early days in our capacity to do that kind of research. In fact, what I've been working on is building up that capacity. I am just in the process of interviewing and hiring our new assistant commissioner, communications and learning, and learning really encompasses research and policy sort of thinking.

I have with me here a very good gentleman in those matters who has been acting, and we're developing the section there. So I am hoping that over the next year or two we'll be able to gather together quite a bit more information in that area, but first things first. During the first year or two what we had to focus on was getting our administration up to speed and getting our processes there.

• (1015)

Mr. Pierre Poilievre: How am I doing?

The Chair: You're doing just wonderfully, one more minute.

Mr. Pierre Poilievre: Thank you very much, because sometimes you just—

The Chair: I'm going to write that one down.

Mr. Pierre Poilievre: —know how to make a guy feel small.

The final question, then, is this. As you've come to learn and master this Conflict of Interest Act, would you say that there is a major problem or an obvious omission that you would like to see rectified?

Ms. Mary Dawson: I think the only one I've mentioned to date is that post-employment issue, about the fact that there's no reporting requirement, and so there's no way to follow up. There's no way to keep in touch. Nothing else springs to my mind at the moment, but as I say, my time for making those kinds of suggestions is my annual report. I try to put them in there.

Mr. Pierre Poilievre: Thank you.

The Chair: Thank you kindly.

Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Chair, I wanted to come back to your suggestion or your information about the PCO guidelines for ministers and ministers of state, and I'm wondering if the clerk could distribute those guidelines to the members of the committee so we would all have them.

The Chair: Absolutely.

Mr. Bill Siksay: I'm also wondering, Chair, if it might not be a good idea for the committee to invite someone from the Privy Council Office to come and discuss or present to us about those guidelines so we might have a chance to appreciate them better, particularly for those of us who are just learning this field.

The Chair: We'll allow members to think about that. We'll try to deal with that question before we adjourn today.

Mr. Bill Siksay: It's just a suggestion on that, Chair.

Ms. Dawson, I believe you have issued one administrative monetary penalty to Minister MacKay. Is that the first one that's been decided?

Ms. Mary Dawson: Yes, it is.

Mr. Bill Siksay: Then that's the only one since the act came into force?

Ms. Mary Dawson: We're in process...Lyne.

Mrs. Lyne Robinson-Dalpe: The only time a monetary penalty violation of the act is made public is when a penalty is issued. We have found another person in violation of the act, but unfortunately it's not public information because no monetary penalty was assigned to it.

Mr. Bill Siksay: Can you tell me how many investigations are under way now? I know you're waiting for these 50 possible interventions regarding that one particular issue, but are there others outside of that one?

Ms. Mary Dawson: Yes, another investigation is under way, and the 50 may be one investigation as well, I'm not sure.

Mr. Bill Siksay: Thank you.

That's all I had, Chair.

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Mr. Poilievre had asked about the success of this new act. So we have one success, I guess, if you could call it that, of a minister of the crown being found in breach of

the Conflict of Interest Act—Minister MacKay. The fine you applied was \$200. Do you think that's really adequate?

Ms. Mary Dawson: Obviously I did, because that's what I applied, but I'm only allowed to go up to \$500. It was the first one I had imposed. How much is at my discretion. I believe this was an inadvertence on his part. So there you go.

Mr. Borys Wrzesnewskyj: I find it interesting that our colleagues across the aisle would find a matter of such seriousness, that a minister of the crown has been fined, to be so humorous.

As the commissioner, but also as a Canadian, the first time you saw that photograph of the oversized cheque, of MP Keddy holding that cheque with his signature for infrastructure paid for by the Canadian taxpayers, but even worse with a large Conservative logo on it, was there a sense of disappointment as a Canadian, besides being the commissioner?

Ms. Mary Dawson: I think because I'm the commissioner I should be very careful about what I say. I will say what I have to say when I issue my report, after I finish the investigations.

● (1020)

Mr. Borys Wrzesnewskyj: You previously said you cannot use public office for private interest. On that particular cheque we see a large oversized Conservative Party logo replacing the flag of Canada, replacing the Maple Leaf. Will you consider this an inappropriate way of using public office for the private interest of a political party?

Ms. Mary Dawson: I can't comment on anything I'm investigating until I'm through. I'm sorry.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: Mr. Albrecht, please.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

I will just point out as well that I'm not a regular member of this committee.

Madam Dawson, thank you for being here today.

I want to focus for a few minutes on the divestment of controlled assets that you point out on page 14. In the first sentence you say that since taking office you've been concerned about the apparent overbreadth of the provisions in the act. You go on in the last part of that paragraph to indicate that this prohibition applies to all controlled assets held by a reporting public office-holder, whether personally, in a joint account with a family member, as a trustee for a beneficiary, or executor, and so on. Certainly, I have some concerns along with you there.

But then on page 16, in the second paragraph, you indicated that as of March 31, 2009, there were roughly 1,100 reporting public office-holders, and 119 had divested themselves of controlled assets through sales at arm's length. Then in the very last sentence of that paragraph, you said that of the 95, only five involved assets that would have posed a risk of conflict of interest.

The next paragraph goes on to speak about another category, in which only four would have posed a potential conflict of interest.

So in total, that's only nine in all of these.

Then at the very end of that section of your report, page 18, in the last paragraph you indicate that you believe some consideration could be given to providing the commissioner with some discretion in setting compliance measures in appropriate cases. Obviously, based on your statistics here, I can't at first blush disagree with you. But would this not add an undue burden on your staff in terms of making these individual decisions on every individual case? Would it actually add to the subjectivity of the decisions that are being made, as opposed to having it clearly identified within the act?

Ms. Mary Dawson: Well, I think the criterion would obviously be whether there was any potential conflict of interest, which isn't all that hard to figure out. We have to figure that out anyway when we're assessing the matter.

The fact that I can say that five posed a conflict and four were the other case suggests that it's a judgment call that we can make. That would be the main criterion, of course.

We have some difficult cases. My point there was that there's an awful lot of administration and churn spent over these difficult cases, and if there are only nine of them, there's less time that we have to spend on the difficult cases.

Mr. Harold Albrecht: But looking at the big picture, right now, the way I understand it—and I'm not a financial adviser—it indicates here that registered retirement savings plans must also be held in a trust that is separate from other investments. Is that accurate, or am I misunderstanding that?

Ms. Mary Dawson: Yes, it is. Some are covered and some are not. I'll let Lyne respond to that.

Mrs. Lyne Robinson-Dalpé: It's only those registered retirement savings plans that have controlled assets in them. So if you have one that contains all exempt assets, then it doesn't have to be placed in a trust.

Mr. Harold Albrecht: So that would explain as well the low numbers of those who have had to divest, because out of 1,100 you have only 117. That's a very small percentage. So the rest have RRSPs, but not in this category?

Mrs. Lyne Robinson-Dalpé: Right.

Mr. Harold Albrecht: Thank you. That's helpful.

The Chair: Thank you, Mr. Albrecht.

Commissioner, on your website there's a link to a Federal Court of Appeal case with Democracy Watch, Barry Campbell and the Attorney General of Canada. It deals with the interpretation of rule 8 under the Lobbyists' Code of Conduct. It was a very significant decision because, previously, to say someone had undue influence over a public office-holder you had to prove that there was influence. The decision of the Federal Court of Appeal was that all you have to demonstrate is that there was an attempt to influence.

That is very significant. The Commissioner of Lobbying has advised me that rule 8, improper Influence, says: "Lobbyists shall not place public office-holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office-holder." It has always been that you have to demonstrate that there was an influence. The Federal Court of Appeal decision is that there needs to be evidence only that there was an attempt to influence.

Now, because it's a Federal Court decision, have you adopted that lighter or less onerous burden, that to determine whether or not a public office-holder, under the Conflict of Interest Act...? It would have to be demonstrated only that the attempt was there, and that the public office-holder... We don't know whether or not they were influenced, but it really doesn't matter. Is your office now adopting that Federal Court of Appeal ruling with regard to onus of proof?

• (1025)

Ms. Mary Dawson: I think that onus of proof, by and large, applied in our act in the first place.

The Chair: Okay, fair enough.

Yes, Nancy.

Ms. Mary Dawson: Did you want to say something else?

Ms. Nancy Bélanger (General Counsel, Office of the Conflict of Interest and Ethics Commissioner): I would simply add that in the lobbying regime, it was a code of conduct; it was not enshrined in law. In our piece of legislation, we actually have a definition of what a conflict of interest is. It's giving an opportunity to a member. So the concept of just an appearance or an attempt is in there when you have an opportunity, but it's looking at the issue from the lobbyist's perspective, and the other one is from the public office holder's.

So I would say that the Federal Court of Appeal's decision on the lobbyist issue is not quite on point, because we have a definition of conflict of interest in our act.

The Chair: But the interpretations are now consistent in terms of identifying an attempt to influence or...?

Ms. Nancy Bélanger: But we're not investigating the lobbying.

The Chair: No, no, I understand that. But in the Conflict of Interest Act, we do have similar situations where it indicates.... And I would like to point them out. You actually included them in both of your annual reports' commentary on this, where you showed that in subsection 14(1) and paragraph (2)(e)—

Ms. Nancy Bélanger: That would be the code.

The Chair: That is under the code.

Then you made reference to the Conflict of Interest Act and you showed the parallel. That is what triggered my interest, because if you look at the language there, what we have now in both the code and the act is unclear as to whether or not you are talking about "interfere" in the sense of "did interfere" or "tried to interfere". You have no adverb or adjective in there.

So I'm asking you this question: would it appear that we should consider making a minor amendment to the Conflict of Interest Act so that the act will reflect the Federal Court of Appeal decision in that regard?

Ms. Mary Dawson: My broad sense is that we cover the same sort of breadth. I can take another look at a particular provision, but our act covers the potential as well as the actual, in one way or another, generally speaking, throughout the act.

The Chair: One or both. So you only need to demonstrate that here was an attempt to influence, for instance?

Ms. Mary Dawson: Yes, I'd like to parse this particular section very carefully, but my comfort level is that we're—

The Chair: I will assume that is the proper interpretation, unless you come back to us and tell us differently.

Ms. Mary Dawson: Okay, which section is it exactly?

Ms. Nancy Bélanger: I understand that you are referring to the gift rule, “might reasonably be seen to have been given”. So we're not talking about a conflict of interest.

The Chair: In the gift area, that was the example I was given.

Ms. Nancy Bélanger: Now we're talking about a very particular rule with respect to gifts.

The Chair: But it's influence, trying to influence or influence—

Ms. Nancy Bélanger: The words are “that might reasonably be seen to have been given to influence”. That's the test we go by.

The Chair: Yes, “to influence”. Is that “to have influence”, or is it —

Ms. Nancy Bélanger: It's if it “might reasonably be seen to have been given to influence”.

Ms. Mary Dawson: That means “appears”.

The Chair: It appears, and you don't have to prove that they actually were influenced.

Ms. Mary Dawson: Yes.

The Chair: All right, that's fair enough.

My last question to you is that if we ever wanted to make or propose an amendment to the Conflict of Interest Act—which was set up under the Federal Accountability Act and tabled by the President of the Treasury Board, I believe—who then is the responsible minister for the Conflict of Interest Act? And if there is in fact a concern about an alleged contravention of the guidelines under PCO, to which minister would this complaint or allegation be lodged?

• (1030)

Ms. Mary Dawson: I think you should ask PCO that question. I think it's up to the government to figure out which minister is responsible.

The Chair: Unfortunately, it appears to me that it's the Prime Minister.

Ms. Mary Dawson: That's for PCO.

The Chair: I understand that.

Therefore, if a member of Parliament had an allegation against a public officer pursuant to the Conflict of Interest Act, they would have to refer it to the Prime Minister for determining whether or not they were in a conflict of interest.

Ms. Mary Dawson: Well, why wouldn't they be referring it to my office?

The Chair: It depends on whether or not the conflict of interest or the contravention is pursuant to the requirements of the guidelines or the act.

Ms. Mary Dawson: Yes, the guidelines are another thing; they are out of our bailiwick.

The Chair: I understand that, and I wish they weren't.

I think this is what many members have said around here, that we seem to have two streams of accountability: one under the Federal Accountability Act, being the conflict of interest; the other being the PCO code for ministers and ministers of state and other public office-holders, over which you have no jurisdiction.

Ms. Mary Dawson: No.

The Chair: So there's a mismatch between your mandate and the tools you have to discharge that mandate, and I guess that's what we want to look at.

Ms. Mary Dawson: I haven't looked at them lately, but I'm not sure how extensive those are. Those may not cover the whole bailiwick that you want to cover either.

The Chair: But they do cover—

Ms. Mary Dawson: They cover political activities, basically.

The Chair: The major additional element is political activities of public office-holders.

Ms. Mary Dawson: Yes.

The Chair: And that's why the Prime Minister, in his note, described them as complementing the Conflict of Interest Act, because it has a new section that makes it a more comprehensive regime. Unfortunately, that comprehensive regime is not totally under your mandate.

Ms. Mary Dawson: That's correct.

The Chair: I think we understand each other.

Members, Mr. Siksay had asked whether we should consider having someone from PCO talk to us about these guides. If it's the will of the committee, we could do that on November 17. Has there been an opportunity to discuss this?

Mr. Rickford.

Mr. Greg Rickford: Mr. Chair, I think we can talk about committee business in camera.

The Chair: It's just to get rid of that point, because I think we're running out of questions and we're going to adjourn.

Mr. Greg Rickford: Then let's adjourn and go in camera to talk about committee business with respect to adding things to the agenda.

The Chair: I don't think we have to go in camera.

An hon. member: It sounds like it to me.

The Chair: All right.

Madame Freeman had a brief question and so did Mr. Wrzesnewskij. Let's finish our questions and we'll be able to excuse the commissioner.

[Translation]

Mrs. Carole Freeman: On page 22 of your report, you state the following: "Investigative work is conducted in strict confidence by my office. Only when I complete an examination are my findings made public." The report goes on to state that where you do not proceed beyond an initial complaint, you find it unfortunate that you are limited in your ability to make public your reasons for not pursuing a matter, especially in cases involving well-publicized and controversial allegations.

What do you suggest should be done to deal with such a situation?

[English]

Ms. Mary Dawson: I haven't got a draft at hand, but I would suggest that maybe I be given the authority to release my reasons for not proceeding with an investigation.

[Translation]

Mrs. Carole Freeman: In your report, you state that when you do not proceed with a complaint, you cannot make your reasons known, especially in well-publicized cases. I do not want to refer back to what we have been talking about earlier, but in well-publicized cases, when a complaint is filed and you cannot proceed with it, you cannot disclose the reasons for your decision. You find that unfortunate. I am therefore asking what you would propose to correct the situation.

Is my question now clear?

• (1035)

[English]

Ms. Mary Dawson: Yes, your question is clear.

As I say, I haven't got a draft in front of me. I haven't exactly thought about how, but an amendment could be made to allow me to use my discretion, perhaps, to disclose the reasons I did not proceed with an investigation.

For example, the reason could be that it was outside my mandate. Nobody knows that and so they don't know why I haven't proceeded with the investigation. Or there could be examples where there are misrepresentations by people as to the situation that I can't counter.

[Translation]

Mrs. Carole Freeman: I would like to ask you a very hypothetical question. With regard to the allegations that are currently before us, if for whatever reason you could not proceed with your examination, you could not inform the public of the reasons why you cannot proceed with the examination.

[English]

Ms. Mary Dawson: Or do not want to. Yes, that is the situation.

When I'm dealing specifically with the individuals involved, I usually write them a letter explaining the situation. If they release that letter, and it's up to them, that's at their discretion. That is the only way that reasoning could be released that I can see.

[Translation]

Mrs. Carole Freeman: You refer to correspondence. Is that the correspondence you send to the complainant or to the person against whom the complaint is made?

[English]

Ms. Mary Dawson: Either.

[Translation]

Mrs. Carole Freeman: Is that the complainant or the person who is the subject of the complaint? What correspondence are you referring to?

[English]

Ms. Mary Dawson: I'm at the stage of starting to look at it—and I have to say this applies particularly in the code. But when I look into a matter and am some way down looking into it, or if I discontinue an investigation, I'm in communication with both the complainant and the person who was complained against. I will always complete my activity by writing them a letter and telling them what happened. It's confidential, unless they wish to release it.

[Translation]

Mrs. Carole Freeman: Therefore, the complainant or the person at the centre of the complaint could release the reasons, but not you.

[English]

Ms. Mary Dawson: That's right. I had one situation where the person who was complained against did disclose it. But sometimes one of them doesn't want to disclose it, or neither of them do, if I'm halfway between.

[Translation]

Mrs. Carole Freeman: My last question concerns the people who will file complaints or make disclosures..., who could be victims of reprisals. What do you recommend? You have also addressed that in your report.

[English]

Ms. Mary Dawson: I'm not sure we need any rule for that; I simply gave that as a rationale for why things are not disclosed unnecessarily. I would take a certain amount of care and would have some discretion as well, I would hope, as to whether to disclose something.

[Translation]

The Chair: Thank you, madam.

[English]

Finally, we have Monsieur Wrzesnewskyj to bring us home.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

Madam Dawson, should our committee decide to proceed with a new investigation into this abuse of cheques, with infrastructure cheques being presented by ministers of the crown...

Some hon. members: Oh, oh!

Mr. Borys Wrzesnewskyj: Obviously our Conservative colleagues aren't happy to hear that we're discussing this publicly.

But should we decide to conduct such an investigation into the conduct of ministers of the crown and Conservative members of Parliament, and if it in fact appears that some Conservative members who sit on this committee were part of this cheques scheme, would it be a conflict of interest for them to partake in those committee meetings when we're trying to get to the bottom of how this happened?

•(1040)

Ms. Mary Dawson: That would be under the code, not the act, in most cases. And I think it would depend on the circumstances of each person involved. But in the abstract, I can't answer that question. You'd have to look at each specific case.

Mr. Borys Wrzesnewskij: One would think that members of Parliament would do the ethical thing and recuse themselves in those circumstances. Mind you, if they've put their names on those cheques, there is a question mark as to whether or not they would do the ethical thing.

We've previously discussed the \$1,000 limit on gifts. But there's an exclusion for trips abroad. We've seen trips that have cost up to \$10,000 per person. Family members of MPs have in fact taken such trips abroad. We have a \$1,000 limit on gifts, but for trips abroad it's basically a free-for-all. It appears that some MPs actively take part in such foreign trips, with costs much higher than tens of thousands of dollars.

Should that be addressed, especially when you have committee members sitting on committees? These trips are often funded by foreign governments or lobbying organizations. Should that not be addressed, and is it ethical for members of Parliament who have participated in such trips to take part in discussions in committees pertaining to policies that relate to those countries or organizations?

Ms. Mary Dawson: There are different rules in the code and the act. I think I'm going to turn to my assistant here to answer your question.

Mrs. Lyne Robinson-Dalpé: In terms of what you're referring to, a lot of the issues are related to sponsored travel. Big amounts of travel are related to sponsored travel and are therefore related under the code. Parliament business is also covered under the code. There are some recusal mechanisms that MPs have to abide by when they're in committee business, but again, that is under the code, and we're talking here about the act.

I guess the issue can be raised in PROC, at that point in time, to look at the code and see which kind of mechanisms members should operate by in committees when they have such dealings.

Mr. Borys Wrzesnewskij: Thank you.

The Chair: Just for those who don't know, PROC is the short form for the procedure and House affairs committee.

But that's right, the procedure and House affairs committee does in fact deal with matters related to members of Parliament. This committee deals with public office-holders as defined.

Commissioner, this has been actually a very good meeting. We have in the past maybe not had an opportunity to really get into many of the areas that you have responsibility for. I can tell you personally that my biggest issue today, brought up by Pat Davidson, was the human resources issue.

For you to discharge your responsibilities, you have a full-time equivalent complement, which is budgeted for. However, like many of the commissioners, you are unable to source and train and have a full complement to be able to discharge the various responsibilities you have. Part of the problem, which you identified, is that we have people who are in fact moving around to other areas within the

federal government or its agencies or its authorities, which means that we're just passing on the problem to somebody else. It just seems to rotate around.

I don't know how we get off this merry-go-round, but if you check the records, the Auditor General raised this several years ago. I think it's a problem that we have ignored, and I hope that you as the commissioner will look for opportunities to participate in whatever dialogue is necessary, whether it be through Treasury Board or whatever. We need to get off this merry-go-round. We need to have full complements of staff in our commissions, in our commissioners' offices, as well as in other departmental areas so that they can properly discharge their responsibilities, which are the responsibilities that we are providing to all Canadians.

So I hope you will do what you can as you consult with others who you know have similar responsibilities in terms of human resources, and that there will be a solution to this, because it has been years.

To you and your colleagues, thank you kindly for the excellent job. We certainly look forward to having you come back before us—for the estimates, at least, and I'm sure something else will come up. We thank you for accepting our invitation to be here, to present yourself to the committee, and to allow the committee to get to know you a little bit better.

You're excused now.

That said, I'd like to deal with that one issue that Mr. Siksay had raised about the guidelines for ministers and ministers of state and whether or not the committee would like to consider having someone from PCO or a delegate from the Prime Minister's Office to help the committee understand where they fit in the regime.

I'm going to go to Mr. Siksay first, and then I have Mr. Wrzesnewskij, and then Mr. Poilievre.

Mr. Siksay, please.

•(1045)

Mr. Bill Siksay: Chair, if it's helpful, I'll give a notice of motion: that the standing committee have witnesses on the Privy Council Office guidelines for ministers and ministers of state at the meeting of November 17 or, should the witnesses not be available that day, at the next available opportunity.

We can discuss this at our next meeting, if that makes it easier for folks.

The Chair: Well, okay, that's a possibility, but we may just have consent. People have their calendars—we all do—and the longer we wait to address this question....

If I may, Borys, let me just ask Mr. Poilievre if he has an answer for us on this matter.

Mr. Pierre Poilievre: The Conservative delegates to this committee are prepared to offer consent.

The Chair: Okay. With that, we'll go forward and ask the clerk to communicate with PCO to seek a suitable date for them to appear before us. The first opportunity would be November 17, but we have a couple of days after that, as you know from your calendar. So we'll take it under advisement and we'll advise the committee as soon as we find out what their availability would be. Is that acceptable?

Thank you kindly.

Mr. Wrzesnewskyj, you had a matter?

Mr. Borys Wrzesnewskyj: Yes, I do, Mr. Chair. I understand that Madam Freeman has put a motion.

The Chair: Insufficient notice of motion. We'll have to deal with that at the next meeting.

Mr. Borys Wrzesnewskyj: If there is unanimous consent on a motion, does it still require the 48 hours?

The Chair: We have no consent. On Thursday we'll deal with it.

Okay, madame? *C'est ça?*

This meeting is adjourned.

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