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# Standing Committee on Access to Information, Privacy and Ethics

EVIDENCE

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Chair: Mr. John Brassard





## Standing Committee on Access to Information, Privacy and Ethics

Monday, September 18, 2023

• (1540)

[English]

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

Welcome to meeting number 79 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[Translation]

Pursuant to Standing Order 108(3)(h), the committee is meeting for a briefing session with the Interim Conflict of Interest and Ethics Commissioner.

[English]

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and by using the Zoom application remotely.

I'd like to make a few comments, if I may, for the benefit of our witnesses and our members. We've been gone for the summer, so we need to recognize these few facts.

Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone to activate your mike and please mute yourself when you are not speaking. For interpretation, those on Zoom have a choice at the bottom of their screen of floor, English or French. Those in the room can use the earpiece and select the desired channel.

Although the room is equipped with a powerful audio system, feedback events can occur. They can be extremely harmful to interpreters and can cause serious injuries. The most common cause of sound feedback is an earpiece worn too close to a microphone. We therefore ask all participants to exercise a high degree of caution when handling the earpieces, especially when your microphone or your neighbour's microphone is turned on. In order to prevent incidents and safeguard the hearing health of the interpreters, I invite participants to ensure that they speak into the microphone into which their headset is plugged, and to avoid manipulating the earbuds by placing them on the table away from the microphone when they are not in use.

[Translation]

I remind you that all comments should be addressed through the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function.

The committee clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

[English]

In accordance with the committee's routine motion concerning connection tests for witnesses, I am informing the committee that all witnesses have completed the required connection tests in advance of the meeting.

I would now like to welcome our witnesses for today.

From the Office of the Conflict of Interest and Ethics Commissioner, we have Mr. Konrad von Finckenstein, interim Conflict of Interest and Ethics Commissioner, and Lyne Robinson-Dalpé, director, advisory and compliance.

Commissioner, you have five minutes to address the committee. Please go ahead.

Thank you.

• (1545)

[Translation]

**Mr. Konrad von Finckenstein (Interim Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner):** Good afternoon, Mr. Chair and members of the committee. Thank you for having me today.

[English]

Let me begin by acknowledging that our meeting space is on the traditional territory of the Anishinabe Algonquin people.

I feel privileged to have been asked by the Governor in Council to take on this role on an interim basis while a new ethics commissioner is being sought. With me today, as you mentioned, is Lyne Robinson-Dalpé, director, advisory and compliance.

[Translation]

My office's annual reports on the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons were tabled in Parliament this afternoon. The reports outline how my office has carried out its mandate through major activities such as directives, advice, education, outreach, and enforcement.

I would like to thank the employees of the Office of the Conflict of Interest and Ethics Commissioner for continuing their work over the last six months in the absence of a commissioner.

Transparency, integrity and accountability are essential to the democratic process. The public needs to have faith in how decisions are made and implemented. For this reason, we have the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. It is my intention to administer these regimes in an open and transparent manner, in a climate of collaboration and mutual respect.

I look forward to engaging in thoughtful, constructive dialogue given the critical role this committee plays in the overall process. I am committed to fostering an environment of openness and communication, as the exchange of ideas produces the best results.

[English]

The need for an ethics commissioner is multi-faceted. It extends beyond ensuring compliance and providing numbers. It also encompasses consideration of individual responsibility and ethical issues for individuals subject to the act or the code. The Ethics Commissioner acts as a moral compass by providing guidance on decisions that challenge ethics or integrity to ensure alignment with legal and societal standards.

In today's interconnected world, the actions of a public official have far-reaching consequences. Ethical missteps can lead to reputational damage, financial losses or legal repercussions. Regulatees can seek guidance from the commissioner on personal conflict of interest matters to prevent compromising objectivity when personal and professional interests intersect. Hopefully, by seeking counsel, public officials can make informed ethical choices that foster trust, public transparency and long-term success.

[Translation]

I will draw upon the expertise and the insights of my provincial and territorial counterparts who are already on the ground and who will certainly have useful insights and ideas. In fact, just after my appointment, I spent a couple of days at the annual meeting of the Canadian Conflict of Interest Network which allowed me to build valuable relationships and gain an insight into our common challenges.

[English]

In closing, I am eager to embark on this journey with all of you to serve Canadians and strengthen the foundations of our democracy. I am grateful for the opportunity to introduce myself today and look forward to further dialogue with you.

Thank you for your attention. I would be pleased to answer your questions.

**The Chair:** Thank you, Commissioner.

You're right on and just a bit under time. That will leave more time for questions.

We're going to start our six-minute rounds now. I'm going to go to Mr. Barrett.

Mr. Barrett, you have six minutes, please.

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

Thank you, Commissioner and Ms. Robinson-Dalpe, for joining us again. I appreciate the opportunity to ask questions and get more information on behalf of Canadians.

Commissioner, perhaps in your reading of the news over the last year prior to your accepting this appointment, or since your having assumed the office, you're familiar with the Prime Minister having spent New Year's at the Prospect Estate in Jamaica. This is owned by Peter Green's family. Mr. Green is the godson to the late Pierre Trudeau, father of the Prime Minister, Justin Trudeau. Mr. Green's son, Alexander, in turn recently made a large donation to the family foundation that of course shares the Prime Minister's name, in which he is involved.

The cost to Canadians was \$160,000. They don't know if they paid for the \$9,000-per-night fee that the Prime Minister would have incurred were he not there at the invitation of the donor to the Trudeau Foundation.

In relation to this trip, what we're looking to find out is who approved the trip from the Ethics Commissioner's office and on what date that approval was given to the Prime Minister or to his office.

• (1550)

**Mr. Konrad von Finckenstein:** Thank you for the question, and thank you for sending me in advance a letter of your concerns.

Let's start from the beginning. We don't approve travel. There is no provision in the act. We don't do that.

What we do is approve.... If somebody receives a gratuity or a gift, he or she can come to us and ask, "Is this okay or do I have conflict of interest?" We give them an answer. We do that on a confidential basis. It's up to the requester to decide whether he wants to make it public or not, etc. We do not comment on any of this.

In this case, all I can assure you—I assume; I wasn't here—is that often, with issues of this nature, a request would have been made and an answer would have been given.

**Mr. Michael Barrett:** Do you know, Commissioner, on what date that exchange was finalized? If you can't comment on the nature of the advice provided, do you know that it occurred?

**Mr. Konrad von Finckenstein:** You are trying to put me in a very complicated position. I am not supposed to.... The advice is confidential. There's a flight that took place. I can only assume.... Let's not pussyfoot around here. Yes, I can tell you that advice was sought before he went on his trip and advice was given. If you want to know the nature of the advice, you have to ask him, not me.

**Mr. Michael Barrett:** Well, we'd be pleased to put questions to the Prime Minister if he'd come to committee, but we can't even get any of his caucus to be here.

How do you think that in relation to this type of trip, where we have \$160,000 that taxpayers are on the hook for and we have this relationship of the Prime Minister's foundation with a donor giving a trip to the Prime Minister...? It has shades of "The Trudeau Report", the first one, where your predecessor ruled on the Prime Minister's illegal vacation to Bells Cay. He was in violation of the act.

How can the act and the code be strengthened to prevent this type of ambiguity and these contraventions of the law that we've seen detailed in "The Trudeau Report"?

**Mr. Konrad von Finckenstein:** First of all, you're making up certain stipulations here. You say \$160,000. I don't know where that figure comes from, or what it's based on or anything, but to be more to the point, I don't have opinions. I deal with requests. I deal with requests of judgment. People come to me and I tell them whether they comply with the existing law or not. That's my function. My function is not to give opinions or to talk about how things look, but whether people have complied with the rules or not.

**Mr. Michael Barrett:** Is there a backlog of investigations in your office?

**Mr. Konrad von Finckenstein:** At present, we have eight open cases, which involve 11 people.

**Mr. Michael Barrett:** Eight open cases, which involve 11 people—

**Mr. Konrad von Finckenstein:** I have to be careful when I say "cases". It means that something has been referred to me to look at. It doesn't necessarily mean it will result in an investigation or something like that. That's eight cases where people have brought things to our attention, which we're looking at.

• (1555)

**Mr. Michael Barrett:** With a six-month appointment, how do you plan to address that backlog while also addressing any new matters that are referred to you or discovered by your office, in order to maintain the public's confidence that the act and the code are being complied with?

**Mr. Konrad von Finckenstein:** Look here: Just because there was no commissioner, that doesn't mean that work didn't go on. If something is referred to us, obviously we look at it. We do preliminaries, and then a decision is made on whether there should be an investigation or not. Once there is an investigation, obviously it becomes one.

The preliminary work has been done on these eight cases. Soon I will get a report from my people on what they recommend, and we'll decide whether to proceed, whether to dismiss them, etc. It's not a big backlog. It's perfectly handleable and we will do it.

The problem really arises because this act, in comparison to other acts, does not provide that in the absence of the commissioner, he may assign the deputy commissioner or some people to do something. There is nothing, and that's really the problem.

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

Thank you, Commissioner.

Typically, we would go to a Liberal member at this point, but we don't have any in the room.

[*Translation*]

Mr. Villemure, you have six minutes.

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

Commissioner, thank you for being with us today. Ms. Robinson-Dalpé, thank you as well.

We all found that it took a long time to appoint someone. I believe that, in the meantime, the people at the Office of the Conflict of Interest and Ethics Commissioner did their job putting together cases, because the investigations could only be concluded by a sitting commissioner. Is that correct?

**Mr. Konrad von Finckenstein:** That's correct.

**Mr. René Villemure:** When were you contacted about this position?

**Mr. Konrad von Finckenstein:** In April, I believe, I was asked whether I would be willing to accept a position like this. I said yes, but I was going on a cruise with my wife for 40 days, so I would be ready to discuss it when I got back.

We got back at the end of June. They called me to see if I was still willing to accept the position. I said yes, and I was appointed about a week later.

**Mr. René Villemure:** All right.

When did your six-month appointment begin?

**Mr. Konrad von Finckenstein:** It started on September 3.

**Mr. René Villemure:** Okay.

You were a judge and you were at the CRTC for many years. You have an impressive background.

What specific expertise do you have for being the Ethics Commissioner?

**Mr. Konrad von Finckenstein:** I have 39 years of experience in government. I've always worked for the government. I've been involved in the development, drafting, implementation and enforcement of legislation. Finally, as a judge, I've rendered decisions on laws that were overbroad and proposed corrections to laws containing errors. So I've been involved in all stages of the legislative process.

In addition, as a judge, naturally, in my judgments, I have examined legislation from both a legal and a practical standpoint. Laws must not only be adequate, they must also be enforceable and grounded in reality. I think that's a critical trait for this kind of position. You need to be able to understand the spirit of the law and, by issuing notices, ensure that it is enforceable in real life.

**Mr. René Villemure:** So it's a matter of understanding the law and the spirit of the law.

**Mr. Konrad von Finckenstein:** That's right. You say it more elegantly than I did.

**Mr. René Villemure:** It's a force of habit.

I was also thinking that while strict enforcement is important, it can't be enough. Justice must be sought beyond legality, if you will.

• (1600)

**Mr. Konrad von Finckenstein:** Yes, it has to be legal, but at the same time we mustn't forget the purpose. If the law is difficult to enforce, you can't respect the spirit of the law, and you have to find a solution that better reflects reality.

**Mr. René Villemure:** Would you be willing to go beyond an interim appointment?

**Mr. Konrad von Finckenstein:** No. I was asked to take over this position for only six months, and I said I was prepared to do so for six months. We didn't discuss what would happen after that period.

**Mr. René Villemure:** Okay.

Would you be interested?

**Mr. Konrad von Finckenstein:** Frankly, I haven't thought about that. I've only been on the job for two weeks. I'm still in the process of understanding my role and getting the facts.

**Mr. René Villemure:** It's not a trick question at all. I was wondering why a permanent commissioner had not been found. I know that there's been a lengthy search and that it hasn't been easy. I was pleased to learn that you would be in this position for six months, but our goal is still to find out what's going to happen in the long term.

Do you have any idea—I'm not asking you for an opinion—why it's so hard to fill a position like this?

**Mr. Konrad von Finckenstein:** Frankly, no. I think it's a very interesting position. It's just a matter of interest. You need someone with a lot of experience. It's not for someone who is just starting their career. You need a little experience in the government realm.

**Mr. René Villemure:** Yes, you need to have seen how things work a little.

Thank you very much.

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

We'll now go back to the Liberal Party.

Mr. Fergus, are you going to go first?

You have six minutes.

**Hon. Greg Fergus (Hull—Aylmer, Lib.):** Thank you very much, Mr. Chair.

I would also like to thank Mr. von Finckenstein for being here.

Welcome to our committee. I'm very grateful to you for accepting this position.

I'd like to continue in the same vein as my colleague Mr. Villemure. First of all, you seemed to hesitate before answering Mr. Villemure's question about why you felt there weren't many candidates for this position.

I'll be more direct: Did you hesitate to accept this position?

**Mr. Konrad von Finckenstein:** No.

I think I have the skills. I have experience and I'm very interested in the position. I've spent most of my working life in government. This is an area that interests me and that I understand. I was told

there was an issue and the position had to be filled. So I was asked if I would be willing to take the position for six months, and I agreed to do it.

**Hon. Greg Fergus:** Do you want to stay on, Mr. von Finckenstein?

**Mr. Konrad von Finckenstein:** Please ask me that question in six months.

**Hon. Greg Fergus:** Ha, ha!

Do you think people are a little hesitant due to the political nature of the position? Unfortunately, it is a somewhat politicized position.

**Mr. Konrad von Finckenstein:** If all the position required was enforcing the law and rendering judgments, it would be easy to find someone. Obviously, it must be said that there's political involvement. The decisions we make naturally have a political impact and affect people's reputations. We live in the age of social media, where everything is always exaggerated. We have to be careful what we say, among other things. It's easy to say something we think is legal and correct, but it could be taken the wrong way.

I think that's probably one reason why people are reluctant to take on this position. I, for one, have always held very controversial positions. So it's something I'm used to; I don't have a problem with it.

• (1605)

**Hon. Greg Fergus:** That's a very good thing.

Throughout your career, you have maintained a good professional reputation. You have always gone by the book and worked within the legal framework at hand.

Do you think it's possible to be a good public servant and retain your own political views, while keeping them separate from your work to make fair and impartial decisions?

**Mr. Konrad von Finckenstein:** I believe so. I used to do that as a judge.

In this case, I was appointed for only six months. I'll leave my personal views at the door and focus on the cases at hand. Whatever my personal views are, I have to deal with the issues entrusted to me and consider the consequences of my decisions for those individuals, not for me personally, without taking my political views into account.

**Hon. Greg Fergus:** I couldn't agree more.

**Mr. Konrad von Finckenstein:** I do it every day, but it's not easy. From time to time, I'm tempted to mix the two, but that's not allowed. We always need to be mindful of that.

As a judge, I rendered a number of judgments and I had to think about the impact my personal views might or might not have. I don't believe they got in the way. When a judge is faced with that, they ask for a colleague's opinion. They can read the colleague's judgment and ask for their personal opinion as to whether everything's been done right or whether something is questionable. After a while, it becomes automatic. You leave all your personal views at the door to focus on what's in front of you.

**Hon. Greg Fergus:** I completely agree with you, Mr. von Finckenstein. I feel you've demonstrated that throughout your career. I have very high expectations, but I know that you will continue to do that. I think it's a good thing that all members of this committee recognize it's possible to do this fairly and impartially. I truly believe that it's required for the position you're taking up.

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

Thank you, Commissioner.

[English]

We're going to return to Mr. Green.

Mr. Green, you have six minutes. Go ahead.

**Mr. Matthew Green (Hamilton Centre, NDP):** Thank you very much, Mr. Chair.

To my committee members, welcome back to committee. I'm looking forward to getting back to work.

We're happy to have this very important position filled, even if only on an interim basis. As my colleagues have reflected, your CV is exemplary. I look forward to your continuing the good work in your public service that you've done for decades. Your resumé certainly speaks for itself.

In your opening remarks, you noted the issue of the need for trust, transparency and accountability. I think, without reflection on your personal opinions, it goes without saying that we are in a hyperpartisan, extreme moment in history right now. Your transition into this position is going to be integral to the work of the government by helping us continue to restore the trust of the general public and to ensure that, without favour and without target, any elected official within this House is held accountable for their actions.

Given that this position has been vacant for some time, what are your priorities in the first couple of weeks of your mandate?

• (1610)

**Mr. Konrad von Finckenstein:** First is to get rid of the backlog, and I've done some of that.

For instance, as you know, ministers and secretaries of state, to be appointed as reporting office-holders, often have to put things in a blind trust. They hire a lawyer, and the lawyer sets up the blind trust. He sends it to us, and we look at it. We say, "Yes, that's fine" or "Change this", and then it's done. Then the lawyer gives a bill of \$20,000 or something like that. What you do is that you send it to me, and I send it over to the department and say, "Here, this man, as required by the Conflict of Interest Act, had to put this in trust. This is the cost. Please reimburse him", and they do.

The act says that the commissioner sends it to the department. As a result, god knows how many of these things were waiting in my office. It's very frustrating. On the second day I came in, I said, "This is ridiculous. This is a post office function." I delegated these to someone else to get them out, and I can tell you that today, the vast majority of them have gone out.

**Mr. Matthew Green:** That's excellent, although I should say that I've always found it an interesting part of Canadian parliamentary politics that active members of Parliament can still vote on matters

concerning industries in which they have individual stock holdings. I always found that an interesting thing, as it is in the States, but I digress.

With that being your first priority—you mentioned a backlog—is there currently a backlog of post-employment waivers for public office-holders?

**Mr. Konrad von Finckenstein:** It depends on your definition of backlog. I think there were three or four.

**Mr. Matthew Green:** Are there any administrative monetary penalties that should have been imposed in recent months and have not been?

**Mr. Konrad von Finckenstein:** Again, for the administrative penalties, there's a process. Obviously, some people don't comply. There's an investigation, and then we send Lyne here to make the suggestion that this man should be penalized a certain amount. We go to the person and we say, "This is what has been decided. Do you have any comment or any excuse or any explanation?" Most of the time people say yes, there is, etc. Then, based on her recommendation, when the accused comes before me, I will say, "Under the circumstances, that's a valid excuse" or "No, this doesn't fly" and we issue these.

There are about 20 outstanding, and I will deal with them as they come up. These are not very complicated issues. I'm sure by the end of the month they'll be gone.

**Mr. Matthew Green:** It sounds as though you're off to a very efficient start.

Given your vast experience, particularly on the bench as a judge, as well as your deep experience within the actual Government of Canada, I imagine that as you are getting into this role, you're probably already seeing some challenges that face the Office of the Conflict of Interest Commissioner, both in the short term and in the intermediate term. What steps do you intend to take during your mandate to address those challenges? What are the challenges that you're seeing right off the bat, and what will you be doing to address them?

**Mr. Konrad von Finckenstein:** The challenge we see right off the bat is the effect of it. The act is deficient in not having a provision for what happens when the commissioner's term has expired or the commissioner is incapable or whatever. There should be a delegation principle. Either he can nominate somebody, or another commissioner—we have about three of them who report to Parliament—can step in, etc., with some provisions. That's a clear deficiency.

Other than that, it's a bit premature to ask me that after two weeks. I think that in six months I will have a much better idea and can share that with you.

**Mr. Matthew Green:** That's fair enough.

Commissioner, the fortunate thing for you in this interim position is that we are a very active and busy committee and I'm sure you will be back before us in no time. You'll be here before us and we'll be looking forward to maybe asking those questions again. It's always my interest at this committee to try to find systems and structural recommendations that we could provide the government, and we hope to strengthen the act, so even having you here before us today just suggesting these early deficiencies and suggesting delegated authority in the interim is a good piece of testimony that we'll take into consideration at committee.

Thank you.

• (1615)

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

Thank you, Commissioner.

That concludes our first round of six-minute questions. We're now going to the second round of five-minute questions.

I have Mr. Kurek for five minutes.

Go ahead, sir.

**Mr. Damien Kurek (Battle River—Crowfoot, CPC):** Thank you very much, Commissioner, and thank you for coming before us. We acknowledge fully what I'm sure has been a very busy couple of weeks for you. Thank you for your time here.

Commissioner, one of the things that I hear often from constituents is a general erosion of trust in institutions.

Being a part of the ethics committee, we have dealt with a whole host of questions around the conduct of public office holders and some of the perceived challenges that exist and that have led to that erosion of trust, and with the situation where the former interim commissioner was announced and it was quickly revealed that there was a close connection with a senior Liberal cabinet minister. She did the right thing and stepped down, which was important in not eroding that trust further, but the fact that it happened was certainly seen by many—I heard a lot about it from constituents—as poor judgment on the part of the Prime Minister. The act clearly articulates that there has to be consultation for the appointment of a commissioner, but not an interim commissioner, and that is certainly something that needs to be addressed.

As I was preparing for this meeting, I looked at your CV as well. You have an exemplary record of public service, but just because this is a question that I'm asked often by constituents.... It is about some of those conflicts of interest that are perceived to exist. I almost hate to have to ask you this, but just to make sure that it's on the record.... It's about whether you have a connection to the Trudeau Foundation, a relative of a cabinet minister, an in-law of a cabinet minister or some of those other very high-profile connections that have cast doubt on some of the other situations that have contributed to this erosion of trust.

I'm hoping, Commissioner, that you can comment and just put that on the record exactly, to clear up whether you have any of those connections that have led in part to some of that erosion of trust that has taken place.

**Mr. Konrad von Finckenstein:** To my knowledge, I have none. I have been retired for 10 years. Obviously, prior to retirement, I have been involved with a lot of people in government in both parties, etc. Most of them were business relationships. A few were also personal. Should one of those come up in any case, I will have no hesitation whatsoever to immediately recuse myself and designate somebody else to deal with it. It would be another one of the commissioners. Let's say I would ask the commissioner of lobbyist registration or somebody like that, another servant of Parliament like me, to basically deal with that.

I doubt that something would arrive, but who knows? I certainly am prepared to do that. It was the same thing when I was a judge. There was one case where my daughter was articling for a firm. She wasn't on the case, but I said right away, "Forget it. Assign it to somebody else. I don't want it even to come up." If there is an inkling of conflict of interest, I, as commissioner of ethics, have to lead by example. There can be no question of anything, and I don't even want someone to be able to raise a point. I would immediately tell them to take it off the table.

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

I wish we had been able to have this conversation seven months ago. I appreciate your candidness in answering that question.

Commissioner, one of the things we heard from what is now your office is that there are a number of scenarios, investigations and files. You mentioned some of the challenges around the act in terms of not having a delegate and whatnot, that things sit on the commissioner's desk even when a commissioner is not there. I'm curious: That seven-month delay is a long time for an office to be vacant, especially an important one like this.

I think I have about 30 seconds left. Can you tell the committee how you plan to make sure that the erosion of trust that I talked about before in terms of that seven months of vacancy...? How are you going to work to make sure that this can be cleared up?

**Mr. Konrad von Finckenstein:** First of all, the backlog will be gone. Also, it was trivial. The things that aren't trivial I will deal with. I'm known for being efficient and quickly making a decision. I don't sit on a decision for months, you know. I think very much that time is a very valuable commodity. If you don't make a decision, it corrodes. If something is hanging over somebody's head, let's deal with it rather than let a reputation corrode because there's no action. So, you can be sure that will be done.

In terms of trust, I think the biggest thing—and I said this in my opening remarks—is to be transparent, to explain the process and not hide behind some rules and say, "I can't." No, no, I'm sorry. If I can't tell you, I will tell you why and what the rationale is, etc., so that people understand it, and say that what I'm doing is not because we're trying to hide something but because we're trying to protect somebody or somebody's reputation, or because the rules do not allow it. I think it's key to confidentiality that, when you invoke it, you explain the context, the rationale and also if or when it can be lifted or pierced, whatever the case or the situation may be. When I have something to say, I will share it with you. One of your colleagues asked me something and you heard me say, "Let's not pussyfoot around here." That's the point.



• (1620)

**The Chair:** Thank you.

**Mr. Konrad von Finckenstein:** I do that on purpose. I want to make sure that people understand I have nothing to hide.

**The Chair:** Thank you, Commissioner.

I gave you a little bit of extra time there because I thought the response was very important to the question. Thank you.

We are now going to go to Mr. Bains for five minutes.

Go ahead, sir.

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

Welcome back, everyone.

Thank you to our witnesses for joining us. I want to echo the statements of my other colleagues here in recognizing your exemplary public service.

My first question comes from an interview that took place in mid-August with The Canadian Press. Mario Dion stated that he was not surprised that a candidate had not been chosen yet: “The field is narrow and few people would qualify for the job, or even want it, he said.”

My first question is this: What motivated you to accept the role? You mentioned that you've been retired for 10 years.

**Mr. Konrad von Finckenstein:** Just because I've been retired for 10 years, that doesn't mean I'm not interested in issues. I follow them. Besides, I was retired from the public service. I did a lot of consulting and writing on telecom issues, etc., because I like public policy. It interests me. I like it, as you can see. You can say I'm a public service junkie, and here was an opportunity. They obviously needed somebody. They had trouble finding somebody. I could be of service. Why not?

**Mr. Parm Bains:** You seem like someone who feels that he can fix things. You're a problem-solver. What are the key areas that you want to...? I know you mentioned the backlog. What are some other things that you think are needed?

**Mr. Konrad von Finckenstein:** Your colleague just mentioned trust, restoring trust, making sure the systems works. We haven't forgotten about ethics. If somebody is there who looks after it, if you have an ethical problem, you can come to him for advice and for rulings, etc. It is an important part of the whole functioning of government: that people have trust in it and feel that if there are conflicts, the conflicts will be dealt with. If there's a vacancy and there's no commissioner, you have an office that can't act, because the act provides that only a commissioner can do it. That corrodes the trust, and that's why I thought, “Well, it has to be replaced.”

**Mr. Parm Bains:** Do you think the qualifications for the role are stringent enough? Do they need to be relaxed in a way?

**Mr. Konrad von Finckenstein:** I'm just looking at them in the act. You have to be a former judge, you have to have run a tribunal or something like this, and you have to demonstrate the expertise. Frankly, I don't think it's necessarily as narrow as Mr. Dion suggested.

It is also a question of how widely you cast a net and what criteria you establish for appointment, as you know. I don't know how PCO does it. I've been appointed by PCO four times to a position. I never know what criteria they use when they choose this one over that one. You'd have to ask them why they have such trouble finding the right person.

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

You mentioned social media a bit, or it was mentioned earlier. What is the role of social media in holding parallel inquiries? How would you deal with that?

**Mr. Konrad von Finckenstein:** Parallel inquiries...no. I don't think social media holds an inquiry. What it does is comment on it, prejudice it and put its slant on evidence and allegations, etc., that may have been proven or not. The main thing is not to respond to social media. Social media is there. You can't influence it. If you try to get in it, I think it's a mug's game. The key thing is establishing confidence in your process and doing it in a timely way. Don't leave things hanging.

No. This is an issue. It's before me. I will deal with it. You will hear it shortly. When I deal with it, I will deal with it on the basis of the evidence before me, the testimony and my judgment at the end of the day. I think that's the best way to deal with it.

Don't take on social media. Don't try to steer it or play with it, or something like this. It's a mug's game as far as I'm concerned. On the other hand, it's there and it can serve as very useful information to spread your message out if your message is consistent and trustworthy.

• (1625)

**The Chair:** You have 25 seconds.

**Mr. Parm Bains:** Maybe I'll ask a member of staff a question.

I know your office has been proactive in recent years in engaging with public office holders. Do you have any statistics that you might be able to share with us in terms of how much engagement you've had and some measurables?

**Ms. Lyne Robinson-Dalpé (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner):** As you probably know—or you may not know—every quarter, we publish a report. It's a status report of the activities that we've engaged in in the last quarter, over the course of the year. On the engagement side, we have been very proactive with reporting public office holders—and members as well—offering information sessions and providing them with guidance, not just individually—as individual members or individual reporting public office holders—but also as groups. It's not only for the individuals who are subject to the rules, but also their staff.

We continually have an ongoing discussion with them, and we engage with these people to sensitize them to the rules and make sure that they abide by the rules.

**The Chair:** Thank you.

Thank you, Mr. Bains.

[Translation]

Mr. Villemure, you're next. You have two and a half minutes.

**Mr. René Villemure:** Believe me, Commissioner, I'm pleased to hear you say that we must strive to be thorough, inspire trust and set aside our personal views for the common good.

They contacted you in April, and you accepted the position. I assume that, before doing so, you looked into what the Office of the Conflict of Interest and Ethics Commissioner does. You surely also took the time to review the act and see how it works.

First, do you have any suggestions to help us improve the act or how the office works?

**Mr. Konrad von Finckenstein:** I feel it would be useful to review the act, hold hearings and get the opinion of other members and the public, among others. Are we still getting the most out of the act? Could it be improved or reformed, among other things? As I said, delegation is clearly an issue.

As your colleague mentioned, we live in the age of social media. Does that have an impact on the act? Should we make amendments and give greater powers to the commissioner, for example?

The Conflict of Interest Act also applies to ministers and secretaries of state, as does the Conflict of Interest Code for Members of the House of Commons. Is the act aligned with the code? Could we introduce amendments for more effective integration? Those are big questions that I can't answer right now.

However, I feel that this committee could and should look at them.

• (1630)

**Mr. René Villemure:** Of course, you wouldn't undertake changes of that kind in a six-month mandate, but you're an attentive observer of the public scene.

You said you were retired, but still active. Do you currently have other mandates?

**Mr. Konrad von Finckenstein:** No. I'm a member of a few non-profit organizations, but I have no mandates.

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

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

[English]

Mr. Green, you have two and a half minutes, please.

**Mr. Matthew Green:** In my opening round of questions, I spoke a bit about what your mandate is going to be. Certainly before today we've had members of your commission before us on various matters. Obviously, when budget time comes up, there will be conversations around the adequate funding to do the job.

Do you feel, in your first couple of weeks, given your past senior-level managerial experience, that there are enough resources being put into your office to adequately do the work?

**Mr. Konrad von Finckenstein:** It's a bit early for me to say, but I'm being informed by my staff that essentially we have the necessary resources to do the job.

**Mr. Matthew Green:** Now that we have identified that you have the resources, given the act and the scope of the work, when you're working through that, how are you going to go about measuring the progress within the department year after year, or I guess in the short time you have? What would progress look like for you and how do you plan on measuring it?

**Mr. Konrad von Finckenstein:** There are certain measurements already in place. We have targets for how long it should take to deal with requests, the five-day turnaround, etc. That's obviously one way of measuring.

The other one is essentially... As you know, and of course your colleagues have mentioned, there's a perceived lack of trust right now, presumably because of the six-month hiatus. I hope we can restore that so they feel that the system is functioning and that issues that have cropped up are being dealt with in a timely manner.

**Mr. Matthew Green:** Three new people were brought into the House of Commons today through by-elections. I'm a firm believer that some....

Oh, were there five?

**The Chair:** Yes, there were five.

**Mr. Matthew Green:** I stopped counting after a while.

Five new people came in. I'm a firm believer in education at the front end. Do you think more can be done for MP orientation to ensure there is a comprehensive understanding of the code, so ignorance can't be an excuse down the line?

**Mr. Konrad von Finckenstein:** Lyne here is the expert. I'll let her answer, but let me first say that it's not only what we offer, but what people attend. Part of the problem is getting people to spend enough time to be informed. We do what we can to inform them.

Lyne, you are the expert on this.

**Ms. Lyne Robinson-Dalpe:** As most of you are probably aware, the members' code was modified last June to include a mandatory training session for all new MPs. Therefore, within 120 days following the publication of their name in the Canada Gazette, a member has to have training with our office. We have actually communicated with the five new members, informed them of this obligation and scheduled training for them.

Yes, it was a recommendation made by previous commissioners. The procedure and House affairs committee has granted that. Therefore it is now part of the obligations for new members.

**The Chair:** Commissioner, you're going to be the recipient of a longer microphone here. For the interpreters, you're speaking just a little—

**Mr. Konrad von Finckenstein:** I will speak right into the mike.

Interpreters, I hope you hear me clearly.

**The Chair:** There, I think that might be a little better.

[*Translation*]

Before the next round, where Mr. Gourde will go first, I'd like to ask a question.

[*English*]

Commissioner, I know you've been busy over the course of the last several weeks. One thing that consistently comes up is the Conflict of Interest Act itself. As you know, it came into effect in 2007. There was the statutory review in 2013, and then my understanding is that there was prorogation. The act was tabled in the House in 2014.

It's been nine years since the act was reviewed. Have you come to any conclusion or thought about whether the Conflict of Interest Act itself needs to be reviewed?

• (1635)

**Mr. Konrad von Finckenstein:** It's a bit premature to ask me that. I can answer only generally.

Any legislation, after such a long period of time, as you mentioned, deserves to be reviewed, because things change. Especially in this age of social media we have to see whether some of the procedures or some of the ways we looked at it, which were based on a paper world, still make sense or can be improved in this day and age.

[*Translation*]

**The Chair:** Thank you, Commissioner.

We will now start the next round.

Mr. Gourde, you have five minutes.

**Mr. Jacques Gourde (Lévis—Lotbinière, CPC):** Thank you, Mr. Chair.

Mr. von Finckenstein, first of all, congratulations on your appointment.

Earlier, you talked about the need for very experienced people. However, your interim term is six months long and a commissioner's term is usually seven years. Seven years is quite a long time, and to have experienced people, you need people of a certain age. Could the seven-year term limit the number of candidates?

**Mr. Konrad von Finckenstein:** First, if someone accepts an appointment, they are free to resign. They aren't required to stay for seven years.

Second, term limits are a good thing. You really have time to change and reform the organization, to leave your footprint, your

ideas, and so on. If your mandate lasts only four years, that may not be enough, particularly if you want to amend the act or the code, since that requires a lot of time, consultations, and so on.

That means seven years is an asset. However, as you say—

**Mr. Jacques Gourde:** Thank you, Commissioner.

I'll go back to the interim. You know, investigations sometimes last six, eight or nine months. When an investigation lands on your desk and it was started by a predecessor or by the team—who are already working very well—you have to make the decision and sign the report.

If you stay in your interim position for six months and leave while an investigation is under way, will the next commissioner have to start the whole investigation over again and redo what's already been done?

In two or three weeks, will you be signing reports that are already being drafted, or will you need to start the process all over again to ensure that it meets your own requirements?

**Mr. Konrad von Finckenstein:** No, we don't redo everything.

We take the evidence and ask those drafting the report to explain the decisions they made and their reasoning. We take that and we look at it. Finally, we look at the decision, we determine whether it's okay, whether it's been adequately explained. If something is unclear or ambiguous, we can ask for it to be redone.

However, I feel that, in general, it's the same thing as when I was on the bench: When another person started the work, we had to ask ourselves whether there were questions of credibility or just questions of facts, reports, evidence, documents, and so on.

If the credibility isn't in question, we will continue what's already been started and render the decision. If the credibility is in question, we need to start over, because it's a personal matter. At the end of the day, it's my decision. I'm responsible for it. That means that I can't base myself on the testimony my predecessor received.

**Mr. Jacques Gourde:** I have a minute left.

If I understand your answer correctly, if, in the entire investigation process, something bothers you or seems worrisome, you can ask for a reinvestigation of some of the work that's already been done, and it may take another one, two or three months. If the investigation drags on and your term ends, your successor may ask exactly the same thing for the same investigation.

Could that happen?

• (1640)

**Mr. Konrad von Finckenstein:** Anything is possible, but I don't think it's very likely.

**Mr. Jacques Gourde:** Thank you, Commissioner.

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

Thank you, Commissioner.

We go now to Ms. Hefner for five minutes.

[English]

**Ms. Lisa Hepfner (Hamilton Mountain, Lib.):** Thank you, Interim Commissioner, for joining us so early in your mandate. Ms. Robinson-Dalpé, it's good to have you here answering our questions, as well.

I would like to take you back. You mentioned a couple of times your experience on the bench. As someone who covered criminal courts for many years, I'm wondering if there are other aspects of that role as judge that you would bring to our ethical framework here in Canada, or other sensibilities? Do you know what I'm saying?

**Mr. Konrad von Finckenstein:** First of all, I didn't do criminal cases; I did only civil cases. I was at the Federal Court, so I dealt mostly with judicial review, which is basically the process. It's about looking at the process and making sure that the process was properly followed, that people had the necessary jurisdiction and came to the necessary conclusions, and that the conclusions were reasonably defensible. That's really it. You don't redo the situation unless it's unreasonable.

It is very close to what we have here. In effect, here you have rules. You have a code. You have an act. You have a situation. What is illegal? Is this reasonable? Does it produce a reasonable end or not? You have to apply a certain amount of common sense.

Second, I think what you always keep in mind when you are a judge is not only the decision you make but the unintended consequences or side effects. I would be deciding this little issue, and that's clear, but having decided that, does it have secondary or tertiary effects, which can be very negative or which nobody has taken into account?

It was the same thing when I was commissioner of competition or chairman of the CRTC. We were always worried about the unintended consequences. It's the same thing here, too. I will deal with somebody's conflict, given the precedent, but I also want to keep in mind the unintended consequences, making sure that there are no unintended consequences or that, at least to the extent I can foresee them, they are acceptable.

**Ms. Lisa Hepfner:** Going back to the changes in how new public office holders are informed of their duties under the act, maybe you can explain the difference. Now, for members who weren't just sworn in this week, how are they informed of their obligations on an ongoing basis?

**Mr. Konrad von Finckenstein:** Lyne, I think that's your domain.

**Ms. Lyne Robinson-Dalpé:** As most of you are aware, there's the review process that all members and reporting public office holders have to go through on an annual basis. That is an excellent opportunity for members and public office holders to have an exchange with their advisers and ask questions or be more sensitized to their obligations under the regimes.

There is also ongoing training on a monthly basis that is provided by the office. There are emails sent out to new public office holders to invite them to training, but we also offer training to any member or their office. If you want any training, we will gladly provide that training to you.

**Ms. Lisa Hepfner:** Would you say that engagement with your office has increased over the years, and if so, in what ways?

**Ms. Lyne Robinson-Dalpé:** I would say yes, definitely.

I spoke about the quarterly report. In it, there are some statistics as to how many people participate in the training sessions we offer. Levels are getting pretty high. People want to learn more about the rules, the application and our interpretation of the rules, because they need to know how the rules apply to them so they can abide by them.

Essentially, we are doing a lot of outreach, either through formal training or on our website. I encourage you to follow up with our office and take advantage of those sessions.

• (1645)

**Ms. Lisa Hepfner:** Further to that, do you have any other advice for public office holders who may be watching this today?

**Mr. Konrad von Finckenstein:** I think what my colleague said is, really, the advice: Get yourself informed before you do anything, because you are now in a job where you're going to be under a magnifying glass, to a certain extent. Your actions are going to be watched and they can have negative consequences for you. If you're informed, you won't do them. If you need any help, come and we'll help you. We'll have the door open to give you free advice.

**Ms. Lyne Robinson-Dalpé:** Can I just add to that? Please be mindful that all advice provided by our office is confidential. You can call our office at any point in time. It is strictly confidential. We will not publish or comment on any of this information publicly.

**The Chair:** Okay, thank you. If you think it's a conflict, it probably is a conflict.

Thank you, Ms. Hepfner, Commissioner and Ms. Robinson-Dalpé.

We're going to go to five minutes.

[Translation]

If I understand correctly, Mr. Villemure and Mr. Green, you have no further questions.

[English]

We're going to go to Mr. Kurek, and then for a couple of minutes to Ms. Khalid. I think you're going to get off easy today, Commissioner.

Go ahead, Mr. Kurek, for five minutes.

**Mr. Damien Kurek:** I'll pick up where my colleague left off. I believe there are two new parliamentary secretaries who have been appointed from the membership of this committee. I understand there could be some changes.

However, Commissioner, in the aftermath of the hot water that cabinet minister Mary Ng found herself in, in a sole-source contract with her campaign manager and best friend, the recommendation that was made by the previous commissioner, just as he had announced he would be retiring, was that cabinet ministers and parliamentary secretaries should take remedial training.

My question, Commissioner, is this: Have any cabinet ministers or parliamentary secretaries taken up the Office of the Conflict of Interest and Ethics Commissioner on the recommendation that they take remedial training, in light of those comments and that recommendation that was made by your predecessor?

**Mr. Konrad von Finckenstein:** Can you define “remedial training”?

**Mr. Damien Kurek:** Supplementary training, a refresher course, I think, was.... I certainly wouldn't want to put words in the mouth of the former commissioner, but he was very frustrated that it seemed like public office holders were negligent in their understanding and certainly in their following of the rules of the act.

I'm curious. Did your office in fact receive any requests from ministers or parliamentary secretaries in the follow-up to making that recommendation? I believe it was in December that he made those comments.

**Mr. Konrad von Finckenstein:** As you've heard, I think many times, everything we do is confidential. If there is somebody who has dealt with us before but feels he hasn't understood and wants more, something more specific, etc., it comes very close to seeking confidential advice. I really can't comment on your question.

**Mr. Damien Kurek:** I think a question that should be asked, certainly to the Liberal government writ large, is whether all of their cabinet ministers and parliamentary secretaries have taken that remedial training. Certainly, that's something I'd be happy to ask them.

Commissioner, because the investigation process is a quasi-judicial process, your expertise lends you credibility, I believe, in this role. However, Commissioner Dion shared a list of 49 standard questions that are asked of somebody who is being investigated. Commissioner, I'm wondering if it would be possible for you to table that and share any more about what an investigation might look like.

The reason I ask is that Canadians see your role and your office as key to that trust that is required with public office holders. For them to understand what takes place during an investigation, the thoroughness of an investigation, I think would be very valuable. We heard about a list of 49 questions. It would be great if you could table that and if you could outline a little bit about what an investigation would look like if somebody found themselves in one.

• (1650)

**Mr. Konrad von Finckenstein:** You know, it really depends on what the allegation is and what you do with it. That's exactly what we don't do, a pro forma “These are the questions we ask.” We look to see what the issue is. What are the allegations? What are the rules that apply? Then we will question, obviously, the person who makes the allegation. We will question the person who is the subject of an allegation, and any other witnesses who have something

relevant to say. On the basis of that, we will then make a decision. The decision will be well explained as to exactly whom we talked to, what we asked them, what they said or what we heard, what conclusion we drew and whether we found something credible or not credible.

To do what you just suggested looks logical at first glance, but actually it does exactly the thing I don't want to do. These are individual cases for people who have a particular problem, etc., and we want to make sure we deal with the problem in a fair and honest way, in accordance with the code.

I don't want to come in with a pro forma approach or with a line of questions that drive you towards a certain solution, because that's serving neither the person nor the public. What I want to know is that somebody made an allegation about this. This is for the allegation. Here are the rules. Here is what we did. Therefore, the result is yes or no. That's the only way you can deal with it. You should not proceed with pre-set questions because, to a very large extent, that drives your investigation in a certain direction, which is exactly what you don't want to do. You want to be able to judge it on the basis of the person who is subject to the allegations.

**The Chair:** Ms. Khalid, go ahead.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Commissioner, for your time today. We really appreciate it, and the hard work that you do for Canadians and for our Parliament in ensuring oversight.

I just want to follow up on intersectionalities among a lot of questions that have been asked. My colleague asked about the role of social media in having an impromptu parallel inquiry, if you will, in terms of whether to come to a conclusion of guilty or innocent. We know the hyperpartisan nature and the extreme polarization, not just here in Canada but across the world, when it comes to ensuring trust in public institutions.

I'd really like to understand what you think about that. What are the measures, perhaps, we can use to ensure that before your results, before you make a decision, a decision is not made in the public space?

**Mr. Konrad von Finckenstein:** I don't think there's an answer to that. I don't think you can prevent the public from forming an instant judgment or listening to social media and coming to a conclusion.

In terms of the process, at the end of the day, the only thing we can do is ensure there is credibility in the process, to be as transparent as possible, as I mentioned several times, so that people understand what we are doing, why we are doing it and where we are going, and then, when it comes out, to explain it in terms that people understand. Don't hide it behind legalese and don't cite the act all the time, etc., but in effect put it in real terms so that people understand the situation the man was in and what he did. Then say that it seemed reasonable under the circumstances but it violated the rules, or, on the opposite side, that actually the person did seek advice and followed the advice and that, therefore, although it looks shady, it was actually perfectly permitted under the rules. That's the best you can do.

**Ms. Iqra Khalid:** I appreciate that.

As the last point, I think, that we'll have at this committee, I just want to know what your take is with respect to trust in public institutions. As the interim Ethics Commissioner, what do you envision as your role and the role of the office in ensuring that this public trust is maintained?

• (1655)

**Mr. Konrad von Finckenstein:** It's a bit of a repeat of what I said before. I think that clearly for all public institutions, including ours, on trust or lack of credibility, etc., our prime task has to be to restore the public trust, and that can be done only by being transparent and open, and also by communicating what we do as much as we can, and communicating clearly and precisely.

To the extent that we can use social media, by all means, let's use them. If that's how people receive their news, then fine. I'll offer it to social media. There's no problem. Just make sure there's nothing in there that can be twisted, which somebody will do, or that is unclear. You have to be clear. It has to be understandable to the common man. I'm not writing for a legal scholar. I'm not writing for the law school. I'm writing for the people who vote. Do they understand what the ruling is and why we find that somebody has a conflict or doesn't have a conflict?

**Ms. Iqra Khalid:** Thank you very much for your time today. We really appreciate it.

Thank you, Mr. Chair.

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

Thank you, Commissioner.

That concludes our round of questioning. I've met a lot of political junkies in my life. By extension, we're all political junkies. I've never met a public service junkie before.

Commissioner, I want to thank you and Ms. Robinson-Dalpe for taking the time today to come before the committee. Thank you, sir, for accepting this role on an interim basis. I think your public service speaks for itself, and that service to Canadians speaks for itself. I'm not speaking on behalf of the committee but as chair of the committee. You've given me quite a bit of confidence today with the way you have responded to the questions and the way you are going to conduct yourself as commissioner on an interim basis.

I want to say to committee members that on Wednesday we have committee business. As of now, it's scheduled to be in camera. We did receive the interim report on our foreign interference study, which came to our accounts on Friday. I'll remind all members that it is still confidential. We have not dealt with it. I expect we'll have a discussion about this during committee business on Wednesday. We're going to talk about the schedule heading into the fall, as well as the report.

That concludes today's meeting.

Thank you, sir, on behalf of the committee and on behalf of Canadians.

The meeting is adjourned.









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