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# Standing Committee on Access to Information, Privacy and Ethics

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Chair: Mr. John Brassard





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• (1530)

[English]

**The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)):** I'm going to call the meeting to order.

Welcome to meeting number 58 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[Translation]

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Members may therefore appear in person or remotely using the Zoom application.

Should any technical challenges arise, please advise me immediately. Please note that we may need to suspend for a few minutes, as we need to ensure that all members are able to participate fully.

[English]

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Wednesday, November 30, 2022, the committee is resuming its study of the third edition of the Lobbyists' Code of Conduct.

[Translation]

We have one witness joining us via Zoom today, Mr. Conacher.

Have all the tests been completed for Mr. Conacher?

All right, thank you.

[English]

I'd like to welcome our witnesses today. As an individual, we have Mr. Scott Thurlow, a lawyer and counsel on legislation. From the Canadian Labour Congress, I'd like to welcome Siobhán Vipond, executive vice-president; and Mike Luff, national representative, political action department; and from Democracy Watch, we have, on Zoom today, Mr. Duff Conacher, the co-founder.

Each of you has five minutes to give your opening statement to the committee.

Mr. Thurlow, you are first. Go ahead, sir, for five minutes.

**Mr. W. Scott Thurlow (Lawyer, Counsel on legislation, As an Individual):** Thank you very much, Mr. Chairman.

Good afternoon. My name is Scott Thurlow. I am an Ottawa-based lawyer who provides advice to registrants under the Lobbying Act about their obligations. I am also a registrant myself.

Before I delve into the substance of my presentation, I want to note the irony of having this meeting about a subject I am very passionate about on Valentine's Day. I also want to wish my wife a happy birthday.

**A voice:** Smart move.

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

**Mr. W. Scott Thurlow:** Thank you for providing me that excuse.

• (1535)

**The Chair:** If you're making the chair look bad, Mr. Thurlow, then you've succeeded. Thank you.

**Mr. W. Scott Thurlow:** There are two key points I want this committee to consider, as it reflects on the lobbying commissioner's proposed code of conduct. The first is on the charter implications of what the commissioner has proposed, and the impact on how individual electors participate in the democratic process. The second is whether the potential infringement of charter rights helps the primary goal of the statute: to create a publicly available and transparent lobbying registry.

A ban on lobbying public office holders because of political activity is an *ex post facto* limitation on the freedom of assembly to join like-minded individuals in a campaign; on the freedom of speech to campaign to share political ideas; and on the democratic right to participate in an election, in the way the Supreme Court of Canada describes, in *Figueroa v. R.*, as the ability to "meaningfully participate" in the democratic process.

I need you, as elected officials, to remember what your volunteers do. They drive people to the polls when they can't get there themselves. They remind people when and where to vote. They make sure electors are registered and help those who aren't registered get on the rolls. They scrutinize the vote count and ensure the democratic will of electors is not usurped. In short, they support, protect and defend our democracy. Why on earth would we want to dissuade a single Canadian from doing that? Even if the proposed code's ban is only for one year, that is still an *ex post facto* limitation on those rights.

The only judicial instruction about unacceptable political activities is the organization of a fundraiser by a registrant for a person who is the target of their lobbying. A bright-line test is where tens of thousands of dollars may be at issue, and the successful re-election of a candidate could turn on raising that capital. It was our friends at Democracy Watch who filed this suit, so many years ago. There is no evidence to suggest that routine political activities, regardless of their proximity to the candidate, rise to that level or anything proximate to it.

Can a reasonable person, with or without knowledge of the regulatory process, honestly believe the act of canvassing on behalf of a political candidate is so significant as to create a tension between a public office holder's obligation to a volunteer and their duties to their office? You are elected officials. I will allow you to use your own judgment as to what will or will not influence you. I don't think there are many reasonable people who think that door knocking will create this tension.

It is worth noting the proposed code specifically carves out individual contributions within the prescribed limits of the Canada Elections Act. It's \$1,650 per year, versus a registrant not being allowed to provide refreshments of \$40 twice in the course of a year. One of those two things is prohibited by the code. It's the smaller number.

Is it because Parliament set those limits? Is it because they are reasonable limits in a free and democratic society? When Parliament considers those changes, the tone of the constitutional discussion is different. If Parliament wants to limit the activities of electors, then Parliament will be accountable to them.

In conclusion, I want members of this committee to ask themselves this question: Do you honestly believe the people who gave up their time to support your election should be precluded from communicating with you on public policy issues? From the preamble of the act, I offer you two pillars upon which it is based: A system for the registration of paid lobbyists should not impede free and open access to government, and free and open access to government is an important matter of public interest. Telling an elector they can't communicate with someone flies in the face of those provisions.

I would welcome any questions you have.

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

For the benefit of our witnesses, we have a couple of members subbing in today. Mr. Dalton is in for Mr. Gourde. Mr. Zuberi is in, as well as Ms. Vandenberg. Welcome to the committee.

Next up, we have Ms. Vipond.

You have five minutes to address the committee.

**Ms. Siobhán Vipond (Executive Vice-President, Canadian Labour Congress):** Thank you and good afternoon, Chair and committee members.

My name is Siobhán Vipond. I'm executive vice-president of the Canadian Labour Congress, Canada's largest central labour body. The CLC advocates on national issues on behalf of workers from coast to coast to coast.

We support the objectives of the code to ensure that lobbyists adhere to the highest standards of transparency, respect for government institutions, integrity and honesty. We support the commissioner's goal to ensure that the code is clear so that lobbyists understand their obligation, and to foster transparent and ethical lobbying of public office holders. However, we have serious concerns about two rules in the updated code that will undermine my ability to do my job as an elected union official and undermine your ability to do your job as elected public officials.

First, we are concerned about rule 6, with respect to political work. This rule limits the lobbying activities of our members because of political activities they undertake during an election campaign. It is very concerning that the updated code not only subjects our members to a 24-month cooling-off period for campaign work that is strategic, high-profile or important work for a candidate or political party; it also subjects our members to a 12-month cooling-off period for such campaign activity as canvassing, gathering donations, distributing campaign materials and helping with campaign office or event logistics.

These types of campaign activities cannot reasonably be seen to create a sense of obligation by an elected official towards a lobbyist. We firmly believe this rule violates the charter rights of our members to participate in the democratic process. Specifically, it violates our members' freedom of expression under paragraph 2(b) of the charter, and cannot be justified under section 1.

I'm elected to represent my members. An essential part of that is to meet with all of you to discuss my members' priorities, but I also enjoy volunteering on election campaigns for good candidates. This rule forces me to choose between these two things—doing my job representing my members or volunteering on campaigns. That is totally unreasonable and unfair.

The second rule we have serious concerns about is rule 4, with respect to hospitality. The updated code prescribes a \$40 limit for hospitality per official at each meeting, lobby day, event or reception, and it prescribes an \$80 annual limit per official. This rule will severely limit or effectively end the ability of many unions, associations, charities or organizations to host receptions, lunches or even provide coffee at meetings in cases where there are multiple engagements with the public office holder in a 12-month period.

First, we believe it's unreasonable to suggest that normal hospitality, such as serving coffee, juice, wine or cheese, at any in-person event should create a sense of obligation for a public office holder. Therefore, the threshold is unwarranted.

Second, this threshold will diminish democratic discourse and the duties of public officer holders such as you by curtailing the number of events a public office holder can attend with one organization. If a public office holder attends two events with our organization in January and they reach that \$80 annual limit, then they won't be able to attend another event with us for the rest of the year where hospitality is provided. This is a major overreach of the code and will make it much more difficult for you to do your job, as it will limit the interactions you can have with the constituents and stakeholders you represent based on this \$80 hospitality threshold.

Third, the rule is completely unworkable for organizations like ours. It's untenable for us to monitor this hospitality threshold for every public office holder. We meet with hundreds of public office holders in a 12-month period. It is totally unworkable for us to monitor and track how much hospitality each public office holder consumes at each event and to ensure that they don't attend other events once they reach that \$80 limit.

Plus, it's ridiculous to expect us to enforce this rule. Are we supposed to tell the Minister of Finance that they can't have a coffee or a bagel at the next meeting because they reached their hospitality limit at a previous meeting?

The low-value threshold for hospitality is unwarranted, unworkable and unenforceable. It should be removed from the code. Public office holders are subject to the Conflict of Interest Act with rules for disclosure. Organizations such as ours should be able to offer whatever hospitality public office holders are able to accept.

In conclusion, we believe rules 6 and 4 of the updated code will curtail my ability to do my job and your ability to do your job effectively by limiting how often we can engage with each other on behalf of the people we represent. We urge you to address these concerns in the advice you provide to the commissioner on the updated code.

Once again, thank you for this opportunity. I look forward to your questions.

● (1540)

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

Thanks to you both for being under time. That will allow a lot more questions to be asked.

Mr. Conacher, you have five minutes, sir, to address the committee. Go ahead, please.

**Mr. Duff Conacher (Co-Founder, Democracy Watch):** Thank you to the committee for the opportunity to address you today on this very important topic with regard to some of the key rules amongst other key rules that protect our democracy and government integrity at the federal level.

I'm representing today a coalition of 27 citizen groups with a total membership of 1.5 million supporters, who all oppose the parts of the commissioner's proposed new code that would change the current code rules in ways that would allow for corrupt favour-trading between lobbyists and politicians.

Democracy Watch has already made three submissions to the committee and three submissions to the commissioner. I will be

sending a further submission with details about my testimony today.

My first request is that you need to invite the commissioner back before anything goes forward. One of Democracy Watch's submissions has 10 key questions the committee has to ask the commissioner about the implications of these rules, and when she testified on February 3, only one of the 10 questions was asked. Essentially, that's hiding what's really in there.

I'll address the gifts and hospitality rule briefly because lots of people misunderstand it, including people who have testified today. The Ethics Commissioner has already made it clear with a public statement that MPs cannot accept any gift from anyone trying to influence them, whether they're registered as a lobbyist or not, if the gift or hospitality is worth \$30 or more annually. That's the limit. It doesn't matter what the lobbyists' code is changed to say; the Ethics Commissioner has said \$30 and that's it.

The average donation made over the last five years to political parties by individual Canadians is \$75. There's a reason for an \$80 annual limit. Canadians, individual voters, can't afford more than that. It doesn't matter, again, whether you change the code; the Ethics Commissioner is going to say you can't accept gifts worth more than \$30.

Small gifts have influence. Tests by clinical psychologists worldwide of tens of thousands of people have shown that if you want to influence someone's decisions, you do them a favour or you give them a gift, and even small gifts have influence. If you deny that as an MP you're simply saying you're not human. These tests have been done in every culture worldwide and they all show the same results: the best way to influence someone is to give them a gift or do them a favour, and even a small gift will cause a sense of obligation to return the favour.

The much more important issue is the cooling off periods in rule 6 and the definition of "other political work" in the appendix of the proposed new code.

The current rule is that if you do any significant political work, including any fundraising, you have to sit out for four years. The commissioner is gutting that rule entirely. The commissioner's proposal is that lobbyists, as long as they don't do it more than nearly full time, or without frequent or expensive interaction with a public official or a party official, should be allowed to raise an unlimited amount of money for the politician or the party at the same time as lobbying them. That's just one of many examples of what the "other political work" definition allows.

It's a huge loophole. It's one of the most corrupt things I've seen a so-called democratic good government watchdog do in the past 30 years. I've seen lots of watchdogs let people off for clear wrongdoing.

This will systemically allow for rampant unethical lobbying, U.S.-style trading of favours that's corrupt, and it will corrupt every policy-making process going forward, as lobbyists use fundraising, campaigning and other favours to buy you off and corrupt your policy- and decision-making. It's a 25-year step backwards, back to 1997, before there was a code. It goes against every OECD standard and every other international standard.

The commissioner has also made the very questionable claim that the current four-year prohibition on lobbying after political activities violates the Charter of Rights' freedom of expression, based on one opinion from one law firm, Goldblatt Partners, which the commissioner, in a sole-sourced contract—which is smelly itself—paid tens of thousands of dollars, as far as we can tell.

Several Supreme Court of Canada and other Canadian court rulings have clearly stated that the charter rights can completely, justifiably, be restricted to protect government integrity. As a result, it is clear that the current four-year cooling-off period complies with the charter entirely.

The committee must order the commissioner to disclose this opinion they've received from Goldblatt Partners. For this to go forward based on a secret ruling from a law firm would be untenable.

The second significant problem with the commissioner's proposed new code is that it does not specify what will happen after a lobbyist works in a political party's election campaign headquarters, or campaigns or fundraises for a political party in-between elections. The new code does not say whom a lobbyist would be prohibited from lobbying. Will the prohibition only apply to the political party leader, or everyone in the party?

Also, the third problem is that gutting the code's rules in ways that allow lobbyists to do favours for cabinet ministers, and MPs and senators will also likely gut the ethics rules for ministers, MPs and senators.

• (1545)

How? All of these ethics rules currently have a blanket rule that says that you can't improperly further another person or entity's interests. It would, of course, be improper for cabinet minister, MP or senator to further the interest of a lobbyist who had raised money for them or done other favours for them, but if the Lobbyists' Code is changed to say that it's proper, then it will no longer be improper for the ministers and MPs to do that.

**The Chair:** Mr. Conacher, we're past the five minutes. I gave you a little extra time. Please finish quickly.

**Mr. Duff Conacher:** I will make one last statement.

If you do not reject the commissioner's unethical proposed new rules or remain silent, you will essentially be supporting corrupt political decision-making.

As I'm testifying this afternoon on Valentine's Day, I will end by appealing to you to show your devotion and commitment to ethical and political decisions by rejecting the commissioner's proposal to allow you to have secret affairs with lobbyists for wealthy private interests, secret affairs that would allow high-powered lobbyists to buy you off through fundraising, campaigning and doing other favours for you, secret affairs that will corrupt your—

• (1550)

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

We're going to start with our first round of questioning. Perhaps you can pick it up from there, Mr. Conacher.

Mr. Barrett, you have six minutes for questioning.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Thanks very much, Chair.

Thanks to the witnesses for appearing today.

Chair, I want to start by talking about some news that comes from the Office of the Conflict of Interest and Ethics Commissioner today. It's that the commissioner has announced his resignation.

I'm fine to use my time for this, Chair.

**The Chair:** Okay.

**Mr. Michael Barrett:** I just want to take a moment to remark on the circumstances in which the commissioner has decided to end his term early. It's due to persistent health challenges. I know these have been a tough couple of years for everyone. These are very trying times, with changes to their work schedule, and he has a commission with lots of staff to run, and he had to adapt to all of that. I would also note that he's been kept quite busy by members and designated public office holders over the last couple of years.

I want to offer a quick quote from the Commissioner. He said:

I firmly believe that educating regulatees and the public about the importance of avoiding conflicts of interest serves to help restore Canadians' trust in public officials and the institutions in which they serve and, ultimately, in our democracy.

I appreciate the commissioner's work over his tenure and, of course, I know that I can confidently speak for all of my colleagues on this committee when we wish him good health and the best of luck in his future pursuits.

Thanks, Chair.

I'll turn now to questions. I'll start with Mr. Conacher.

I want to pick up on the quote from our outgoing commissioner. That's about the confidence that Canadians have in their public institutions.

What do you think the effect of these proposed changes will be on Canadians' confidence in their public institutions?

**Mr. Duff Conacher:** Well, you couldn't go much lower. Several surveys in the past several years have shown that only 10% to 20% of Canadians trust politicians. They believe that you are trying to protect elites and yourselves and don't address their concerns.

This move is essentially saying that we're going to legalize bribery, that we're going to let lobbyists buy you off in elections by doing favours for you, campaigning at a very high level up to nearly full-time, raising unlimited amounts of money for you and your party and then lobbying you right afterwards. There is no cooling off period for this. It is not a one-year or two-year period.

This is a huge loophole that is unstated in the draft code. As long as you do it less than nearly full-time and without frequent or extensive interactions with a candidate or an official, you can start lobbying them the next day. If it's in-between elections, you can raise tens of thousands of dollars for a cabinet minister or their party and continue lobbying them. No stop.

It's going to bring in the U.S.-style corrupt politics into Canada. It's the most corrupt thing I've seen a so-called good government watchdog do in 30 years. It's going to corrupt every policy-making process that affects 35 million Canadians. Hopefully Canadians will storm Parliament, because it is a reason to storm Parliament. This is a systemic—

**Mr. Matthew Green (Hamilton Centre, NDP):** I have a point of order.

**The Chair:** We have a point of order.

I would ask Mr. Conacher to be judicious in his words and use his words carefully. I, for one, as chair, don't appreciate the term "storming Parliament". I understand the analogy, Mr. Conacher, but please be judicious.

Mr. Green, did I address that?

**Mr. Matthew Green:** You did, sir. Thank you.

**The Chair:** Go ahead, Mr. Barrett, I stopped your time.

**Mr. Michael Barrett:** I'll pick up from there, Chair. Thanks very much.

I'll turn to the folks in the room with respect to the effect that campaigning for individuals could have, and then having access to them in your role as a lobbyist, or one's role as a lobbyist.

What do you think is the right way to strike the balance between avoiding the perception that undue or unfair access has been granted versus kindness campaigning for a good candidate, in exchange for access to that candidate once they have been elected, and potentially elevated to the role of a privy councillor?

I'll start with you, Mr. Thurlow.

• (1555)

**Mr. W. Scott Thurlow:** I think there are two questions there. The first one is, does this actually happen? We could talk in anecdotes, but I don't think anyone has ever actually said, "This has happened. It's unethical. This is the name of the person. I lay it down like that gauntlet."

The second is, what I call the hook versus the trawler. If we were talking about the campaign manager, absolutely, there's an elevated

role involved, but the proposed code gets everyone. It's the trawler at the bottom. It's very specific.

It's interesting, because the previous code of conduct, the current iteration, does have those more central key roles. It's not necessarily about access to the candidate. It's about who is doing this work in a way that it will really benefit the candidate above and beyond simple public participation.

**Mr. Michael Barrett:** I'm about to run out of time, but to your point, that underscores the importance of being very clear. One thing I've heard from folks who are registered to lobby is that they would appreciate clarity, so there's no question about what they can do during election period and what they can do in their roles as lobbyists.

Would you agree that absolute clarity is essential for this to be effective?

**Mr. W. Scott Thurlow:** Absolutely, and if you look at the proposed code, it provides a listing of similar activities, or things that should be contemplated in a certain way. Precision is where the law comes from. It does not come from breadth. The advice I would give to you is....The reason there's confusion is these long enumerated lists with no precision.

**The Chair:** Thank you, Mr. Thurlow, and Mr. Barrett.

Ms. Hepfner, you're next, for six minutes.

**Ms. Lisa Hepfner (Hamilton Mountain, Lib.):** Thank you, Chair, and thank you to our witnesses for being here discussing this code with us today.

Through you, Chair, I would like to direct my first question to Mr. Thurlow.

It seems to me that you're saying this new code would really restrict people's access to the democratic process. We want people to be involved. Volunteers aren't just about helping you get elected; it's about bringing people into this system and making them part of it. We should encourage that.

Am I right in that you are saying that this code would restrict people, and cut people off from participating in the process?

**Mr. W. Scott Thurlow:** I'd flip it, and say there are people who are registrants right now who have said, very firmly, that as a result of this proposed code, they would not participate in the democratic process in the future. That's bad.

You are free to participate in the democratic process, as I could go and volunteer for a local candidate, but after the fact, I would be limited in what my professional capacity would be to interact with government—and not necessarily with that person but with government itself.

There is an argument to be made that this is a violation of the section 6 rights to freely work in the country. I haven't seen anyone really articulate that point yet, but we've got courts, and I'm interested in their views.

**Ms. Lisa Hefpner:** Starting there, can you talk to us about when the code was created? What was the intent of Parliament, when we created this code of conduct for lobbyists?

**Mr. W. Scott Thurlow:** That's a fantastic question.

If you look at the enabling provisions of the statute, they're about ensuring that the lobbying that actually happens will happen in a way that is ethical and transparent, and can be done in a publicly accountable way. There are certain aspects of the proposed code that make a lot of sense, namely, confidentiality with your clients, honesty, and dealing with information that you are provided as you are talking about regulations.

This is a principled code of conduct that actually applies to the work that is covered by the Lobbying Act. I would posit that the role of the commissioner is about what happens at registration and onward. It has nothing to do with what happens before registration.

• (1600)

**Ms. Lisa Hefpner:** That's interesting.

I think we have about 6,500 registrants on the lobbyists list, and those include organizations, so several people would be caught up in that. It's not a small number of people we're talking about here.

**Mr. W. Scott Thurlow:** It is a very large number of people. I can't even imagine how many members are a part of your organization. It's not one man's charter right; it is multiple thousands of people who have the potential to have their rights limited. Even if it were only one, that's how our charter works—it's the charter of rights and individual freedoms.

**Ms. Lisa Hefpner:** I would turn to you, Ms. Vipond. What we heard from the commissioner at this committee is that the new rules will make things more equitable for lobbyists, so that lobbyists, who perhaps don't have the same bank account as others, would have the same access to members.

What do you think about that argument?

**Ms. Siobhán Vipond:** I'll speak as a labour activist. When I come to speak to elected officers or officials like you, it's never to buy you off. We come with the facts about what members want to see in the legislation, and we trust that you're gathering that from all your constituents and that you are going to turn around and make sure that our legislation is in a position that it best represents all of this.

This idea that there's all this buying-off happening is mischaracterizing the problem. There absolutely needs to be transparency and honesty. But limiting our ability to represent our members and limiting our right to be active in our democracy—which includes leaflet dropping, sometimes going door to door, which, I think, we should encourage people to do—quite honestly will limit our ability to represent our members and to run for office in our unions, especially when we look at federal unions that are under this jurisdiction.

That's why we're here to say that this is going too far. It's going to be limiting, and it's going to have a real, negative effect on our right to work and our right to represent our union members.

**Ms. Lisa Hefpner:** Given that members of Parliament make almost \$190,000, more if they have extra roles in Parliament, do you

think the general public would think that we'd be influenced by \$40 or \$80 a year, going to receptions for lobbyists?

**Ms. Siobhán Vipond:** Listen, I think this is one of those things you read and say, "This cannot be what was meant". If you've ever held an event at any hotel anywhere, you're not getting the breakfast coffee for \$40. I don't think that was the intention, which is why we want to raise awareness of it, because it is absolutely ridiculous. Also, the way it's written is that you're turning it so that it's our responsibility to monitor what you're doing. That shouldn't be for our organizations to do. That's why you're covered under your rules, so that you are following them and you are being good public office holders.

Asking us to monitor to make sure, because somehow one reception where you're in front of our members is suddenly going to turn it.... If that were true, I would hope that we had all the labour laws in the world that we wanted to see in Canada.

**Ms. Lisa Hefpner:** Very good.

I'm almost out of time. Thanks very much.

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

[*Translation*]

Next on the list is Mr. Villemure.

Mr. Villemure, you have six minutes.

**Mr. René Villemure (Trois-Rivières, BQ):** Thank you very much, Mr. Chair.

Mr. Conacher, my comments will be for you first.

Before entering politics, I worked for 25 years as an ethicist with government. In addition to suggesting Canadians storm Parliament, you said some very harsh things.

First, do you believe that any donation, contribution or association necessarily means influence?

Second, do you think being influenced is a negative thing?

[*English*]

**Mr. Duff Conacher:** All donations imply accountability.... I'm sorry, but I'm listening to the translation, and that didn't really make sense to me.

Is it that donations imply accountability or donations imply unethical influence?

[*Translation*]

**The Chair:** Mr. Villemure, I'll stop your time if you want to ask your question again.

**Mr. René Villemure:** Does any involvement, any association or any donation, whatever it may be, necessarily mean that there is influence or that you are beholden to the person?



[English]

**Mr. Duff Conacher:** Well, it does, according to tests worldwide by clinical psychologists of tens of thousands of people from every culture. “Do unto others as you would have them do unto you”—it’s the golden rule. Small gifts have influence. They’ve tested tens of thousands of people.

What do you do in that case if you want an egalitarian system, and it’s the Supreme Court of Canada that has set out an egalitarian model? One of the key principles is a substantively equal opportunity for substantively equal participation and influence in all political processes. What you do is you limit anyone who can afford to give more than what an average person can give. An average donation over the last five years to political parties is \$75. Canadians have said that’s the best indication we have of what people can afford.

• (1605)

[Translation]

**Mr. René Villemure:** In one of the questions...

[English]

**Mr. Duff Conacher:** If it’s more than that, you’re allowing wealthy people to give more than an average person can give.

**The Chair:** Mr. Conacher, I know sometimes it’s difficult when you’re on Zoom, but Mr. Villemure had a question that he wanted to pose again.

We’ll go to Mr. Villemure.

[Translation]

**Mr. René Villemure:** You seem to have many biases, suggesting that you do not support lobbying. You can answer with a yes or no.

[English]

**Mr. Duff Conacher:** We’re in favour of ethical lobbying. The 27 citizen groups that have called for the changes have proposed a reasonable alternative, which is that significant political activity or any fundraising should face a long cooling-off period. However, a bit of the canvassing and volunteering should be allowed without any cooling-off period.

That’s a reasonable alternative that protects government integrity, that will prevent unethical lobbying and that will be an egalitarian system that upholds its fundamental, democratic principle of “one person, one vote” by not allowing any one person, lobbyist or lobbying group to have more influence than any average voter.

If you’re going to go to a different system than that, it is unethical and it’s violating that fundamental “one person, one vote” system by allowing wealthy interests to have more influence because they can give more and are here in Ottawa, wining and dining you, etc.

**The Chair:** Go ahead, Monsieur Villemure.

[Translation]

**Mr. René Villemure:** Mr. Conacher, I believe we have different descriptions of ethical lobbying. Nevertheless, I thank you.

Ms. Vipond, Mr. Conacher talked about four years. You said 12 months. Convince me.

[English]

**Ms. Siobhán Vipond:** I think we’re looking at what is being proposed and saying that two years for the higher level that’s being proposed makes sense, because we’re going from four to two, but that including all of the other positions is too wide.

Democracy means involvement. It means not just showing up for voting. It means talking to officials. The best thing about going door to door is you hear from people who maybe don’t share your views. You can talk about the issues and people supporting good candidates. That’s what they should do.

When we look at these limits, this idea that you can’t have the job of lobbying because you are involved in a democratic process, we think, is absolutely false.

What is being proposed is the two years for the higher...we’re saying, okay, but you have to exclude that lower part of it, because there should be no exclusion on lobbying. That, in essence, is the Lobbying Act, and that is just talking to officials to convince them of the important changes that workers want to see.

[Translation]

**Mr. René Villemure:** What would be the dangers of implementing your position?

[English]

**Ms. Siobhán Vipond:** I think there are rules in place, so I don’t think the dangers are there.

We understand and agree with looking at this legislation and making sure that people are covered by it. It’s these two parts of this legislation that we think are reaching too far and are going to have a negative impact on the work, especially when I speak to leaders who are in the labour movement and who have been elected to represent their members.

That’s why we want to, hopefully, have some opinions in which it’s addressed that these two are not reflective of what’s going to help and, quite honestly, are going to cause some constitutional issues.

[Translation]

**Mr. René Villemure:** I see.

You have spoken at length about rules 4 and 6.

Are there other parts that are problematic? If so, what would you suggest?

[English]

**Ms. Siobhán Vipond:** Currently, no. We’re only here, saying that we want to see four and six addressed. We think that having oversight to ensure that there are ethics that exist in those rules...we’re comfortable with that.

[Translation]

**Mr. René Villemure:** As you know, one can follow a rule while being unethical.

[English]

**Ms. Siobhán Vipond:** Absolutely, but I also think well of people. I think people come to the table for the right reasons.

Those rules need to exist. It can't be a free-for-all, but it cannot hinder people's constitutional rights.

[Translation]

**Mr. René Villemure:** Thank you very much.

• (1610)

[English]

**The Chair:** Merci, Monsieur Villemure.

Mr. Green, you have six minutes.

**Mr. Matthew Green:** Thank you.

Welcome to all of our guests. It's great to have our familiar faces and friends here from the Labour Congress. I appreciate you joining us today.

I have to share with you that I am a bit torn on this particular issue. I'll declare my bias in that I don't see the Labour Congress as being a lobbyist in the same sense of the term as the private sector, for-profit and pay-to-play-type scenarios. I don't see workers and citizens electing and sending people to come and fight for workers' issues being the same as professional lobbyists whose only objective is to have clients and make money.

My first question is to Ms. Vipond. Do you see all lobbying as being the same, or, in your perspective, ought there be a consideration—or, perhaps a precision, as our friend Mr. Thurlow has suggested—that might provide clarity around different types of lobbying?

**Ms. Siobhán Vipond:** Yes, I agree with you that not all lobbyists are the same. I am sitting here because there are three million-odd workers who support the CLC, but the reality is that the lobbyist registry registers me as a lobbyist. That means I'm covered by those rules, but it doesn't negate my rights and the role I play in the union movement.

Currently, what's in front of us when we look at these rules is that we're going to fall under that. If that was not the intention, then someone needs to go back to change where that's coming from.

The reality is those rules are clear. I hope it's clear from our testimony—we know these rules because we follow them—that we are going to get swept up in this. If that's not the intention, I think that's something you need to take on.

For us, of course not all lobbyists are the same, but the rules are laid out and we have to follow them.

**Mr. Matthew Green:** I have couple of things, reflecting on Mr. Conacher's comments around American-style financing. I abhor this notion of Citizens United and this libertarian notion of freedom that would put a corporation as a person and allow it to act and run roughshod, given its access to capital, over democratic systems. I consider it to be a significant flag.

In your consideration of this, was there any reflection on how providing a more significant per-vote subsidy might provide the

kind of levelled playing field that some of the critics of this particular piece of legislation might have? Has that been a thought?

**Ms. Siobhán Vipond:** I don't think it's exactly the way you're saying it.

We did look at this to see what it was going to mean for our organization, and I think you're well-versed on the type of work we do.

“Lobbyist” can be used as a dirty word, to be quite honest. It can be used to dismiss your ideas, but that's not why we're here. We don't think anything that is outlined in rule 4 or rule 6 is going to improve what needs to be improved in terms of the purpose of transparency and efficacy. That's why we really think there needs to be attention to it.

**Mr. Matthew Green:** Mr. Conacher, you heard my question about the per-vote subsidies.

I have a keen interest in taking money out of politics. I don't happen to believe that all lobbyists are created equal. I think that there is a lobbying sector—an industry of lobbying. You only have to look at critical issues around pharmacare, subsidies to oil and gas, or a whole host of issues. The people who show up are the ones who have the deepest pockets. They show up the most frequently.

In your opinion, will returning to a healthy per-vote subsidy by the public financing within our electoral systems help head off some of the critiques that you've raise here today in terms of this American-style, Citizens United scenario?

**Mr. Duff Conacher:** No.

I mean, it would help make our political finance system more democratic, but our lobbying system would still be unethical if these rules go forward as they are now.

I'm not sure about the Canadian congress's comments today, because they—

**Mr. Matthew Green:** Mr. Conacher, I'm going to reclaim my time, sir. Thank you very much.

I will state, though, to your benefit, that I am keenly interested in getting the disclosure from Goldblatt. I know there's a balance we have as a committee between protecting what ought to be an independent officer of Parliament and our parliamentary privileges to be able to send for documents.

For the good and welfare of this committee—I'll say it on the record right now, Mr. Conacher, so you know I'm in favour of this—I would encourage the thought or the reconsideration by the officer for us to be able review that document to have a better understanding of what they're putting their charter claim on. I will be looking to pursue that at a later time.

Rounding up my last line of questioning here, I'm going to go back to the Labour Congress.

In her testimony to this committee, the Commissioner of Lobbying stated she did not know what an ideal solution might be in regard to rules around hospitality, but she'd be happy to hear what solutions the committee might suggest.

What solutions do you have?

• (1615)

**Ms. Siobhán Vipond:** The solution that we are putting in front of you is the existing rule. It is that you have to monitor yourself and you know what the limit is. We're not trying to figure out what you're consuming at different events. We're not trying to figure out if you can come or not.

These are not extravagant events, but they have a cost to them, so we think the onus should be on you. That is what we're proposing.

**Mr. Matthew Green:** Thank you.

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

I apologize; I was clarifying something with the clerk.

We are going to proceed to our second round of questioning. To start, we're going to go to Mr. Kurek.

You have five minutes.

**Mr. Damien Kurek (Battle River—Crowfoot, CPC):** Thank you very much, Chair.

Thanks to the witnesses for participating in what is an important discussion. I think everyone would agree that surrounding any lobbying we need a system that is accountable and that is transparent so that ultimately Canadians can trust the process. As was stated, there has been an erosion of trust in the process, and certainly one could get into extensive political conversations around that.

I did want to speak specifically about the Lobbyists' Code of Conduct, so I'm going to go around the room and ask about the consultation process. The commissioner talked a lot about that consultation process. I'll go to each person, and I'm just wondering if in 15 seconds they can comment on their experience with the commissioner's consultations.

I'll start with the Canadian Labour Congress.

**Mr. Mike Luff (National Representative, Political Action Department, Canadian Labour Congress):** First, I would say there were appropriate consultations, in our opinion. I think there were three rounds of consultations in total. There were no obstacles to making submissions or presentations.

The one thing that was frustrating was that as the code was updated there was no reason or justification for that update. We didn't know her justification for a lot of these changes until her appearance before you last week.

**Mr. Damien Kurek:** I appreciate that.

Mr. Thurlow, would you care to comment?

**Mr. W. Scott Thurlow:** Sure. It was definitely a robust consultation, in the same way that my 10-year-old tries to consult with me when she wants to stay up a little later. We didn't get what we wanted, but that doesn't mean that the consultation wasn't robust.

**Voices:** Oh, oh!

**Mr. W. Scott Thurlow:** That said, I think the condition precedent that underlined the consultation, which was that the rules on political contributions to these candidates were confusing, was kind

of *boulevardisé*, to use the right word, because it's more complicated now than it was when it started.

**Mr. Damien Kurek:** Mr. Conacher, you have 15 to 20 seconds.

**Mr. Duff Conacher:** The commissioner said, when she testified before you, that she listened to everybody and has carefully crafted these rules and balanced what she heard. She didn't listen to us or the 15 or so other groups that sent her letters last June saying to extend the cooling-off period for significant political activities. She's reduced it to zero. That's not a balance going from four to zero.

It will allow everyone—lobbyists—to do pretty much everything they want except work full time in the campaign war rooms and then lobby the person at the same time and raise an unlimited amount of money for them while they're lobbying them.

No, she didn't listen to us at all, even though she took a lot of time.

**Mr. Damien Kurek:** Okay. Thank you for that.

I'll go around the room again. I do want to ask if there are any examples that witnesses can point to where it's like, "here's the problem", and specific instances, if you can, to say, "Here's an instance of illegal lobbying and here's the solution."

I have about three and a half minutes, so limit it to—

**The Chair:** Pardon me?

**Mr. Damien Kurek:** I'm sorry. It's a minute and a half, so limit it to 30 seconds, please, if you could.

**The Chair:** I'm paying attention, Mr. Kurek.

**Mr. Damien Kurek:** I'll start with the Canadian Labour Congress: examples and solutions in 30 seconds.

**Ms. Siobhán Vipond:** Absolutely: I think it's as my colleague Mike said. We don't know the motivation for these changes to happen, and I don't have examples of where this illegal lobbying has happened.

• (1620)

**Mr. Damien Kurek:** Next is Mr. Thurlow.

**Mr. W. Scott Thurlow:** We have a public registry that has all communications reported. If you know how Google works, you can cross-reference those communications with political donations. Those political donations can tell you what access happened.

Corporate contributions have been illegal in Canada since the Chrétien years, so I'm not quite sure what secret corporate contributions are coming in. It's illegal for those contributions to happen.

**Mr. Damien Kurek:** Mr. Conacher, are there any examples that you can point to of illegal lobbying?

**Mr. Duff Conacher:** Well, the commissioner has referred 11 cases to the RCMP. The RCMP charged one recently, she said, on February 3. There are five others the RCMP has referred back to her. There are five others, I guess, that the RCMP is still investigating.

I'm not sure what Mr. Thurlow is talking about. There are huge loopholes in the Lobbying Act. You can lobby in secret very easily if you want to. You just have to design your contract in a certain way or lobby for less than 20% of your time.

On the case Mr. Thurlow referred to earlier—which we won in 2009—of a lobbyist raising \$70,000 for a minister while lobbying them, that was illegal under the old code. Under this new code, that will be legalized. That is legalized bribery. That is legalized corruption. That is what needs to be changed by changing rule 6 and the definition of “other political work”.

**The Chair:** Okay. Thank you, Mr. Kurek.

Thank you, Mr. Conacher.

Next we are going to go to Mr. Bains.

Sir, you have five minutes.

**Mr. Parm Bains (Steveston—Richmond East, Lib.):** Thank you, Mr. Chair.

Thank you to our witnesses for joining us today.

My first question is for Mr. Thurlow.

In your correspondence to the committee, you've indicated that the “the majority of the elements of the Code of Conduct consultation are outside the Commissioner's legislative authority under section 10.2 of the Lobbying Act.”

Can you explain in detail what you mean by this statement?

**Mr. W. Scott Thurlow:** I'm happy to do so. Thank you very much for the question.

Section 10.2(1) of the Lobbying Act specifically says, “The Commissioner shall develop a Lobbyists' Code of Conduct respecting the activities described in subsections 5(1) and 7(1).” Once you are receiving payment to try to influence public policy, that is what the code of conduct applies to. It does not apply to the things that happened before.

Now, neither subsection 5(1) nor subsection 7(1) refer to the political activities of lobbyists. The plain language of the statute limits the authority to act of registration and the communications that give rise to those registrations, not any activity that occurs before those communications are contemplated.

**Mr. Parm Bains:** Okay.

What's the consequence of a 10-year cooling-off period for exempt staff?

**Mr. W. Scott Thurlow:** A 10-year period? Yeesh, that's two elections. No....

**A voice:** I don't think so.

**Mr. W. Scott Thurlow:** Fair enough.

Again, there's a little bit of a duelling banjos situation about all of these different levels of lobby bans and cooling-off periods. I think the only cooling-off periods that real statutory authority exists for are the ones for public office holders who leave public office and then return to the private sector. Those are the ones that Parliament contemplated.

It's important to use Parliament as the high-water mark here because Parliament is an actual constitutional actor, and it can deliberate in a way that balances those rights in a very different way than, say, an officer of Parliament. Notwithstanding the consultation, when Parliament passes a vote, every one of the people who voted one way or another have to go back to their constituents and defend that action.

**Mr. Parm Bains:** Okay.

I'll go to our Canadian Labour Congress folks.

In your comments on the revised draft of the code, you opposed regulations on political work that restrict the fundamental freedom. This work either involves frequent and/or extensive interaction with the candidate or official, or performed on a full-time basis. Are you concerned that this could apply to mundane or common practices like door knocking or putting up signs?

**Ms. Siobhán Vipond:** Yes, absolutely.

I think putting up signs was excluded, if I remember correctly. However, yes, whether it's leaflet dropping, door knocking, getting on the phones, participating in a campaign, that is an absolute concern of ours because we encourage our members to get involved and to get involved with candidates they like.

• (1625)

**Mr. W. Scott Thurlow:** I have it right here. It's “distributing or disseminating campaign materials”. That includes signs, right?

**Mr. Parm Bains:** Right.

How much time do I have, Mr. Chair?

**The Chair:** You have one and a half minutes, Mr. Bains.

**Mr. Parm Bains:** Okay.

I'll go back to Mr. Thurlow.

Do you have...? With regard to the proposed \$80 annual limit for hospitality at functions, what kind of administrative burden do you think that would put on organizations hosting events for parliamentarians?

**Mr. W. Scott Thurlow:** Again, you all are the elected officials. You will know what will influence you and what will not. I know your Outlook calendars look like a diaspora of colour because you have so many meetings. If you did not have food at these receptions, you probably wouldn't eat, which.... That's bad.

What I would tell you is that this \$80 amount is a little bit random in nature. I'm not quite sure that there's any rational connection between it and the average contribution as asserted by Mr. Conacher. I don't know why they picked \$80, but Mr. Conacher is correct when he says that the conflict of interest commissioner has a different number. That's bad. We need to pick one and stick to it.

**Mr. Parm Bains:** Okay. Thank you.

Those are all of the questions I have.

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

[*Translation*]

Mr. Villemure, you have two and a half minutes.

**Mr. René Villemure:** Thank you, Mr. Chair.

Mr. Thurlow, I have two questions for you, and we have little time.

I would like to hear your opinion. How is it that McKinsey was able to circumvent the requirement to register as a lobbyist?

[*English*]

**Mr. W. Scott Thurlow:** The act is very specific, both in subsection 5(1) for organizations and in subsection 7(1) for consultant lobbyists.

There's the first asymmetry for lobbyists, Mr. Green, by the way. We treat them differently. They have to be influencing public policy. They have to be going after a bill or proposing a bill. It's a very specific enumerated test.

If Parliament wants to amend that test to capture the work that's done there, that is an excellent and robust debate that I would encourage you to have, but that's not what the act says now.

[*Translation*]

**Mr. René Villemure:** In other words, there was a gap, and the activity fell through the cracks.

Don't you think that the Lobbying Act should be reviewed? We are talking about the Lobbyists' Code of Conduct, but lobbying still falls under the act. Do you believe it's time to review the act, which has not been looked at for two cycles?

[*English*]

**Mr. W. Scott Thurlow:** Again, I am not going to stand in your place and tell you what you should or should not amend—I have a long list—but there are aspects of the act, certainly, that could benefit from some change, the designated public office holder's provisions being one of them. The discretion of a lobbying commissioner to limit a lobbying ban, I think, needs to be expanded a little bit.

I think we can agree that if the Prime Minister has a five-year ban, a 22-year-old who works for the Minister of Sport probably doesn't need a five-year ban. I think there's a little bit of asymmetry there. Right now we have a trawler and everybody who holds one of these specific offices is treated the same way.

[*Translation*]

**Mr. René Villemure:** Thank you very much.

Finally, in a few words, tell me your recommendation to increase the public's trust in lobbyists.

[*English*]

**Mr. W. Scott Thurlow:** Send them a phone card and I'll talk to them.

Seriously, the system that we have is completely undersold. We have a publicly accessible system. Anyone in the world can google and find out when an individual lobbyist spoke to someone about a particular subject. It is very easily usable. I think there are six or seven journalists who've made a career out of writing stories about

who's lobbying who and at what time. I think that's something we should be really proud of. In terms of the ability of individuals to see what is happening, I think it's spectacular.

Mr. Conacher asserts that there are all kinds of secret lobbying that can happen. That would be a criminal offence, if it were happening. I don't think Canadians shy away from criminal offences. I provide advice to lots of people. I tell them, "Register. You have nothing to hide." It's a public registry. The purpose of the Lobbying Act is to shine a bright light on this activity so that Canadians can decide for themselves whether or not it's a good idea.

• (1630)

**The Chair:** Thank you.

Thank you, Mr. Thurlow.

[*Translation*]

Perhaps Mr. Green could share his speaking time with you, Mr. Villemure.

[*English*]

That's because of what happened. No, I'm only kidding. After what happened the other day, I thought maybe—

**Mr. Matthew Green:** This is the new coalition. There's a new coalition in town.

**The Chair:** Mr. Green, you have two and a half minutes, sir.

**Mr. Matthew Green:** Thank you very much.

Mr. Conacher, I'm going to ask you a question. I'm going to ask you to be brief and just get right to the point.

Around the world, which has the gold standard? Which country should we be looking to for the gold standard of legislation around lobbying?

**Mr. Duff Conacher:** Canada is behind on both the—

**Mr. Matthew Green:** It's a very specific question. Which is the best country around the world? Do you know that answer? Who should we be looking to?

**Mr. Duff Conacher:** No. There isn't one jurisdiction that puts it all together on both ethics and transparency.

**Mr. Matthew Green:** Okay, I will pass it on.

Thank you, Mr. Conacher. I appreciate your time.

Mr. Thurlow, I'll put this question to you. Is there a gold standard we should be looking to that has the precision, what you were talking about in your opening remarks, to provide clear guidelines for Canadians and anybody involved in this?

**Mr. W. Scott Thurlow:** As it applies to the law, the gold standard is Canada.

**Mr. Matthew Green:** Do you honestly think that—

**Mr. W. Scott Thurlow:** I honestly think that to be the case.

There might be a few state or provincial programs around the world that are a little more narrow. There are some municipal programs that—

**Mr. Matthew Green:** I'm a little bit incredulous. You think that the lobbying laws we have are the gold standard around the world. Is that your testimony?

**Mr. W. Scott Thurlow:** You tell me which one is better and I'll—

**Mr. Matthew Green:** Well, I'm just talking about—

**Mr. Duff Conacher:** Toronto. Toronto is better.

**Mr. W. Scott Thurlow:** Toronto is not a country.

**The Chair:** Okay, Mr.—

**Mr. Matthew Green:** I have a point of order.

It's not helpful, Mr. Conacher, when you interrupt my interventions. It's not helpful, at all. You're here as a guest at committee.

**The Chair:** As the committee knows, I generally have a lot of leniency, with regard to interactions. Many committee chairs ask that things go through the chair, then to the witnesses. I allow a lot of this cross-sectional stuff to occur, but we have to be mindful that we don't interrupt each other. If there is a question to be asked of an individual, please ask it of that individual. My expectation, as chair, is that the individual will answer the question directly.

Mr. Green, I stopped your time. Please go ahead.

Thank you.

**Mr. Matthew Green:** Thank you very much.

My last question is for the congress.

We've heard that being lumped in with everything else happening is very difficult. With the way you do hospitality, do have any concluding remarks on having consideration for the millions of members you represent across the country?

**Ms. Siobhán Vipond:** If you take into consideration what we're proposing with regard to rules 4 and 6, you are not losing the essence of the changes proposed in front of you—transparency and efficacy. Rules 4 and 6 are having a negative impact, so we're asking you to address that, then leave the rest, because it's working to the extent it needs to, I think, and will allow us to represent workers who trust us to talk to elected officials.

**Mr. Matthew Green:** Thank you so much.

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

The next speaker we have is Mr. Dalton.

You have five minutes, Mr. Dalton.

**Mr. Marc Dalton (Pitt Meadows—Maple Ridge, CPC):** Thank you.

Thanks to all the witnesses for their comments.

I'm following up Mr. Green's comment with a question to you, Mr. Conacher.

He asked about a gold standard. You mentioned we weren't meeting any of the OECD standards—or not so much meeting standards as falling behind the rest of these countries.

Can you elaborate on that, please?

**Mr. Duff Conacher:** We haven't fallen behind all the countries. The U.S. has a stronger disclosure law, and the OECD has stronger ethics standards set out as goals for both lobbying and conflicts of interest. Canada is not meeting either of those.

Toronto and Quebec require volunteer lobbying to be registered. You don't have to be paid. That catches a lot of people: retired business executives doing a bit of lobbying for their former business, and board members doing lobbying for their organizations. These can be high-powered lobbyists, because they may have been lobbyists for a long time, when they were staff or CEO, and they know all the politicians. In a couple of minutes, they can make an influential call. That's captured in Toronto and Quebec.

They're better, and the U.S. is better. They require disclosure of how much is being spent on lobbying. The OECD standards are higher than anything any country has met. These have been set out in several reports. I'll be submitting links to them in the submission I'm making to you.

We're far behind the best or gold standard. [*Inaudible—Editor*] unethical lobbying is very easy to do and legal.

• (1635)

**Mr. Marc Dalton:** Again, to you, Mr. Conacher, what do you see as positive measures within this proposed code?

**Mr. Duff Conacher:** The gifts rule clarifies the dollar amount, but, again, the Ethics Commissioner and Commissioner of Lobbying already set that out, so it doesn't have to be set out in the code. It was already set out in guidelines and statements by both commissioners.

Otherwise, it's a gutting of the rules. As I mentioned, it will be legal for lobbyists to raise tens of thousands of dollars for a minister they're lobbying. Currently, that's illegal. That's a gutting of the rules—going from a four-year cooling-off period to zero for that kind of activity.

The one-year cooling-off period in this code does not apply to anything the Canadian Labour Congress representatives talked about wanting to do. You would have to do all of those things—canvassing, door knocking, and dropping off leaflets and pamphlets—nearly full time or with frequent and extensive interaction with the candidate or party official, in order for you to have to sit out one year. If you do it less than nearly full time and without that interaction, you can lobby them the next minute after you finish door knocking. There's nothing you're going to be prohibited from doing with this rule.

I'm not sure why they have a problem with rule 6 and the definition for “other political work”. It doesn't prohibit them from doing anything they've talked about today—

**Mr. Marc Dalton:** Thank you.

**Mr. Duff Conacher:** —and it doesn't prohibit them from representing their members. Go and lobby people. Just don't wine and dine them, and don't do favours for them, because that's unethical.

**Mr. Marc Dalton:** Thank you.

Ms. Vipond, we're moving from four years to two years, but you said you're not happy with that, at all.

Can you express why? I would think you'd be somewhat happy. What are the big changes that bring you displeasure? Do you think it's a total gutting...a total difference between what they were doing beforehand, as opposed to now?

**Ms. Siobhán Vipond:** No, a two-year period is better. Our big concern is that lower threshold, which is really encompassing almost any kind of participation in that kind of election process as a volunteer. That is more the concern, which has that 12-month cooling off period.

In terms of going forward to two years, I think that is going to work better, but, yes, it is catching many people. I would argue that, if I put leaflets in a mailbox, you are not going to do the changes I need. It's not enough to lump sum it in with giving tens of thousands of dollars illegally. It's not the same thing.

**Mr. Marc Dalton:** You have also made some good points about the \$40 and \$80 per year limit. What do you suggest? You also suggest increasing it yearly, because I know that legislation moves on, and that can change.

Just in the whole area of wining and dining, it can be quite expensive. I know that members of Parliament have a limit to how much we can spend for a meal if we go to a event, so there are limits that we also have.

Can you make some comments on that? I know that Mr. Thurlow has said there shouldn't be any limits. Maybe I misheard you. What should the limits be and what should be put in the code regarding this?

**The Chair:** I need a very quick response on this, because we're over time. You've no more than 10 seconds.

**Ms. Siobhán Vipond:** I think you have answered the question, which is that there's already an existing limit. It is on you to say you have to disclose everything over \$200. That should stay in place. The onus shouldn't be on us to keep an eye on what you're consuming at events, that wining and dining. That's why we think that there should not be a limit in these rules. You are already covered by rules, and we should be able to host events where you participate as you can according to your rules.

**The Chair:** I'm going to leave it there.

I'm sorry, Mr. Thurlow.

Ms. Saks, you have five minutes.

**Ms. Ya'ara Saks (York Centre, Lib.):** Thank you, Mr. Chair.

Thank you to all of our witnesses today. This has really been a fascinating discussion and back-and-forth.

I'm going to start with you, Mr. Thurlow, and a tweet of yours:

Rather than deal with hypothetical problems, why don't we focus on the constitutional issues that are squarely in front of Parliament as a result of the proposed changes to the lobbying code?

I don't like to deal in hypotheticals either, so let's get to the heart of the matter, because we have skirted around the charter. I would like to dig in a little, if we can.

**Mr. W. Scott Thurlow:** First of all, I am glad I have one follower. That's spectacular.

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

**Mr. W. Scott Thurlow:** Mr. Conacher has offered these hypotheticals. He thinks that these things could be happening. He has offered no evidence of any of it happening.

We know that there are people who have said that they are not going to go knock on doors because they think it will limit their ability to be a lobbyist in the future.

What's worse and more nefarious is that even if they don't do it every day, as asserted by Mr. Conacher—though we have the code in front of us that says something a little different—they might just want to do it for a weekend, but they might get that phone call in the middle of the night from the investigator saying that someone has complained. Then the investigation happens, the report is tabled in Parliament and their reputation is ruined forever.

**Ms. Ya'ara Saks:** Okay. I'm going to dig a little deeper into that. Your earlier comments during your testimony today talked about precision in language to provide ethical transparency.

For example, we get to the lobbying commissioner and her ability to determine what is an appropriate cooling off period person by person or individual by individual. You talked about the impact of the trawler effect. How can we be more precise or push for more precise language, let's say for example, in volunteers?

**Mr. W. Scott Thurlow:** I think the first thing is that we shouldn't be providing a laundry list of examples of things that we have talked about anecdotally that are real, basic political engagement. If the test is that you shouldn't lobby the people who owe their job to you, we know what those rules are. It's the campaign manager. It's the person who flies the plane. It's those Prime Ministers' tours, the leaders' tours, for example. There's a very different impact and very different exposure, not to the one person but to the entire team.

I think the original rule 8 from 12 years ago was far easier to understand than what we have two iterations later. Ironically, it has been clarified twice to make it more easily understandable.

• (1640)

**Ms. Ya'ara Saks:** So we should lean into that precision language from before.

I'm going to move from there to CLC and Ms. Vipond and Mr. Luff.

We saw in the last municipal election in Toronto that voter turnout was at its lowest level ever. It was the same thing with the provincial election in Ontario. There was also a low voter turnout, as our colleagues know, in 2021 across the country.

What is the impact when we look at something like this trawler effect of volunteers and that looseness you have referenced with your 3.5 million members across the country? Are we going to make it less accessible for individuals to be part of the democratic process, and what risk does that put on representation overall of our citizenship and their rights?

**Ms. Siobhán Vipond:** I agree with you that participation is extremely important. You're right that we see this cooling off happening, where people aren't participating because maybe they don't think they have influence on politics. It's something we take quite seriously when we talk to our members, because in the same way when they vote on their collective agreements we need them to participate in that, we need them to participate in all types of politics so that their voice is there.

What we have in front of us I don't think is going to change whether people participate or not, except to say that if this goes through, when we're talking about rules 4 and 6, our members may get confused. If they're thinking of running for leadership roles like mine, then they can't participate in these volunteer politics because we're being told we have to choose between the two of them. That's unfair. People should be allowed to participate in politics. That is our democracy.

**Ms. Ya'ara Saks:** Okay.

I'll lean in again. We talked about gold standards. Rather than gold standards, how do we measure up compared with other countries? Do you have any thoughts on that?

**Mr. W. Scott Thurlow:** It depends on your test. Mr. Conacher is 100% correct when he says the U.S. system has different and more stringent disclosure laws. Their lobbying system is run by the IRS. They have a different set of resources from the lobbying commissioner, who I think has 30 employees. I can't remember exactly what it is.

Part of the reason why there is public disclosure in the United States is that the IRS gets their tax returns and they can tell what they're spending money on. Through the legislation, they have made the decision that Americans have the right to know who's spending kajillions of dollars. In Canada, we just don't let them contribute money. It's individual Canadians who make those contributions, not large corporations.

For those of you who are worried about Citizens United, it's not here, I can assure you of that. Our contribution limits are very low by comparison. In fact, in the United States, under Citizens United, they don't exist.

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

**Ms. Ya'ara Saks:** Thank you, Chair.

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

I do agree with Ms. Saks that this has been a fascinating discussion today.

We are going to start our next round of questioning, starting with Mr. Kurek for five minutes.

Go ahead, sir.

• (1645)

**Mr. Damien Kurek:** Thanks, Chair.

Yes, it has been fascinating.

What I find particularly interesting is the different perspectives represented here, but I think there's agreement on the need for precision and the need for the rules. In the case of lobbyists, and certainly as a member of Parliament and in my work with the Ethics Commissioner on all of the disclosures and whatnot that MPs go through, precision is absolutely fundamental.

In the about four and a half minutes I have I would like to provide the opportunity to all of the witnesses—and I'll go in the same order I did before—to suggest maybe some language as to what this precision you're looking for should be.

I'll start with the CLC.

**Ms. Siobhán Vipond:** It's as we've put in front of you. I would also argue about phrases like “frequent and extensive”—and one of the witnesses has said exactly how they interpret that. If our political activity is “frequent and extensive”, what does that mean? Does that mean I did it twice in one weekend? Does that mean I did it the last two elections? That is very hard to interpret. As Mr. Thurlow has said, until there is a complaint, we actually won't get a test for it. Then that's when we don't know what we're supposed to be doing, because we want to be complying with these rules.

**Mr. Damien Kurek:** Okay.

Mr. Thurlow.

**Mr. W. Scott Thurlow:** I'm going to flip the question around and state that the Supreme Court of Canada says that you and I have the right to meaningfully participate in the democratic process. In the case of Mr. Figueroa, he was a communist, and he wasn't getting a lot of money—yes, I figured that would be what would happen—

**Voices:** Oh, oh!

**Mr. W. Scott Thurlow:** He wasn't getting any money under the per-vote subsidy because of the rules that applied to the number of parties that had to be filed. So he advanced his constitutional right under section 3 and said that money is what's going to allow you to meaningfully participate in the process by learning more about his party, the Communist Party of Canada. That meaningful participation is going to be different for every Canadian until you tell them what they can't do. This code of conduct specifically tells Canada what they can't do. I think that violates both the letter and the spirit of section 3.

**Mr. Damien Kurek:** Thank you, Mr. Thurlow.

Mr. Conacher, we've been talking about precision. Do you have any suggestions as to what precision should look like?

**Mr. Duff Conacher:** The precision is there in the gifts and hospitality rule, and that's fine. In terms of rule 6 and the definition of “other political work”, yes, the terms need to be defined. They shouldn't be left the way they are, because they're going to allow for unlimited fundraising while lobbying. What does “near-full-time” mean? What does “frequent and/or extensive interaction” mean?



The rule for low-level political activity should be that you are allowed to canvass and distribute leaflets a couple of times during an election campaign without having to sit out from lobbying afterwards. For fundraising, if you do any of it you should have to sit out for four years. For being in a campaign office, you should have to sit out for low-level right through the next election, and for the upper level even longer.

That's the way to ensure equal opportunity for equal and meaningful participation and influence, which is what the Supreme Court of Canada actually said. It's not just meaningful participation; it's equal opportunity for everyone, every citizen, to participate and have influence at an equal level. That's one person, one vote, with no one allowed to do more than any other person if they are then going to try to influence. That's why you have the cooling-off period that lasts at least until the next election—

**Mr. Damien Kurek:** Thank you.

**Mr. Duff Conacher:** —for any significant campaigning and any fundraising.

**Mr. Damien Kurek:** I have one more question that I hope to get in. I have about a minute left.

This is in terms of the whole conversation around ministerial staff and that cooling-off period versus...you know, the Prime Minister five years or a low-level staffer. Perhaps you could take 10 seconds each to answer this, starting with the CLC. When it comes to precision, do you have recommendations on what that should look like?

**Ms. Siobhán Vipond:** Not at this time. I can leave it to Mr. Thurlow.

**Mr. W. Scott Thurlow:** I would just use the things that we use to distinguish them right now, such as their rank—EX-4, -5, -6 or whatever—their pay and their length of service. Right now most of the designated public office holders are banned from lobbying for longer than they served. That seems a little off.

**Mr. Damien Kurek:** Okay.

You have about 10 seconds, Mr. Conacher.

**Mr. Duff Conacher:** Are you talking about the cooling-off period in the act?

• (1650)

**Mr. Damien Kurek:** Yes.

**Mr. Duff Conacher:** It should be a sliding scale. It should be based on your power and it should be specific to who you could lobby. You might be a low-level staffer who is a great friend of the Prime Minister's. It doesn't much matter that you're low-level. It's [*Technical difficulty—Editor*] and it should be based on relationships and personalized on a case-by-case basis, with a sliding scale from one to five years.

**The Chair:** Thank you, Mr. Conacher and Mr. Kurek.

Mr. Zuberi, you're next for five minutes.

**Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.):** Thank you, Mr. Chair.

Thank you to the witnesses for being here.

We heard a really interesting analysis, and for me a little bit shocking, from Mr. Conacher that it's possible for somebody to give unlimited funds, pretty much, to an elected official with this current version.

Mr. Thurlow, do you agree with that analysis? As a lawyer, do you agree with that analysis of this current version of the code?

**Mr. W. Scott Thurlow:** No.

**Mr. Sameer Zuberi:** On this point, how do you read this? I understand that it's normal that there are differences of opinion, but I'd like to understand your position. What is your position with respect to that question?

**Mr. W. Scott Thurlow:** I think a very good balance was struck in the Federal Court of Appeal's decision in Democracy Watch and Campbell. It has been stretched by subsequent commissioners.

I think the best approach for these types of things is for Parliament to say what those limits are and for Parliament to say that election contributions by individuals “shall” be limited to \$1,650. There's no wiggle room there. That's the limit.

**Mr. Sameer Zuberi:** I would say that the challenge around that is that \$1,650 today is different from \$1,650 tomorrow.

**Mr. W. Scott Thurlow:** That's why there's an inflation adjustment variable in the Canada Elections Act that actually allows for that. It used to be \$1,500. Now it's a little bit more.

**Mr. Sameer Zuberi:** Exactly.

We heard an interesting point from Mr. Green about how in the past there was a subsidy per vote.

Mr. Thurlow, in your view, if that were restored to what it was in the past, do think that would help mitigate some of the concerns we're talking about with respect to lobbying?

**Mr. W. Scott Thurlow:** I don't know if it will deal with the lobbying issue, but I certainly think it will talk about access to meaningfully participate in the electoral process. It was a political decision. There are different philosophies about how public financing should happen. If you make a contribution, you're eligible for a tax receipt. These per-vote subsidies don't necessarily flow the same way to the same parties, because there's a critical mass associated with them.

Even poor Mr. Figueroa, who would get only so many votes under the subsidy, wouldn't be able to buy an ad in the Edmonton Journal with that money, because he just wouldn't have enough—although the Fort Saskatchewan Pennysaver would still be able to sell him an ad.

The per-vote subsidy is an equalizer, but still, the way money is used in elections, you get much more value when you can compound that money and get a better ad buy.

**Mr. Sameer Zuberi:** I would suggest that the per-vote subsidy replenishes a war chest, which is necessary in elections. Thus, one doesn't have to seek to replenish it as thoroughly if there is a per-vote subsidy.

I'd like to hear from the CLC representatives. What is your view on that particular question?

**Ms. Siobhán Vipond:** Yes, I think you're absolutely right. We agree that getting big money out of politics makes a lot of sense. That's why it's individually funded. That subsidy would help to do that.

What that subsidy would not do is negate the need for volunteers. Elections would still need volunteers. They would still need people to take the phones, knock on doors, etc. That means these rules would still have a negative effect on people like me and other leaders in the labour movement from having to choose between whether we want to be representing our members or be volunteers in elections.

**Mr. Sameer Zuberi:** Given that CLC does lobbying, don't you think that those who are officially lobbyists within CLC could just stand out, not be involved in the elections, and the rest of the group would be involved? Isn't that a workaround for your concern?

**Ms. Siobhán Vipond:** I don't believe the Constitution should be worked around. I do think it covers everybody.

Yes, I'm here talking and giving you personal stories about what it would mean to me, but I'm not alone in that. There are lots of people who hold office in the labour movement and also want to participate in politics. I think saying that these individuals are not allowed to have the constitutional right to do both is really problematic. What we're suggesting in front of you isn't gutting this to a point that it would mean we wouldn't have good rules around lobbying in Canada.

I think what we're suggesting to you would allow us to ensure that we're not penalizing those like me who want to be involved in the political process, but also want to represent members and get good legislation for workers.

• (1655)

**Mr. Sameer Zuberi:** Thank you.

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

**Mr. Matthew Green:** Mr. Chair, I just want to note that I will be ceding my two and a half minutes to Mr. Villemure as we continue our work, our good co-operation, here.

**The Chair:** I didn't force you into that did I, Matt?

It's just like Mr. Thurlow did on Valentine's Day.

[*Translation*]

Mr. Villemure, you have five minutes.

**Mr. René Villemure:** Thank you very much, Mr. Chair.

Many thanks to Mr. Green as well.

Mr. Conacher, you have made recommendations, some of which I find radical. Still, I'm interested in your opinion.

Without getting into extremes—you know, the review is unlikely to go to extremes—what would be absolutely necessary to put into the code?

[*English*]

**Mr. Duff Conacher:** Well, regarding more change to the current code, currently if you are involved in significant campaigning or any fundraising, then you have to sit out past the next election to

match the five-year cooling-off period after you leave public office before becoming a registered lobbyist. As a lobbyist, if you are involved in significant campaigning or any fundraising that therefore causes an appearance of a conflict of interest, you should have to sit out past the next election. That's what the rule is now.

There's no reason to change it at all, unless you want to allow unethical lobbying to become rampant. There's nothing in the current proposal for rule 6, or in what we're proposing, which is to allow for low-level political activity—a bit of canvassing and volunteering during campaigns with no cooling-off period.... That would allow everyone to do a little bit, as much as an average voter does—but no more, because if you're doing more, then you're buying influence and it becomes unethical.

[*Translation*]

**Mr. René Villemure:** Do you think these measures would somehow prevent secret lobbying, as you call it?

[*English*]

**Mr. Duff Conacher:** No. Secret lobbying will only be stopped when the act is changed to close all of the many loopholes that allow for secret lobbying.

Mr. Thurlow had said earlier today that if someone did secret lobbying it would be illegal. That's not true at all. If you're not paid to lobby, then you don't have to register. If you're lobbying about the enforcement of law and lobbying the agency that enforces the law, then you don't have to register. If you're a business employee and you're lobbying for less than 20% of your time, then you're not listed in the registry. You can violate the lobbyists' code as much as you want, because it doesn't apply to you.

There are huge loopholes. If you're lobbying about contracts—as you asked about earlier—you don't have to register. I'm not sure what he's talking about, that lobbying secretly is illegal. Lobbying secretly is legal in many ways. It's very easy as a contract lobbyist or a consultant lobbyist to just say, “Put my contract to say I'm paid for giving you strategic advice, but I'm lobbying for free.” Then you can never be prosecuted, because you're not being paid to lobby. There are huge loopholes, and those have to be closed to end secret lobbying.

The code needs to be strengthened to stop unethical lobbying.

[*Translation*]

**Mr. René Villemure:** That is very interesting.

Tell me something. If all the recommendations you think are needed to make lobbying “ethical” are not implemented, does that make the lobbying illegitimate?

[English]

**Mr. Duff Conacher:** Yes, if this rule sticks and other political work goes through as is, I believe it actually violates the Charter of Rights of the 17.2 million voters in Canada who are not paid lobbyists. They have a right under the Supreme Court's several rulings, to democracy, to democratic good government and to have confidence in the appearance of integrity of every political process. That's what the Supreme Court has said.

Why would anyone have confidence if you are allowing lobbyists to raise...? It's not give, as the previous member had posed my statement as saying that someone could give someone thousands of dollars of funds. Of course, Scott Thurlow would disagree with that, but that's not what I said.

What I said was that if rule 6 and other political work definitions go through as is, someone will be able to raise tens of thousands of dollars for a cabinet minister or the minister's party that they are lobbying, and lobby them at the same time.

Why would any member of the public have confidence in policy-making at the federal level if that's legal?

• (1700)

[Translation]

**Mr. René Villemure:** Very interesting. Thank you.

I want to go back to the first question I asked you, because I found your answer very intriguing.

In your opinion, anything someone receives automatically influences them, or makes them feel beholden, whether it's an invitation to an event where a meal is provided or anything else. That person is automatically being influenced.

Is that right?

[English]

**Mr. Duff Conacher:** Yes. Clinical psychologists have tested tens of thousands of people worldwide and all humans have been influenced by even small gifts or favours. If someone does you a favour, you feel a sense of obligation—unconsciously, actually—to return the favour.

Doctors were given free samples of drugs by pharmaceutical companies. The doctors didn't use the free samples; they gave them to patients. It doesn't save the doctor anything. It doesn't really do anything for the doctor. Doctors were studied and they all said that those free samples didn't affect how they prescribe drugs at all.

In fact, it affected all of them. It changed their prescribing practices. They started prescribing the drugs that they were given free samples of, even though the free samples didn't do anything for them.

[Translation]

**Mr. René Villemure:** Do you think it's possible another study—

[English]

**Mr. Duff Conacher:** Small gifts have influence.

[Translation]

**Mr. René Villemure:** —would show the absolute opposite?

[English]

**Mr. Duff Conacher:** As I said, clinical psychologists have studied this. Read Dan Ariely or Robert Cialdini, who is the guru of influence. The number one way to influence someone is to do a favour for them or give them a gift.

That's why, when you're at a restaurant, your server gives you some mints. It increases the tip you give, on average. That's why all sorts of people send out envelopes with free fridge magnets. They've given you something and you feel you have to give something in return, so you make a donation.

**The Chair:** Thank you.

**Mr. Duff Conacher:** It works because that's what humans do: "Do unto others as you would have them do unto you." It's the golden rule. It works everywhere.

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

Thank you, Monsieur Villemure.

Mr. Barrett, you have five minutes.

**Mr. Michael Barrett:** Thanks very much, Chair.

I just want to take the first part of my time and give notice of a motion. I'm not moving a motion.

I'm not splitting my time, Monsieur Villemure.

I'll submit it in both official languages, though I know that translation will capture it. The motion is as follows: "That the committee dedicate one of its remaining Access to Information and Privacy Systems study meetings to hear from the witnesses listed below in regard to the...hotel costs of up to \$6,000 per night, associated with the Prime Minister's trip to London in September of 2022, that were made public through an Access to Information request; That the following witnesses be invited: [the Honourable] Mélanie Joly, Minister of Foreign Affairs; Frédéric Huot-Bolduc, Global Affairs; Davon Singh, Global Affairs; and Jason Kung, Global Affairs."

I can transmit that to the clerk for ease of distribution.

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

Just to be clear, you're putting that on notice.

**Mr. Michael Barrett:** That's correct. I am not moving it.

**The Chair:** Thank you.

Go ahead. You have three minutes and 50 seconds left.

**Mr. Michael Barrett:** I want to circle back to the issue of money in politics. This is really important, because I think that perception becomes reality for a lot of folks.

Mr. Thurlow, you talked about the annual contribution limit for individuals. The limit is now \$1,700. It reset on January 1, having gone up a whole \$25 over the year previous.

That number is set, and the same legislation in which it was introduced included a ban on corporate donations. We've seen instances of corporations inviting employees to give donations to political entities and then reimbursing them for them, and those have resulted in compliance agreements or criminal charges. Those are the two options. Then your corporation takes the reputational risk and results of doing that.

Mr. Thurlow, do you think the existing framework with respect to that personal contribution limit and the counterbalancing consequence of criminal charges or potentially a compliance agreement with Elections Canada provides sufficient levels of transparency?

• (1705)

**Mr. W. Scott Thurlow:** I think criminal charges are pretty serious.

**Mr. Michael Barrett:** Yes.

**Mr. W. Scott Thurlow:** What the Commissioner of Canada Elections chooses to do to enforce the law and whether or not they involve law enforcement officials is an administrative discussion for them to have. Do I think a publicly transparent list of donors—which every one of you would have for the parties—is part of the transparency we aspire to so that we know who is giving what? Absolutely.

I don't have a view about what the best way is to enforce the criminal law limit.

**Mr. Michael Barrett:** Yes.

**Mr. W. Scott Thurlow:** But when you balance the fact that contributions have to be made public and we have a public registry of lobbyists and then we have to list all of the communications we have with designated public office holders, I think you can draw those lines—and certainly Canadians can.

**Mr. Michael Barrett:** Sure.

I have just under [*Technical difficulty—Editor*] left, so I'd like to ask both organizations in the room if they think it would be beneficial to harmonize the number that is used in the Conflict of Interest Code for Members, that \$200 gift limit, with the reception amount—not for a gift but for hospitality—and if that would that add clarity for the public, for the public office holders, for members of Parliament and for lobbyists.

**The Chair:** Please give a quick response.

**Mr. W. Scott Thurlow:** I can go ahead if you like.

**Ms. Siobhán Vipond:** Harmonizing does make sense, but what you're not dealing with is the onus of reporting and keeping an eye on it and the administration attached to it. We had 400 activists in Ottawa last week, and we're really proud that they got to talk to their elected officials. The idea that we would chase around people to find out what they consumed is actually a really high burden. It makes more sense that it lies where it is right now, which is that you have to keep yourself in check. Then there's the process if you don't report as per the rules.

**The Chair:** Perhaps we can go back to this in the next round.

**Mr. Michael Barrett:** Sure.

**The Chair:** That concludes Mr. Barrett's time.

Ms. Vandenbeld, you have five minutes. Please go ahead.

**Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.):** Thank you, Mr. Chair.

It's wonderful to be back on this committee as I was in a previous Parliament.

Mr. Thurlow, I was very concerned when you talked about a post factum limit on freedom of assembly, freedom of speech and democratic freedoms in the Charter of Rights. To me those things are fundamental in our democracy.

I know that, for instance, if Parliament were to pass legislation that contravened democratic rights, those in section 2 of the charter, there would be recourse to the courts. But when it's in a code and when it's an officer of Parliament, what recourse is there if individuals' rights are being broken?

**Mr. W. Scott Thurlow:** That is the million-dollar question.

The code of conduct is not a statutory instrument. There is no jeopardy attached to violating the code of conduct, other than reputational damage if there's an investigation and report. We could seek an injunction or make an application under the federal court rules to say this instrument violates the charter, but that's not cheap and there's no guarantee it would even be heard, because it's not a statutory instrument.

The thing with charter rights is that they have to be jeopardized and, as I clearly said in my earlier testimony, this is about the principle as much as it is about what's actually being limited. My democratic right is not being limited. It's about what happens after I use my democratic right. That is going to encourage me not to do the thing, under sections 3, 2(b) or 2(d).

**Ms. Anita Vandenbeld:** Essentially, that's why you said it is ex post facto.

The fact is, I had 200 or 300 volunteers in my last campaign. I live in Ottawa. A few of those young people might then go on to get a job in one of the firms here in town. Does it not set up two different standards, where 199 of my 200 volunteers can come to my Friday drop-in and tell me what they think about the most recent legislation, but that one is not able to do that? Does it not set up two standards for people who...because everyone who wants to can volunteer on a campaign? It's not some exclusive thing only certain people can do.

What is your view on that?

• (1710)

**Mr. W. Scott Thurlow:** I strongly agree with your position and I'll take it one step further.

What happens if you're doing all this wonderful canvassing, then you get a job offer? These young people, who have been politically active, have met other people through the campaign. They may not be able to take that job, now. I think that's a "few and far between" example, but it enters into the calculus of young people when they start being very involved in these campaigns.

I think you're right. There is an asymmetry there, potentially. You also want to communicate with your constituents. The test turns into the payment.

This goes back to Mr. Conacher's volunteer lobbying. Volunteer lobbying is not a thing that exists. Volunteer lobbying is free speech. A retired executive who isn't being paid for what they're doing is lending their expertise. They don't benefit from it. If they're getting paid, they benefit from it. We can prove or determine that. Did you get a cheque for doing this work? If yes, that's why the nexus of payment exists in the act. We can actually prove they're doing it.

**Ms. Anita Vandenbeld:** One would call that advocacy, if it's not paid.

This is something very worrying to me, because we are seeing a decline in political participation.

Before politics, I did a lot of work internationally on democratic development. One thing Canada was known for, as a global best practice, particularly for political financing.... We have moved away from limits, because there will always be loopholes and workarounds in codified limits. In terms of international best practices, moving toward transparency allows the public to see what is going on. It then becomes self-regulating.

You mentioned something similar to that. I wouldn't mind if others could also weigh in, but, Mr. Thurlow—

**Mr. W. Scott Thurlow:** Sunshine is the best medicine.

**Mr. Matthew Green:** We heard that.

**Ms. Siobhán Vipond:** I believe this being known is really important, but we have to be very worried about people getting caught up in this and not being allowed to participate.

If the standards are there and people have to follow them, every time someone says something happened and someone got caught, it means that, in essence, those rules were working, because we know it's happening. Most of us have access to Google to find out this information.

**Ms. Anita Vandenbeld:** Mr. Thurlow, you mentioned the fear of an investigation also being a limiting—

**The Chair:** Ms. Vandenbeld, your time is up.

Thank you.

We have one more round. We have two five-minute interventions for both the Conservatives and the Liberals, then two and a half minutes for Mr. Villemure and Mr. Green.

I believe Mr. Dalton is next, for five minutes.

Go ahead, Mr. Dalton.

**Mr. Marc Dalton:** Thank you, Chair.

I'm just going to a comment you made, Mr. Thurlow: that there are no real teeth in this code. Actually, the commissioner also said it. It's just reputational damage.

This might not be received well by all the members here, but when you have a Prime Minister who has had three breaches of the ethics code, of ethics, and when we have all sorts of violations happening, the general public, they mix everything up, so there is a real deterioration in respect from the public towards politicians, which I think is well deserved as far as politicians go, from what we're seeing in this government.

We need to raise that bar, obviously. It starts from the top. Unfortunately, it's failing at the top, and it's going all the way through.

Can you give me some examples of where so far there have been contraventions that might be pushing this code? Can you give us some examples of what we've seen? I'll open that up to Mr. Conacher, too, or whoever.

**Mr. W. Scott Thurlow:** I believe that Mr. Carson was sentenced under the act.

I understand your frustration. I think the way that I would respond to your question is by saying that a reputational hit for people who are in the business of being an advocate is damning. It will make it impossible for them to make a living. It will be impossible for them to do the things they want to do. If you're a solicitor and you've been found to be in contravention of this, why would anybody else hire you to do that work?

I think the absence of investigations is not necessarily proof that there is a problem. There have been files that have been referred to the RCMP. There absolutely have been reports that have been tabled in Parliament.

You tell me: You are the elected official. If you knew that someone had been in violation of the Lobbyists' Code of Conduct, would you be so ready to have your name appear in the public registry as having met with them?

• (1715)

**Mr. Duff Conacher:** The former Commissioner of Lobbying, Karen Shepherd, who used to disclose in a chart the cases that came before her, found more than a hundred lobbyists guilty of violating the lobbyists' code, but she let them all off. She didn't issue a report to Parliament. She let them off with having to write an essay and, as a result, did not name them. There are more than a hundred lobbyists out there who have violated the code, some of them probably still lobbying. They were never named. No one even knows that.

With regard to the new commissioner, she is not publishing her summaries of her rulings on issues that she has investigated. She's hiding that information. She took down the old chart that the old commissioner, Shepherd, had up. We can't even tell whether she's doing her job properly and whether she's letting everyone off the hook even though they violated the code. We don't even know how many cases there are.

Their enforcement is pretty weak. They follow the media. They're not requiring communications from ministers to be disclosed to them so that they can determine whether people are lobbying who shouldn't be. They aren't really doing audits. They never have. There is probably a one-in-a-thousand chance of getting caught if you're violating the rules, but we really don't know, because it's all being hidden by current Commissioner Bélanger.

**Mr. Marc Dalton:** Thank you for the comment.

Again, Mr. Conacher, you mentioned a sliding scale, which is quite interesting. Going case-by-case and one to five years, is that manageable? Can you elaborate a bit on that?

Maybe I'll also ask Ms. Vipond for some comments on how she might see a sliding scale, if that is at all appropriate.

**The Chair:** I have to stay on time on this. We have one minute left.

**Mr. Marc Dalton:** Okay.

You have 30 seconds each.

**Mr. Duff Conacher:** Yes. It has to be manageable to be fair. It would be an administrative burden on the commissioner, but the blanket five-year cooling-off period was extended to all MPs and their staff because of the scandal involving a former MP back in 2010. It shouldn't have been extended to everybody as the same five-year blanket rule. It doesn't make sense. It's unfair.

A sliding scale would be fair. It would take a lot of work, but it would be fair. People should have the right to go out and be a lobbyist if they haven't really done much...if they were a backbench MP and on no committees, or a low-level staff person there temporarily, not known to be anybody in the government.

**Mr. Marc Dalton:** That's great. Thank you very much.

I have just a few moments here, Ms. Vipond.

**Ms. Siobhán Vipond:** The one size fits all doesn't work here. It absolutely could be a sliding scale. It doesn't need to be done individual by individual. It could be done category by category. Everybody has that kind of access, the time they served, etc. That would make it more fair for people who are looking for employment past their positions within government.

**Mr. Marc Dalton:** Thank you.

**The Chair:** Thank you.

Ms. Saks, go ahead for five minutes.

**Ms. Ya'ara Saks:** I yield my time to Ms. Vandenberg.

**The Chair:** Oh, it's Ms. Vandenberg. I'm sorry; that's my mistake.

**Ms. Anita Vandenberg:** See, now that I'm back on this committee, I just can't stop.

Thank you.

I want to pick up on my last question. You mentioned, Mr. Thurlow, that somebody who might go canvassing just a couple of times clearly doesn't fall under this, but, because it's vague, they may suddenly say to themselves, "Well, maybe I will", or worse yet, this person ends up under investigation.

I'm thinking again about this 22-year-old who worked on my campaign. They were interested in politics and took political science. Then, within a year or so, they got an offer from one of the local government relations firms. They're thrilled, but they end up under investigation because somebody complained about seeing them going door to door for me one time a year before. That young person then has to answer questions, maybe has to get a lawyer and potentially has their name dragged through. The employer backs right off and says, "Oh no. There's an investigation here. I'm not going to hire this person. We'll call you back in three months."

Is this what we're talking about? Is this what we're facing? To me, that would create an incredible chill for a lot of young people who are interested in politics and who want a career where they make a difference in politics either through elected office or through government relations.

I'd like to ask Mr. Thurlow to answer first, but then I'll go to Mike and Siobhán.

• (1720)

**Mr. W. Scott Thurlow:** I know first-hand of anecdotal examples where exactly that has happened, where people wanted to participate and chose not to for fear of something happening to them on a pecuniary basis in the future.

The obverse also happens. That places a limit on the skill that public servants are able to recruit as well. Don't only think about the individual who's a lobbyist; think about whom we want to attract into the public service. Whom do we want to be learning how to be politicians and becoming politicians in the future?

These are skills that are learned as they happen.

**Ms. Anita Vandenberg:** Go ahead, Ms. Vipond.

**Ms. Siobhán Vipond:** Yes, absolutely. We know that the chilling effect can happen. It can happen not just to folks who are worried. Sometimes it's because they don't know the rules, and then someone told them that this could happen, so it's just easier not to participate. That's a real danger.

For us in the labour movement, we also want people who want to be active in their unions to be active in their unions. This will also have a chilling effect there. That's terrifying, to be quite honest, because that shouldn't be the reason people decide to participate or not.

The chilling effect is absolutely a danger in this.

**Ms. Anita Vandenberg:** We're looking at this from the point of view of the benefit to the politician of volunteers on a campaign.

I've seen some young people grow tremendously and gain skills. I started volunteering on campaigns when I was 15. I think the skills I learned then as a young person are part of the reason I'm still in politics today.

What would this do in preventing some people from being able to get those benefits of working on a campaign, with the camaraderie, the sense of purpose, the skill sets and the experience? What would this do to our democratic system?

Mr. Thurlow, go ahead.

**Mr. W. Scott Thurlow:** Well, there are some people who will do it regardless—God bless them. There are some people who will choose not to.

I am more worried about the marginal voter, the person who's not as likely to participate, the person who needs a ride to the poll, the person who isn't registered but is legally allowed to be registered.

It's those volunteers, who, if five of them decide not to do it, how many people then didn't get onto the roll as a direct result of that? Volunteers are the scrutineers who make sure that votes are counted properly. Do they have access to the candidate? Absolutely, they do. That's important work. We need to have those scrutineers to make sure that democracy functions the way that we expect it to.

**Ms. Siobhán Vipond:** Yes, being a volunteer on campaigns means a lot of different things to a lot of different people. Sometimes it's part of journey in terms of the type of work that they're going to go into. Sometimes it's maybe just about learning more skills and making more connections in their community. I've been with new Canadians who are volunteering. It's a great idea. They're just interested and want to know more.

I think we should be scared of this chilling effect because, my goodness, this is going to cut out a whole bunch of other opportunities for them. Our democracy depends on people's participation in all of that. We shouldn't be putting up barriers to that.

**Ms. Anita Vandenberg:** So how do we fix it?

**Mr. W. Scott Thurlow:** I would—

**The Chair:** Give a very quick response, please.

**Mr. W. Scott Thurlow:** I would go back to our old code. Should we have a conflict of interest provision? Absolutely. Should we take something, expand it and add pages and pages of examples, carve outs and different limitations? That's just adding to the confusion.

**The Chair:** Thank you, Mr. Thurlow and Ms. Vandenberg.

[*Translation*]

I now give the floor to Mr. Villemure for two and a half minutes.

Go ahead, Mr. Villemure.

**Mr. René Villemure:** Thank you, Mr. Chair.

All the discussions we had today show that there is an underlying lack of trust. There is cynicism towards the political class and towards certain activities, such as lobbying.

When people lose trust in a body, they end up developing distrust. That's what we are hearing today, behind the various opinions, which are quite opposed to each other.

The next step is defiance. Defiance means rejecting the system. We definitely want to avoid a rejection of the system; that's why we are looking to restore trust.

Trust is often underestimated in society. We often think it's a given and that that's how it should be. We tend to normalize trust by codifying it.

It's not rules that make people good. The Lobbyists' Code of Conduct will be an instrument for building trust, but it can't be the only one. People have to see that there is a will. Earlier, Mr. Dalton talked about leaders and the Prime Minister. Yes, the fish rots from the head, as Confucius said. I think that we all, together, have to have this willingness to restore trust, to go for what is right beyond the code. It's fine to have a code, but Mr. Thurlow told us about many ways to get around it. Sometimes, it's possible to follow the rules and still be wrong.

I think we should all be working to rebuild trust. We would all benefit from doing so.

• (1725)

**The Chair:** Thank you for your statement, Mr. Villemure.

[*English*]

Mr. Green, you have two and a half minutes to conclude this discussion.

**Mr. Matthew Green:** Okay, I'm going to take another shot at this.

Mr. Conacher, you spoke, and I think you raised an important point around proactive disclosure on reporting mechanisms for investigations. I want to give you a brief moment to reflect on that and ways in which you would see an enhanced version of proactive reporting as it relates to investigations or outcomes. I'd just like any of your thoughts on that.

**Mr. Duff Conacher:** Sure.

Parliament's in violation of the Lobbying Act by failing to refer to this committee or another committee the review of the Lobbying Act for the last 10 years. It's supposed to be done twice. It should be reviewed, and one of the things that should be put in is that the Commissioner of Lobbying is required to issue a public summary of every single review or investigation of any situation or complaint that comes before her. If she finds the person not guilty, the person wouldn't have to be identified, but at least we would know whether she's doing the job at all, and it would summarize when the situation arose, when the complaint was received, when the investigation started, when it concluded, what the conclusion was and what the commissioner did.

Then we would know, like we did with Karen Shepherd, the former commissioner. She found more than 100 lobbyists guilty of violating the Lobbyists' Code, and she let them all off in secret without identifying any of them and issuing a report to Parliament, so we still don't know who they are, those 100 lobbyists who are likely out there still lobbying unethically.

**Mr. Matthew Green:** I have limited time, sir.

In your mind, what would be appropriate penalties or compliance measures after the fact, should somebody be found guilty?

**Mr. Duff Conacher:** Of violating the Lobbyists' Code?

**Mr. Matthew Green:** Correct.

**Mr. Duff Conacher:** Administrative monetary penalties should be put in place, like the Commissioner of Canada Elections has. The Commissioner of Lobbying has called for them. It should be on a sliding scale, and I believe in the concept of ability to pay, so it should be higher if you have a higher income. More and more scholars are advocating for that in the U.S. It's been implemented in some places. The penalty should mean the same to the person, and that means that if you have a higher income, it should be a higher penalty for you because you can afford to pay more.

**Mr. Matthew Green:** In the case of a corporation, then, it would also slide up to be appropriate for the scale of the corporation.

**Mr. Duff Conacher:** Yes, if you want to discourage violations, then the penalty has to mean something.

**Mr. Matthew Green:** I agree.

You recommended that compliance measures should be added at the end of the proposed rule 2.2 to require disclosure of confidential information in the form of a record to the appropriate authorities.

Do you have any recommendations for compliance measures with regard to confidential information that has been received in forms other than government records?

**Mr. Duff Conacher:** There should be disclosure that the public official has disclosed it to someone outside of the government. Really, they're the ones who are supposed to be upholding the public trust and respecting the confidentiality of information, so they should pay the highest penalty.

If someone then uses it for their lobbying, the penalty should be very high, as well, because that's just a "who you know" system, people doing favours for you inside secretly. The penalty should be very high because it's so easy to hide it. If you are actually caught—there would be a huge likelihood that you wouldn't ever be caught—you should really pay a very high penalty for that.

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

That concludes our round of questioning.

There are two things I want to mention, but first, I want to ask a question.

The committee has made a commitment to the Commissioner of Lobbying to get some information back to her based on the testimony that's been provided.

I'm going to ask all three witnesses very quickly. Is there anything you provided today that would be new information to the Commissioner of Lobbying? Notwithstanding the fact that maybe she didn't agree with, or didn't put into the Lobbyists' Code of Conduct what you propose, is there any new information you provided to this committee today that you have not already provided to the Commissioner of Lobbying?

The CLC is first.

• (1730)

**Ms. Siobhán Vipond:** No. We came today with what we have provided.

**The Chair:** Mr. Thurlow.

**Mr. W. Scott Thurlow:** There is, possibly in the exchanges with the questioners, but not from my *de novo* testimony.

**The Chair:** Mr. Conacher.

**Mr. Duff Conacher:** Yes. In my submission I will be setting out the Supreme Court decisions, showing that if the code goes through as is, it will actually violate the charter. The current four-year cooling off period does not violate the charter at all. It's completely compliant with the Supreme Court, and other Canadian court rulings.

**The Chair:** Thank you.

For the benefit of the committee, we did receive a letter from the Commissioner of Lobbying. Most of you would have received it, or it's in your digital binder. It was with respect to her decision not to release the legal opinion she received. I know Mr. Green referenced that earlier, so we are not going to get that legal opinion.

**Mr. Duff Conacher:** Shame.

**Voices:** Oh, oh!

**The Chair:** Somebody has a hot mike there.

**Mr. Matthew Green:** On a point of order, Mr. Chair, I recall that it was a request. I want to respect the independence of the office, but what is the jurisprudence on our committee's supreme ability to send for documents? She denied a verbal request. There's still the option to move a motion and then allow the commissioner to explain to the House of Commons why that's not within our purview.

I think we'll retain that option. I hope we can be fully informed here. If people are making charter claims—that's a pretty significant claim on a legal opinion—I feel it would be to the benefit of this committee, and the general public interest, if the general public had access to that legal opinion.

Anyway, I'm going to retain that parliamentary right to move a motion at the appropriate time.

**The Chair:** Right. I mentioned that earlier to advise the committee of something that you are likely aware of. Perhaps there is a motion, or something that would be required of the committee. I'm going to circle back with the clerk to figure out what the best course of action is on that, and then I'll advise the committee.

We do have another meeting on this study on Friday, so we may be able to dispose of it then. Okay? I just want to make that clear to the committee.

I want to thank all of the witnesses for being here today. This was, indeed, a fascinating discussion. The divergence of opinion helps the committee. I also want to thank our analysts and our clerk for preparing us today.

On behalf of Canadians, thank you to all of our witnesses.



The meeting is adjourned.

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