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Mr. Bob Zimmer

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● (0845)

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.)): Good morning.

We have quorum. We are waiting on Mr. Baylis but I'm sure he'll be joining us.

Thank you, Mr. Dion, for attending today as we continue our study on the Conflict of Interest Act.

We'll start with opening comments from you before we proceed with a round of questions.

Mr. Mario Dion (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you, Mr. Chair and honourable members of the committee, for inviting me to be here this morning. I'm accompanied by Martine Richard, who is our senior general counsel, and Lyne Robinson-Dalpé, who is our director of the very important advisory and compliance services.

I'm pleased to have an opportunity to present some initial.... Of course, I've been on the job for less than one month. Tomorrow will be my one-month anniversary so these are initial talks on the possible changes to the Conflict of Interest Act. It's important to note that I make these observations after having been in office for just under one month, as I just said; but I have been a keen observer of the ethics regime for a few decades.

The degree of interest expressed in the House since we all came back last week of course creates an interesting context within which to talk about the Conflict of Interest Act and whether some amendments should be considered. Like my predecessor, I do not think the act is broken. My view is that there is clearly room for improvement. From my point of view, it would be desirable to undertake a comprehensive review of the act, and I'll explain why.

We have just formally adopted a mission statement for the office that says that we exist to provide “independent, rigorous and consistent direction and advice to members”. That's the goal, to be “rigorous and consistent” in providing advice to members of Parliament but also to federal public office holders. There are 2,500 people as well who are appointed officials. That's our role, to provide advice, then to make “use of appropriate sanctions in order to ensure full compliance” and to investigate, where necessary. We advise, we investigate, and we impose sanctions, if and when appropriate, to ensure that the act is respected.

My goal as commissioner is an ambitious one. I want to create the conditions under which all public office holders can actually be in full compliance with the act at all times. The changes I speak of today are made with that objective in mind. There are two categories, in my view, of possible changes. The first category would be intended to clarify the obligations of ministers, parliamentary secretaries, ministerial staff, and Governor in Council appointees, and to provide more predictability in the administration of the act. That would be the first category of changes. The second category would be those changes that are intended to strengthen the enforcement of the act.

In the first category, one clear and obvious possibility would be to make an effort to harmonize the Conflict of Interest Act with the code that governs the conflict of interest for members of the House of Commons. Ministers and parliamentary secretaries are subject to both the act and the code, but there are definitions and terminology in both regimes that should be harmonized to avoid confusion. To be clear, I'm not speaking about harmonizing obligations. The act is more stringent, and this is important given the field of influence of ministers and parliamentary secretaries. For example, the act has post-employment and divestment requirements, while the code has none; and that's fine. However, there are areas that should be harmonized. For example, the code describes in some detail what amounts to furthering a private interest, while the act does not. The code also provides for a preliminary review to determine whether an inquiry is warranted, whereas the act does not. Those are differences that do not really have a logical explanation. That would be the first one.

The second one.... There are many more, but I've picked the most important possibilities from a strategic point of view. Of course, there was a list of 75 amendments that was tabled by my predecessor before this could be...back in 2013. I don't want to discuss technical amendments. I'd like to focus on the most important big ones. There's harmonizing the act and the code; and the second one would be to amend section 17 to clarify that controlled assets that are held indirectly are a no-no, as well as those held directly.

There are two types of assets defined under the act: controlled assets and exempt assets. Exempt assets are items that are for private use and those of a non-commercial character, like your residence, your personal effects, and so forth. These assets do not trigger compliance measures because they do not present the possibility for conflict of interest.

● (0850)

Controlled assets on the other hand are assets that could be directly or indirectly affected by government decisions. The act requires that controlled assets be divested by sale in an arm's-length transaction or by placing them in a blind trust. I agree with my predecessor that the act should be amended to expressly indicate whether controlled assets can be held through a private company. That's the second one.

[*Translation*]

Third, the committee should consider removing the exception for gifts given by friends that is included in subsection 11(2) of the act.

What people view as constituting a friend varies between cultures, ages and circumstances. It would be impossible to define “friend” for the purposes of the act in a way that would take into consideration all of the possible circumstances and that would survive the test of time. It evolves with time and over generations.

Moreover, if the definition of the word “friend” was eliminated, there would still be the acceptability test, and that is what counts in the act. Under subsection 11(1) of the act, when there is a gift “that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function”, it is not acceptable. Whether a gift is given by a friend or not is unimportant. According to the act, you cannot accept a gift if it can reasonably be seen to have been given to influence you. The converse is also true, if a gift given by a friend could not be seen to have been given to influence, you are not breaching the act.

Gifts from a friend or relative are not subject to an exception in the Conflict of Interest Code for Members of the House of Commons. I think that in this case as well, if this exception in the act were removed, the code for members of Parliament and the act would say the same thing.

Once again, in order to clarify and facilitate the continued observation of the act by members of Parliament, ministers and parliamentary secretaries, the rules on fundraising for ministers and parliamentary secretaries could be strengthened.

Currently, the act contains only one provision, section 16, that directly addresses participation in fundraising activities, and that provision does not distinguish between political and charitable fundraising.

It is clear that the potential for conflicts of interest is higher for ministers and parliamentary secretaries in relation to fundraising activities because of the influence they have in departments or, in the case of ministers, in cabinet. Stronger fundraising rules should be included in the act.

That ends the first category of amendments, namely, those to clarify the obligations. I have made four suggestions. I have others, but those are the most important, in my opinion.

I will now address the second category of amendments.

First, there should be sanctions because there aren't any currently.

[*English*]

I'd like to suggest there should be sanctions, or at least Parliament should look at the possibility of establishing sanctions, for substantive breaches of the act.

The role of the commissioner is first and foremost to provide accessible and clear advice as a means of prevention. Robert C. Clark, a former ethics commissioner from Alberta who's been in the business for decades, describes the role as being 90% priest and 10% policeman. I think this is true, and it should be true. However, one should not ignore the dissuasive effect that sanctions can have. They help to focus the mind. They also provide Canadians with the assurance that there are consequences for breaching the act that are more serious than what has been called “naming and shaming”. Sanctions could go some way to rebuilding the trust relationship with the Canadian public.

My office has had a look at the literature on the subject and we've found that there are no studies on the effectiveness of penalties in conflict of interest regimes. We haven't found anything. There are, however, several jurisdictions in Canada and elsewhere that provide for such penalties. For example, the majority of provincial ethics commissioners are already empowered to recommend that the legislature impose a penalty. That's the first one under the category of enforcement.

The second would be the power to issue confidentiality orders. As you know, the Conflict of Interest Act is intended to help build public confidence in our system of government and parliamentary institutions. One could argue that public airing of requests for examinations before the commissioner has had an opportunity to consider and report on them has the opposite effect. It can, in fact, contribute to a loss of trust. For many Canadians, an allegation that the public office holder has contravened the act is tantamount to a finding of a contravention. For reasons of fundamental justice, and in order to protect the integrity of an examination, the act imposes confidentiality upon us at the office. I suggest that the commissioner be given the power to also issue confidentiality orders to witnesses and that the act be amended to require complainants to maintain confidentiality until the commissioner has actually reported. That's another possible—probably controversial—amendment to facilitate the enforcement of the act.

I also believe that the first one I would make under this category would be to give the commissioner the power to make recommendations, because at this point in time there is no power in the statute for the commissioner to recommend anything.

Examination reports, of course, invariably lead to a better understanding of circumstances that can lead to a failure to comply. They serve as a reminder for public office holders of their obligations under the act. When I served as Public Sector Integrity Commissioner, I had the power to make recommendations, and I used it on several occasions. I believe that such authority...which doesn't have to be used each and every time, but if it is at least available if it makes sense, if it serves a purpose.... If I had the power to make recommendations, if and when appropriate, it would allow me to recommend changes that would further strengthen the regime and to craft a just remedy to address the situation at hand.

● (0855)

[*Translation*]

My last suggestion is the following: Training sessions should be mandatory for public office holders.

I am convinced that contraventions to the act often occur because of public office holders' lack of understanding of their obligations. Ignorance of the law, of course, is no excuse but mandatory training sessions could go some way towards mitigating the risk of an inadvertent breach.

These days, giving training isn't very demanding, since we have modern technology that enables us to provide a good overview of the act and the code in an hour or two. Members of Parliament could take this training initially, after their election or appointment to an office, and could retake it periodically, perhaps every year or two.

I look forward to having a dialogue with members of the committee about these possibilities or any other matter they might wish to discuss with me this morning.

Thank you very much for inviting me to appear.

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much for that presentation.

We'll begin our first round of questioning with Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning, Mr. Dion. It's always a pleasure to see you.

You've touched on a lot of topics that I wanted to go through in my questions. I wish I had had these before; I could have prepared differently. But that's okay.

I know that you don't want to go into the weeds on this, but one of the recommendations your predecessor made was on the $200 threshold for disclosing gifts. She wanted to reduce that to $30, I think it was.

What's your opinion on that recommendation?

Mr. Mario Dion: In fact, we have discussed that since I joined the office. I understand she recommended that if a gift is $30 or less, no one would have to do anything about it, essentially. She proposed $30. It could have been $50. It could have been $25. There is a minimal threshold.

It doesn't really serve a purpose to require people to declare a gift that is worth no more than *x*—$25, $30, or $50. It takes time, and there are costs associated with making a declaration, putting it on the registry, and so on and so forth, so I agree with that suggestion.

Mr. Raj Saini: The other issue you brought up—and I was going to delve a little bit more into this—was harmonizing the code, because there's the code and the act.

How would you do that? Would you have one—let's say you call it the act—and you subsume the code into the act? Do you keep them separate? Going forward, how would you see harmonizing both?

There are similarities in some, and there are differences in others, especially when it comes to ministers and parliamentary secretaries. How would you go about producing the document?

Mr. Mario Dion: I think that for constitutional reasons we will have to continue to have a code that governs parliamentarians and other elected officials, and an act or statute. I don't think it's possible to merge the two because of parliamentary privilege and because the House is the master of its own procedure.

At the same time, if there is a will on the part of the government and the committee on procedures and operations to look at these processes, it could actually be possible to do it in parallel. There are several sections that intersect, but it would actually be conceivable that two could be taking place at the same time.

● (0900)

Mr. Raj Saini: When you talk about putting things in a blind trust, would it be easier, in a way, if anybody who's elected put all their assets in a blind trust? Would that be easier, or is that too burdensome?

Mr. Mario Dion: There are currently three options under the act. Option one is that you sell your controlled assets. Option two is that you place them in a blind trust. We saw option three in a case a few months ago. My predecessor has determined that if a corporation owns controlled assets, even if it's a sole-owner corporation, that's adequate, too. Those are the three possibilities at this point in time.

I suggested in my opening remarks that maybe we should abolish the third possibility because I don't believe this was necessarily the intent of the legislation, even though it has been interpreted that way. It would clarify things, and there would be two options: you sell or you place in a blind trust.

Many people sell, by the way. I looked at the numbers from last year, and I was surprised to see that the vast majority of people decide to sell as opposed to going through—I'm not talking about MPs; I'm talking about all public office holders. The vast majority do sell, as opposed to placing in a blind trust. We had 18 active blind trusts at the end of 2017 and 46 individuals who sold their controlled assets last year.

Mr. Raj Saini: Also, you mentioned that there's a difference between the code and the act. I think this point is very important, and I would like to hear a further comment on your part. If somebody makes a claim or an allegation within the act, I believe that becomes public as compared to the code, or do I have it opposite?

Mr. Mario Dion: On several occasions in the past it has become public because the office is the only party that's required to keep things confidential. The MP or senator is free actually. There is no bar against the complainer from making a complaint public. Also, if the media finds out about it, there's no bar against them from making it public. We're the only ones who are required to keep it confidential.

What I was proposing as a possibility, which would have to be looked at very carefully, would be to impose a general blanket obligation on anyone involved to keep it confidential.

Mr. Raj Saini: I think that's in concert with what your predecessor also said, to make sure that the process is confidential.

Just in general, I know there are a lot of recommendations that your predecessor put forward. I know you mentioned the penalties. Are there any that you disagree with?

Mr. Mario Dion: No. I went through them carefully, but you have to bear in mind that I've been on the job for one month. Madam Dawson was there for 10 and a half years, so we still have a ratio of 1:25, or something like that, between my time and her time.

I went through the list. There was nothing where fundamentally my gut said, "This is wrong, I don't agree with this." I saw nothing, but I did not do a complete in-depth analysis, as I would if I were asked to present a document to the committee about proposed amendments. I didn't see anything that prima facie caused me heartburn or difficulty.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thank you.

We now have Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Commissioner, for making yourself available to us so early in your term.

I was struck by your quoting of former Alberta Commissioner Clark with regard to the priest and policeman self-identification. I know that on the public record you have suggested that you see the role somewhat as that of a judge.

I think you are saying you disagree with the concept that mere naming and shaming to encourage compliance is adequate going forward, and that in fact, as you've said today, you'd like to see those reforms with more significant capability for penalties.

You suggested, again on the public record—a quote, or maybe it's a paraphrase—that a fine of $10,000 hurts more than $500. Is that the range you would suggest in changing the provision for penalties?

● (0905)

Mr. Mario Dion: I could also address the earlier portion of your question, Mr. Kent.

The allusion to the priest refers to conduct prior to a breach having occurred. You counsel people. Once it's been determined through an examination or an inquiry that somebody has breached the act, then you become the policeman vis-à-vis the same person. The priest is preventative, and the other one is a word we learned at law school, which I avoid using. There is prevention and there is repression. Once it's been established that the breach has occurred, maybe there should also be a role to sanction.

I mentioned $10,000 as a possibility, but this is something that would have to be looked at by those who know more than me about sentencing and federal statutory breaches and what would be adequate. It would be a maximum of this nature, of this order of magnitude. A million dollars would be ridiculous, and I think $100 would be ridiculous as well, so where does it lie? I thought about $10,000, or it could be $25,000. I have not done research yet to suggest any figure at this point in time.

Hon. Peter Kent: Aside from perhaps an increased penalty—a dollar figure, a fine—to a violator of the act or the code, what are your thoughts on a situation where a violation of the act or the code might have improperly generated significant cost to public funds?

Would you favour those funds being repaid?

Mr. Mario Dion: This is an indirect consequence of the breach of the act. Under the current statute, the commissioner has the authority to examine the situation to see whether the act has been breached, and has no authority to penalize or recommend anything.

My own personal view is that the issue of public funds and whether they were improperly used belongs somewhere else. There is accountability for that, but that accountability is outside of the regime created by this act.

Hon. Peter Kent: I was struck by your remarks regarding the changes to require complainants to maintain confidentiality until the commissioner has reported. As we've seen, certainly in the past year, in some cases the barn door is already open and the public is well aware that a complaint may be made or a decision made by the commissioner independently to begin an investigation based on public information.

I know that the work of the office is meant to be conducted under a veil of confidentiality, and certainly—

Mr. Mario Dion: I think office-holders would want that. Section 48 is extremely clear about that.

Hon. Peter Kent: Absolutely.

Again, though, coming back to your seeing yourself as a judge in a court of law.... If a decision is made by the judge—in this case by the commissioner—with which the complainant doesn't agree, there is an opportunity for appeal.

Do you believe that perhaps if there is tighter confidentiality, there may still be room for further discussion or appeal, depending on a finding by the commissioner?

Mr. Mario Dion: The current regime—and I reread it several times—is essentially the commissioner decides, and there is no appeal. If the commissioner says there is a breach, it's final. Nobody, including the Supreme Court, can upset that, unless of course there's been a procedural breach. There is no appeal. I think it gives finality to a process. I think it's a good thing.

What we're suggesting is that if somebody makes a complaint, even though people might suspect a complaint has been made, they don't know for a fact that something is under investigation until such time as somebody says so. It pollutes the environment within which we have to do our examination. I understand that we're dealing in a political situation most of the time. I can appreciate that. I'm saying from a conduct of investigation point of view it would be better if these things did not exist, if people were not allowed to make it public anymore than we are allowed to make it public. Because then it's the beginning of a conjecture as to how long will it take and how guilty is she, and so on and so forth. If we proceed with dispatch, as I hope we will in the future, we will work on that. It's probably much better to wait until the report is made public at the same time to the person against whom the complaint was lodged, the complainant, and the Prime Minister and the public at large all at the same time. Everybody knows about the situation.

● (0910)

Hon. Peter Kent: I've had disagreements in the past with conclusions reached by your predecessor, but I've respected the confidentiality labelled across the top of the letter and held my tongue. In most cases in a finding of "no reason to proceed with an investigation", the subject of a complaint where it's become publicly known is free to discuss in public that finding whereas the complainant is encouraged to accept it for what it was.

Mr. Mario Dion: Once the matter is over, my concern is much less. Once the matter is over, a decision has been made by the commissioner not to pursue an examination, or to discontinue an examination. I don't think from a management of the regime point of view that this is a problem. The complainant explains that they've received a letter from the commissioner stating that they've abandoned the investigation because of that. I'm talking about until the conclusion has been reached, and only until the conclusion has been reached. Afterwards, everything is fair game, although the office continues to be under an obligation of confidentiality vis-à-vis anything that has taken place since the complaint was made and until the report was published.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

Ms. Mathyssen, you have seven minutes.

Ms. Irene Mathyssen (London—Fanshawe, NDP): Thank you, Commissioner, it's very appreciated that you're here and providing this overview and advice.

I had a couple of questions. You talked about mandatory training, and I think that's a very good idea, but as a member of a caucus I am very familiar with the term "herding cats". I wondered, have any of the caucuses asked that you come and provide the briefings and the training that you're talking about?

Mr. Mario Dion: In the past—and maybe Ms. Robinson-Dalpé can answer—there have been such briefings.

Ms. Lyne Robinson-Dalpé (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): In the past, after an election, we always reached out to caucuses to offer training to their members, and some of them did accept the invitation. We do go and make a presentation. Others decline. It's up to the caucuses to make that determination. For public office holders, we do not have such formal training organized. Therefore, while a public office holder will always have an initial call with someone in the office, with an adviser going through their obligations under the act, they will not have ongoing training unless groups of them ask us to make presentations. That would be a slight difference there.

Mr. Mario Dion: We've recently written to the chair of each caucus to make the offer again, to go and make a presentation to members of each of the three caucuses.

Ms. Irene Mathyssen: Thank you.

You said that the act doesn't discuss the furthering of private interest. I'm quite surprised by that because I would have thought that to be the heart of it, the whole issue of serving not for a personal benefit but serving for the benefit of the wider community.... Can you comment on that, because it seems to me paramount to the integrity of an office-holder.

Mr. Mario Dion: The difficulty is that the code and the act have very different conceptions of what is prohibited. The notion of conflict of interest is quite different under the code as compared with the act.

Ms. Martine Richard (Senior General Counsel, Office of the Conflict of Interest and Ethics Commissioner): Under the act there is no definition of private interest, but we do have what is not considered to be of private interest. That's found in the definitions section:

> private interest does not include an interest in a decision or matter
>
> (a) that is of general application;
>
> (b) that affects a public office holder as one of a broad class

We have that identical provision in the code. However, in the code we have what is considered a private interest, and it's mostly a pecuniary interest. We don't have the definition in the act that we have in the code.

● (0915)

Ms. Irene Mathyssen: Would it not make sense to make sure it was there? If I am in a position of power and I decide to create a situation that my colleagues in the private sector would benefit from, I would think that would be of profound concern.

Mr. Mario Dion: It may well be another example of something that needs to be harmonized between the code and the act. They were developed at different times by different people, in 2004 and 2006. One was developed by the House and its committee, and the other one was developed by the government as part of Bill C-1, I believe, back in 2006.

That's why there are differences like that. I don't fully understand yet the foundation for those differences, because I haven't had time to really study it.

Ms. Irene Mathyssen: Once you do that study, would you be prepared to make recommendations in regard to how to make it function in a logical, fair, and consistent way?

Mr. Mario Dion: Insofar as the code is concerned, of course, I would have to go to a different committee of the House.

Ms. Irene Mathyssen: Yes.

I wondered too about the issue around the definition of a friend. That seems to me to be a rather sticky thing. It's a judgment. Is that something that concerns you, inasmuch as you have to make that judgment?

Mr. Mario Dion: As I was saying earlier, I believe that one clear, easy possibility would be to abolish the exemption so that we don't have to figure out, for the purposes of gifts, what a friend is. Who is a friend, who isn't a friend? It's too subjective and it's not currently defined in any way, shape, or form.

Ms. Irene Mathyssen: Okay.

You also talked about confidentiality. It's very, very important, but sometimes the media get a hold of something. How on earth would you manage the media if they were breaking that confidentiality rule? Is it possible?

Mr. Mario Dion: Anything is possible in a statute, but it has to be carefully looked at. You could actually prohibit the media from broadcasting. It may be legal. It may not be constitutional. It has to be looked at, basically. Freedom of expression, freedom of the press—is it sufficiently important to justify an exception under section 1 of the charter? That would have to be looked at by the Department of Justice. Conceivably it could be done.

Ms. Irene Mathyssen: I applaud you, because it seemed to me that it would be rather muddy in regard to freedom of the press and the fact that things leak—and we thrive on that in this place.

Mr. Mario Dion: Especially with today's technology, it takes a few seconds before everybody knows about something.

Ms. Irene Mathyssen: Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): The next seven minutes will go to Ms. Fortier.

[*Translation*]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Good morning.

Thank you very much for being here.

Mr. Dion, we met before the holidays. You had already begun to tell us about your vision and how you would like to leave your mark. I see that you have already started to do your homework. Although you've been in office for less than a month, you've already put forward some parts of the act that you would like to study.

How will you proceed to conduct your study? I know you've already started doing that, but I'd like to know what process you are going to undertake. Will you model it on an existing approach?

Mr. Mario Dion: I think the appropriate way to proceed is through a committee like this one, where we are discussing possible changes to the act. My role as an officer of Parliament is to recommend amendments to the House of Commons that we might want to consider. These are things that I recommend from my point of view as a commissioner. This is not the absolute truth; it corresponds to my point of view as a person who has to implement the act.

My feeling is that there is currently a certain thirst for change. That's why I'm going to prepare something. I will have it in the bank the day I am asked to provide a thorough description of all the possible amendments that I might want to put forward to improve the administration and the effectiveness of the act.

Mrs. Mona Fortier: Are there some best practices—in Canada or elsewhere in the world—that you would like to draw inspiration from, or is our country already ahead of others?

● (0920)

Mr. Mario Dion: It's a bit early for me to make a judgment about it. We are certainly not at the bottom of the pack. Are we really number one? I just don't know. My office has relatively limited resources to conduct analyses that compare our country with others. We have a part-time officer who spends some of his time doing that kind of thing. I haven't yet had the opportunity to verify what could inspire us, be it in the United States, Great Britain, Australia or elsewhere.

Mrs. Mona Fortier: You have opened a door with respect to resources. That was actually part of my questions.

Now that you have seen what resources you have, do you think you have the human resources or budget to do your job, be it studying the act or something else?

Mr. Mario Dion: We seem to have the resources right now. Of course, if we start doing totally new things or doing much more work, for example in education, I may need to indicate a need for additional resources. However, as things stand, we can do what we need to with the resources we have.

Mrs. Mona Fortier: Earlier in your presentation, you talked about sanctions. I think Mr. Kent referred to it, and I'd like to understand that, too. I see you flirting, say, with some ideas. Would you consider financial penalties or other types of penalties? Do you have any idea how you are going to define the concept of sanctions in order to strengthen the act?

Mr. Mario Dion: The financial penalty is the first that comes to mind. Of course, currently, the act expressly excludes any sentence of imprisonment under section 126 of the Criminal Code. I don't think I'll ever talk about jail time in the case of a violation of the act. In any event, if the violation is sufficiently serious, certain provisions of the Criminal Code could apply. So we are talking about financial penalties.

Loss of employment is another possibility, in the case of someone who is appointed and, not elected like you. Indeed, compliance with the act is a condition of employment set out in section 19 of the act. This means that if a person who has been appointed by order, for example, commits a sufficiently serious violation of the Conflict of Interest Act, that could lead to that person's being fired. It is currently already set out; it is a condition of employment. In labour law, we could therefore consider dismissing someone who has committed a violation of the act, depending on the seriousness of the violation.

I know that, in some places, the possibility of imposing certain sanctions on a member of Parliament has been discussed. It is the House, in fact, that is the master of its discipline and procedure, but in the event of a violation of the act, a member's right to speak for a month or a temporary suspension of the right to sit could be withdrawn. The House would be able to impose that. This is theoretically something that could be considered as well.

Mrs. Mona Fortier: Are you going to study this closely?

Mr. Mario Dion: Yes, with other organizations within the machinery of government, I hope so. We must also consider our limited means.

Mrs. Mona Fortier: Of course.

This morning, you presented something that I think is interesting: We are more interested in prevention than being forced to impose sanctions. In terms of prevention, you are talking about training and, I imagine, working with public office holders.

Do you have any other ideas as to how we could incorporate preventative measures so that we or other public office holders can play our role well?

Mr. Mario Dion: According to Ms. Robinson-Dalpé, who has 14 years of experience in the office and so who has a bit of a better idea than me of what she's talking about, the vast majority of people, 99%, have no problem complying with the legislation. They want to obey the law, they respect deadlines and other requirements. There are very few people who are causing problems at our office. We will probably focus on them, so that we will be a little harder than my predecessor was in terms of the penalties and the means used to force people to observe the act.

The penalties are quite limited at the moment. As you know, we have the power to impose penalties of up to $500, but sometimes there are other ways: The caucus, for example, or the Prime Minister in the case of a minister or a parliamentary secretary. However, it is theoretical. No minister or parliamentary secretary has caused any problems so far. However, if that happens, we might consider being a little bit tougher when it comes to compliance. It is unfair to the 99% of people who respect the plan to let someone not make a statement, for example. We are currently dealing with a fairly recent case. It doesn't involve a minister or a parliamentary secretary, but we will take steps to force that person to take the issue a little more seriously than it has been to date.

● (0925)

Mrs. Mona Fortier: Thank you very much.

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): That concludes our seven-minute round.

To begin our five minute-round, we have Mr. Gourde.

[*Translation*]

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

Mr. Dion, thank you for being here today.

Does the category of ministers, parliamentary secretaries and public office holders include the office of Prime Minister, or is that separate?

Mr. Mario Dion: The Prime Minister is a minister, isn't he, Ms. Richard?

Ms. Martine Richard: Yes.

Mr. Jacques Gourde: So he is subject to the same legislation as everyone else.

Ms. Martine Richard: Yes.

Mr. Mario Dion: Yes.

Mr. Jacques Gourde: Good.

Earlier, you talked about the possibility of elected officials receiving certain sanctions. It is certainly a very delicate subject. When you take away a member's right to speak, right to sit and right to vote, does that really punish the MP or does it punish the people the MP represents? It's also a question that must be asked. If the alleged act is at the line of what is acceptable, it might be better to change the MP and have the population represented by someone legitimate. This is an issue that may need to be addressed.

Mr. Mario Dion: As I said earlier, if the violation is very serious, Criminal Code provisions may apply in any case. Should the violation be very serious, the MP may lose his or her seat.

Mr. Jacques Gourde: I partially agree with you on the notion of “friend”. Indeed, the words “friend” or “close family” can mean brothers or brothers-in-law, for instance.

People may wonder why an MP is now receiving certain invitations or gifts worth more than $1,000 or $1,500 when the MP wasn't receiving any before being elected. If I'm invited to a $500 dinner, for example, and I don't have to pay, I have to wonder if I would have been invited before becoming an MP.

Mr. Mario Dion: Before accepting the invitation, you can call us to find out what we think. We are objective and we have an overview, which the MP doesn't necessarily have. We give advice on these issues, but people don't have to follow it. For example, we can tell MPs that we strongly recommend that they not accept invitations like that. If an MP decides to go anyway and someone complains, we will find out. That's why we need to be consulted.

Some of your friends or family members may have an interest in you that isn't friendly or familial, which is why they offer you certain things.

Mr. Jacques Gourde: I find this interesting.

In our public service, we must make a difference. Being a member of the House of Commons has a lot of advantages. However, when we use these benefits, the line is sometimes very thin, especially with our family members. We have a system of travel points, and we can also use certain advantages. Of course, we had lives before we were elected; there are spouses and children. However, we sometimes see some MPs abusing these benefits.

Have you considered some limitations on these benefits?

Mr. Mario Dion: As I initially said, we work with a framework, an act and a code. The focus of our mandate is to determine if a situation presents a conflict of interest or not, a conflict of interest being a conflict between one's public duties and one's personal interests. This is the only thing we look into. We are not responsible for morality in general, or for the acceptability of a given behaviour, or whatever. That is not at all my responsibility.

With gifts, for example, a series of things is outlined in the code and the act. Some aspects of conflicts of interest are covered. However, it does not cover all behaviour of MPs, ministers or parliamentary secretaries. It just covers conflicts between public roles and the personal interests of individuals, their families, or their friends.

Mr. Jacques Gourde: Earlier, you said that we should take more time to review our code and attend a training program every year or every 18 months.

In the event of a problem, can MPs say that they weren't aware of the code to try to circumvent some of its obligations?

Mr. Mario Dion: In the field of law, there is a very well-known principle that ignorance of the law is no excuse. Ignorance of the law excuses no one, and it certainly can't vindicate anyone.

Mr. Jacques Gourde: Do you know of any ministers or MPs who may have played both sides against the middle by telling themselves that they had the right to do something, even if it was not entirely ethical?

● (0930)

Mr. Mario Dion: I have held this position for less than a month, and no such cases have been brought to my attention. Has it happened in the past? I don't know.

Ms. Lyne Robinson-Dalpé: We carry out our mandate in good faith. We use the information that is given to us to provide advice. If we are not informed of a situation, if an MP or a minister does not consult with us, we cannot provide advice. In that context, we don't necessarily know what situations are coming up.

Mr. Mario Dion: However, we can sense when someone hesitates, when they present a situation under a certain lens to avoid having it viewed under another one.

Ms. Lyne Robinson-Dalpé: Indeed.

Mr. Mario Dion: We are smart enough to ask questions to learn more on a given subject, on things people would rather keep to themselves.

It's like your annual income tax returns: They're only investigated when there are reasons to believe that you are cheating. If not, they are simply accepted.

Mr. Jacques Gourde: MPs have the option to meet with the commissioner to ask if they are allowed to make certain trips. Should it be automatic as of a certain amount, or should it remain a matter of good faith, even if we're talking about amounts of $150,000 and more, maybe even up to $500,000?

Ms. Lyne Robinson-Dalpé: The act says that it it is mandatory to disclose gifts or other advantages when their total value exceeds $200. However, there are exceptions. For example, a public office holder would not be obliged to communicate with the office of the commissioner if they receive a gift from their family worth $200 or more, because they are not obligated to make a disclosure in this situation.

The test in section 11 does not always call for the commissioner to get involved. In fact, public office holders can find themselves in a situation where they might ponder the potential influence a gift may have. If the public office holders decide that this isn't the case, they do not need to communicate with the office of the commissioner.

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): We are unfortunately beyond five minutes.

Next up we have Mr. Picard.

[*Translation*]

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

I would like to ask you some questions on political financing.

The act, as it is written, does not allow anyone to finance their own campaign. All candidates are required to seek funding for their electoral campaigns. All parliamentary secretaries and ministers are primarily MPs, and they will eventually all be candidates again.

I have a problem to present to you. It is highly probable that at least one company or individual in a candidate's riding will ostensibly create a conflict of interest by donating money to the candidate, especially if the candidate is a parliamentary secretary or a minister, because there's always this notion of "scratch my back, and I'll scratch yours". In these circumstances, does the candidate have a choice or not?

I'm not sure that the "I'll scratch yours" part applies for a $1,500 donation, because the impact on the total amount raised for the campaign isn't big enough. However, the court of public opinion doesn't care about the amount donated: It casts its verdict on the donation alone.

As the Conflict of Interest and Ethics Commissioner, what is your position on the obligation that all candidates must evaluate the average value of their campaigns, and, by law, raise funds accordingly? It's a bit ridiculous for some candidates who have the means to finance their own campaigns, but the law requires them to raise funds. The candidates then ask the public to pay for their campaigns, because they are forced to do so. This restrictive approach disadvantages those who have greater public responsibilities.

Mr. Mario Dion: Does your question relate to the participation of a minister or a parliamentary secretary in a fund-raising activity?

Mr. Michel Picard: I was mostly referring to the candidates' circumstances, not an invitation from the party to increase the popularity of an event.

Mr. Mario Dion: I haven't looked into that issue at all. I would rather answer you later, because I don't have the necessary resources to give an opinion this morning. I will send my answer to the Committee via the clerk.

● (0935)

Mr. Michel Picard: Thank you for doing so.

I want to address a question of principle. You have public trust in your organization and ours at heart, and that is essential. I think that it is a noble cause, even a compulsory one.

However, at the same time, you are suggesting that the commissioner have a firmer role: the ability to impose fees or penalties; obligations on matters of confidentiality; and even the authority to prohibit the media from sharing certain information. You're proposing to have much more control over information, which is contrary to your desire for transparency, in my opinion.

Mr. Mario Dion: We actually do suspend transparency until we have reached a conclusion on the guilt or innocence of the person whose conduct has given rise to the complaint. We do suspend transparency

Mr. Michel Picard: So the transparency comes when you release the results.

Mr. Mario Dion: We suspend the transparency until an appropriate analysis has been done and the right of the person to be heard has been upheld. So transparency is suspended, very temporarily.

Mr. Michel Picard: Does the mandatory training you are suggesting, which seems to be just common sense to me, also become an administrative argument from a human resources point of view? Does it become a tool that would let you act more convincingly in carrying out the actions you are proposing, because no one could plead ignorance?

Mr. Mario Dion: Yes, that would be one of the results.

I feel that the large majority are people of good faith. They will have at least one opportunity to educate themselves and to learn what they must comply with. It's a matter of principle, actually.

It is doable. It is quite a focused field. We could provide training that would give a very good idea of what can and cannot be done. It would also indicate who to go to when you want to discuss something before you do it.

Mr. Michel Picard: You mentioned the ratio of your two roles, priest and policeman.

Is your police role like it is in England, in that you carry no firearms?

Mr. Mario Dion: True, we do not carry much in the way of firearms at the moment.

Mr. Michel Picard: Okay, thank you.

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

Our next five minutes go to Mr. Kent.

Hon. Peter Kent: I'd like to discuss whether, in your recommendations for improvements to the act, you might discuss or consider post-employment provisions as they are today, such as the cooling-off period. There have been voices raised in complaint that the five-year provision is too stringent, that perhaps it should be reduced.

Could we have your thoughts on that, please, sir?

Mr. Mario Dion: The five-year rule essentially only attaches to the possibility for somebody to act as a lobbyist. I guess your committee will have to address this question with my newly appointed colleague, the commissioner of lobbying.

The limitations that I'm responsible for relate to one year in the case of public office holders, and two years in the case of ministers and parliamentary secretaries—

Ms. Lyne Robinson-Dalpé: Ministers.

Mr. Mario Dion: —ministers only, and it's not about lobbying.

Hon. Peter Kent: Any such consideration on that side, of course.... There have been recommendations from previous commissioners that the two offices should in fact be functioning with more integration, if not actually merged again. What are your thoughts on that?

Mr. Mario Dion: I met with Commissioner Bélanger a couple of weeks ago to discuss, with respect to our respective statutes, how we can further co-operate. We're looking at the possibility of drafting some type of a protocol that would highlight the subject matters and the areas where our offices could work in unison. Consider, for instance, education of people governed by the acts on lobbying and conflict of interest. We could provide that education jointly, at the same time, at the same place, because you are one and only one person. You don't really care which commissioner is responsible. You need to understand the total obligations that you have under the two statutes.

We're actively involved in developing a protocol for determining how we can better serve the people who are governed by these two statutes.

Hon. Peter Kent: Would a protocol be adequate or should it be written into law? For example, we have the most recent major investigation by the ethics commissioner, which on the other side involved matters before the lobbying commissioner. Might that investigation have been better conducted by the two jointly?

● (0940)

Mr. Mario Dion: We have no authority to do that at this point. It's absolutely impossible—and inconceivable—until the statutes so allow. It's completely impossible. We're bound to confidentiality, even with respect to Commissioner Bélanger.

Hon. Peter Kent: I understand. Could you speak to the instance where a member or a minister might have a financial interest and then votes on legislation on issues that may directly or indirectly affect those interests, and where MPs should proactively determine not to vote, or to recuse themselves from committee or cabinet discussions on such issues?

Mr. Mario Dion: The first thing I would mention is that most bills, probably I would venture to guess, fall within the exemption Ms. Richard was mentioning. A private interest does not include a matter that is of general application. Most bills are, by definition, of general application, or if not that, the effect a public office holder has as one of the broad class of persons.

Most bills do not specifically target a small group of individuals. They usually deal with rules that are applicable to Canadians at large, to Canada as a whole. The issue does not arise in relation to most bills. It's only when there is obviously a direct personalized consequence that the member must recuse himself or herself from voting, and must make a declaration to that effect in the case of ministers.

Hon. Peter Kent: Here's a very quick question.

With what urgency would you recommend the government move to address reform and improvements to the Conflict of Interest Act?

Mr. Mario Dion: All of us us believe that what we are in charge of is the most important thing—but I know it's not.

The act works. The act could be improved. However, there are several issues that need to be addressed at this point in time. The government will have to determine in its wisdom where this fits. It's not an emergency. It's simply something that should be looked at.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

Our last five-minute round goes to Ms. Vandenbeld.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much, Commissioner Dion, for being here.

I'm very pleased to hear you saying that you want to make sure that the conflict of interest code and the code of conduct are strengthened, that they are harmonized, and that they provide more clarity.

I think there is a big difference. Some things are clearly conflicts, and I think everybody around this table would know they are conflicts: somebody has a financial interest and is involved in decision-making that enhances personal financial interests. That's obvious.

There are a lot of things that public office holders do in the course of their duties. I'm thinking of a typical Saturday night. It might be to go to a Kiwanis dinner, then go to an ethnic cultural festival, and then maybe go to another reception of some sort for a community group that is hosting something. It might only be $60 or $75 for the tickets. You bring a staffer. You could start looking at $300 or $400 in one evening. On the one hand, it could be perceived as a gift to influence if you accept that. On the other hand, it could lead into the thousands of dollars over the course of a year if you were to pay that out of your pocket. These are not things that I think most people would see as a personal interest.

I'm wondering if there is a way to distinguish in the code between things that are given.... In many of these dinners, cultural groups actually find it insulting if we don't accept the free food. It's the same thing when.... You know I'm on the foreign affairs committee. We have a lot of delegations going abroad where gifts are given. I can understand if it's a very valuable gift, but some are small trinkets or something that's just given because it's a polite, common thing that's done.

Is there a way to distinguish between the real personal private financial interest and the things that we're doing in the course of our duties?

Mr. Mario Dion: I will need some assistance on this one. We are at the intersection of the code and the act. We're talking mostly about MPs. You're talking as a member of Parliament.

Martine, anything you would you like—

Ms. Martine Richard: Yes.

We do have a guideline available for assistance under the act. It sets out some of the parameters. As an example, trinkets would not be considered to be an issue. When we are dealing with the question of gifts, we're always looking to see what kind of dealings you may have, either as a public office holder or a member of Parliament, with the person offering the gift. That's when we look at the test. Can it be reasonably seen to have been given to influence?

● (0945)

Mr. Mario Dion: The guideline Madame Richard is talking about is on our website. It's quite developed. Some people have studied that and have written several pages of guidelines that you may wish to consult.

Ms. Lyne Robinson-Dalpé: There are exceptions as well for gifts. In the case of a member of Parliament who has functions to attend, there's the exception if it might “reasonably be seen”, because this organization is dealing with you on a regular.... There is an exception for you to accept that gift, even if it can “reasonably be seen to have been given....” So you can contact our office and we will give you advice in that context.

Mr. Mario Dion: When we do the mandatory training I was talking about, those are the types of questions that we would be equipped to answer on the spot on the part of the MP. I'll have the people who have the experience with me when we do that.

Ms. Anita Vandenbeld: In this case, and I guess in many cases, that's subjective. It's difficult to contact your office when one is going to four or five of these kinds of events in a week.

This goes to my next question, which is about the spirit. I think everybody agrees that the letter of the code or the spirit of the code... it's the spirit that needs to be respected, but again, you talked about clarity and predictability. I think it's very important for public office holders not to be in a position where they accidentally end up in violation on something that, if you look at the spirit, may actually go the other way. The spirit might actually allow it, but the letter doesn't.

When you talk about the clarity and predictability, when you say you want to make recommendations on the spirit, and then, of course, if there is a complaint made, it would go back to the letter, where is that boundary? Because as much as I think that's very important, I could see that adding less predictability, less clarity, and more subjectivity in terms of what a public office holder can or cannot do.

Mr. Mario Dion: The one thing I haven't said yet and that I would like to say is that total clarity will never be achieved. That's clear. We're talking about improving clarity. Somebody cannot be blamed for having breached the spirit when something was done that was clearly in keeping with the letter of the law. That's how it works, but sometimes it serves to understand the spirit in order to determine whether you can or cannot do something.

It's a very fine art each and every time. That's why it's important that some people look at possible options, people who have experience in the context of what it is to be an MP or minister, the actual context, what's achievable, and what's not achievable, making it as clear as possible, but it's not easy at all.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thank you very much.

We have Ms. Mathyssen for three minutes.

Ms. Irene Mathyssen: Thank you very much, Mr. Chair.

I was thinking in terms of the appearance of conflict versus actual conflict. It gets very dicey here in terms of the rules, which say you cannot breach the act in terms of actions or the appearance of conflict of interest. Where do you stand on that? As in the case that Ms. Vandenbeld was talking about, how do you sift your way through that?

Mr. Mario Dion: Correct me, Madam Richard, if I'm wrong, but the act does not deal with appearance. The act deals with actual conflict.

Ms. Martine Richard: That's right, except for the gift provision: “reasonably be seen to have been given to influence”. That is the only provision that really deals with appearance.

Mr. Mario Dion: Appearances do exist, appearances can be bad, and appearances have consequences, but it's not punishment under the act, okay?

Ms. Irene Mathyssen: Yes.

Mr. Mario Dion: It's something else. It belongs to the political side of things as opposed to the observation of the Conflict of Interest Act—

Ms. Irene Mathyssen: Yes, and sometimes—

Mr. Mario Dion: —except insofar as gifts being given is concerned.

Ms. Irene Mathyssen: Sometimes the political realities make it very difficult for MPs or provincial members. I've seen that first-hand in terms of someone who unintentionally offered advice and then was skewered for it. She lost her job, actually, because of it.

I also wanted to ask about the whole issue of fundraising. It gets to be very difficult, because we live and die by our ability to fundraise. Cash-for-access has come up as well in the last couple of years. I wondered if you could comment on that very tricky area because, again, we're into appearances, where what seems to be and what is may be different.

● (0950)

Mr. Mario Dion: The office published an information notice 18 months or so ago on the subject matter you're talking about, honourable member, at the time the phenomenon was happening.

Ms. Lyne Robinson-Dalpé: Yes.

Mr. Mario Dion: You may wish to reread it again, because it was given some serious thought, and Madam Dawson has signed something on the subject.

Ms. Lyne Robinson-Dalpé: As well, in “Open and Accountable Government”, there are some very clear guidelines there for fundraising for ministers and parliamentary secretaries, which were added as well.

Ms. Irene Mathyssen: Once again, yes, those guidelines do exist, but it does get murky in terms of perception and the appearance of conflict.

Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): That ends our total round.

Mr. Baylis has some questions and I have a few questions, so we'll extend it a bit beyond the hour.

Mr. Baylis.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): I just want to understand something.

[*Translation*]

This is about gifts. You talked about $25 or $50. What was the background? As I understand it, at the moment, we have to declare any gift valued at more than $200. Is that the case?

Mr. Mario Dion: At the moment, the act prohibits you from accepting a gift that could be seen as an intent to influence you in making a decision, in the way you are going to vote, for example. That is what is prohibited, no matter the value of the gift.

Mr. Frank Baylis: It is prohibited, whether it is $50 or $1, right?

Mr. Mario Dion: It could even be $3. Really, the amount is not important. The objective is to prohibit gifts that might lead to the impression that it was given in order to influence you.

That said, one gift or a number of gifts from the same source, with a value of $200 or more, for example, if someone gives you a gift eight times—

Mr. Frank Baylis: Whether or not the gifts are intended to influence you, we have to declare them if they are valued at more than $200. Is that correct?

Mr. Mario Dion: Yes. It must be declared so that the general public, and the media, of course, know that you are receiving gifts with a value greater than $200, be it one gift or several gifts from the same source.

Ms. Lyne Robinson-Dalpé: And acceptable.

Ms. Martine Richard: The gift must be acceptable. The declaration requires it to be acceptable.

Mr. Mario Dion: That means that it must clearly be a gift that was not given to you in order to influence you.

If a gift has a value greater than $1,000, a provision in the act says that it will be automatically forfeited. When you declare a gift valued at more than $1,000, it is forfeited if it is possible to do so. Clearly, in the case of a meal, forfeiture is not possible.

Mr. Frank Baylis: I want to make sure I understand. You are saying that, if I suspect that I have been given a gift in order to influence me, and it is worth $10, in theory I have to declare it. is that correct?

Mr. Mario Dion: What is the value of the gift?

Mr. Frank Baylis: If I receive a gift valued at $10, and I suspect that it was given in order to influence me—

Mr. Mario Dion: You have to decline it and return it. You do not have to declare it.

Mr. Frank Baylis: I must not accept any gift if the goal was to influence me, even if it is only a matter of $10. Is that correct?

Mr. Mario Dion: Exactly.

Ms. Lyne Robinson-Dalpé: Yes.

Mr. Frank Baylis: I once had a problem of that nature. Before I became a politician, I was in the medical equipment business. The United States had some problems with gifts: some people were trying to influence doctors to buy their products. The problem became so bad that, even if I wanted to give someone a coffee mug with my name on it, with the sole intent of promoting my company, the doctor was not able to accept it.

It still frightens me. I find it ridiculous that someone could try to influence me with a ten-dollar gift. I will not speak for all my colleagues, but I am almost certain that not one of them would feel influenced by being given a ten-dollar gift, even a fifty-dollar one. No one would think that it would influence a vote, for example.

When we establish a code of ethics like this, the challenge is to be reasonable.

Mr. Mario Dion: That is why Ms. Dawson suggested a limit of $30. It means that, if the value is less, you no longer ask yourself the question.

● (0955)

Ms. Martine Richard: No investigation would be undertaken for accepting a gift worth $30.

Mr. Mario Dion: She chose $30 as an arbitrary amount.

Mr. Frank Baylis: Why not look at a limit of $200?

Mr. Mario Dion: Well, that depends. It's a judgment call. We will see; it is up to Parliament to decide. Currently, the limit is set at $200.

Mr. Frank Baylis: Currently, the limit is set at zero. You plan to move it from zero to another amount: $25, $30, or $50. Is that correct?

Mr. Mario Dion: That is correct. It's Parliament's decision.

Mr. Frank Baylis: Okay.

Mr. Mario Dion: The limit of $200 was set more than 15 years ago now. It has not been indexed since, either.

[*English*]

Mr. Frank Baylis: I have one other small question on confidentiality.

If I understand, you want the right to do your investigation in confidence, if and when needed, and hold witnesses to confidentiality.

Let's say in a situation the person has a spurious accusation, it's not right at all, and you do your investigation and it's completely fabricated, but there's an old saying that “Where there's smoke, there's fire”, or someone is throwing mud on someone. After your investigation that has found the person who was accused completely innocent, why would the accuser then be allowed to go and have non-confidentiality post-investigation? If I understand that to be what you're saying, why would we not extend that to say, if someone has been found not guilty of something, there's no need for the public or anybody else to smear that person?

Mr. Mario Dion: Again, something that would have to be looked at is the credibility after an investigation has been duly conducted, after the report is made public. Somebody who continues with “something wrong has happened” would have a bit of an uphill battle to convince people that he or she was right when she made the complaint, and you cannot bar freedom of expression forever. There are things called libel and slander at a certain point, unless you have parliamentary privilege, of course, so you cannot with impunity say anything about anyone without consequences.

Ms. Martine Richard: There is also case law supporting the proposition that confidentiality orders should just be in place while the investigation is ongoing and that, once it's been concluded and there's been public reporting, it ought not to be extended. The courts have looked at that very issue and said it has to be time limited, and usually it's with the conclusion—

Mr. Mario Dion: Freedom of expression prevails.

Ms. Martine Richard: That's correct.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): You have one more question, Mr. Picard, and then I have a few.

Hon. Peter Kent: I have just one question.

You've committed to continuing some of the major open investigations that were passed on to you by your predecessor. I'm just wondering, given we're getting into the pre-budget period right now, if you can offer any sort of timeline with regard to completion of the investigation into the finance minister.

Mr. Mario Dion: There's only one publicly known investigation involving the Minister of Finance, and I've already mentioned to the media that we are aiming to complete this investigation by the end of the spring. At this point, I think it's impossible that it will be completed prior to the usual time when budgets are tabled. It's impossible; it's almost inconceivable.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Mr. Picard, do you have a question?

[*Translation*]

Mr. Michel Picard: I am not looking for a conclusion or an answer, because you have just started your mandate. But I am interested in your vision and your understanding of things.

I am following the lead of my colleague Mr. Baylis when he says that the essential problem is the influence rather than the amount of money. Each individual, each elected official, has a different network. Depending on people's professional situations, an amount of $200 can be good or not, high or not. In some settings, a five-hundred-dollar meal may be much more usual than in others. I am not talking about a recent case in which someone gave $300,000 to a very dear friend. However, the reality and the amounts can vary from one person to another. One individual might expect to have more influence by giving $300 than another professional network where amounts of $500 or $1,000 are, if I may say so without sounding arrogant, small change.

Who is to judge if there is any influence, if someone is accustomed to moving and talking in those kinds of professional circles? Goodness knows, people like that make no bones about criticizing, making comments and proposals, working and influencing, whether or not any gifts are involved, monetary or otherwise. As things stand, simply being part of a network can put you in a situation where you will be on the receiving end of what I would call “strong recommendations” at very least.

● (1000)

Mr. Mario Dion: Let me quote section 11, dealing with gifts:

> 11 (1) No public office holder or member of his or her family shall accept any gift…that might reasonably be seen to have been given to influence the public office holder…

[*English*]

It will be seen by others. It will not be seen.... It's general, what the reasonable man or person—I was taught “reasonable man” in law school, sorry—would conclude, given the circumstances, including the nature of the network you're talking about, including the customs and the habits in the case at hand, essentially. That would be a part of what would be—

[*Translation*]

Ms. Martine Richard: Generally, the intentions of the person providing the gift are not considered. Nor is the possibility that the person receiving the gift is likely to be influenced. So the criterion applied really is about the reasonable person.

Mr. Michel Picard: Which standards define a reasonable person? We have a lot of reasonable people here, from various backgrounds: what are the standards?

Mr. Mario Dion: The commissioner is the reasonable person who will make the decision.

Some hon. members: Ha, ha!

Ms. Martine Richard: That's right

Mr. Michel Picard: We have never doubted that.

[*English*]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): I have some short questions. First, I'd like a clarification. You mentioned that your decision is not subject to appeal, but paragraph 28(1)(b.1) of the Federal Courts Act does allow for appeal to the Federal Court.

Ms. Martine Richard: Yes, it's a privative clause—

Mr. Mario Dion: It's not really an appeal; it's a judicial review, which is very different. The commissioner says whether there was a breach or not.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): It's an administrative appeal, so it is an appeal of your decision through administrative law.

Ms. Martine Richard: There is a privative clause under the Conflict of Interest Act, which is found in section 66. The remedy is a judicial review at the Federal Court of Appeal, because we're a section 28 tribunal. However, the grounds are very limited. There's no judicial review on a question of law, fact, or mixed law and fact. For example, If there are procedural issues, that could be a ground for review.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Of course, privative clauses are not completely determinative, so the courts may well decide otherwise.

Ms. Martine Richard: Yes.

Mr. Mario Dion: However, there's also a 2009 decision involving Commissioner Dawson where the court reaffirmed the non-reviewability of the conclusions made by the commissioner.

Ms. Martine Richard: That's right.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): I have a follow-up question. In the media you've said that you're not going to be bound by the precedents set by Ms. Dawson's rulings and her interpretation of the rules. However, you've also asked us to interpret section 17, or clarify the interpretation of section 17, in relation to controlled assets. When I read that, it's clear that you can't hold controlled assets. It doesn't say “directly” or “indirectly”, and any reasonable interpretation, as I look at it, would refer to both. Mary Dawson had a different interpretation that doesn't strike me as particularly reasonable, and if you're not bound by her precedent, I wonder why you can't simply interpret it differently.

Mr. Mario Dion: Next time the issue arises, we'll have a look at it.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): In respect of guiding and giving advice to holders of public office, based on the spirit of the law, wouldn't it be good to clarify that as soon as possible?

Mr. Mario Dion: I can certainly have a look at the grounds on which Madam Dawson reached her conclusion. The key words are “to hold”. Are you holding controlled assets when those—?

The Vice-Chair (Mr. Nathaniel Erskine-Smith): One can hold things indirectly.

My next question is about additional orders. While I think Mr. Kent's question about repaying things at the taxpayers' expense is a bit bizarre, I do think repayment of the reasonable value of an improper gift that one receives is prudent and reasonable under the act. I asked Ms. Dawson and she said she didn't think the act covered that. Do you think this should be a new sanction or order that the commissioner ought to have?

Mr. Mario Dion: We would need some guidance as to how you evaluate a gift, because certain gifts are hard to evaluate. Of course it would be—

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Reasonable commercial value....?

Turning to fundraising rules, you said they should be strengthened under section 16. You didn't give many examples, so perhaps you could provide this committee with some examples in writing of how you would want section 16 strengthened.

Mr. Mario Dion: Okay.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): You mentioned sanctions on monetary amounts larger than $500. Could you follow up in writing with whether you would differentiate between good-faith mistakes and intentional or willful blindness, and whether there would be a difference in discretion pursuant to those sanctions? I tend to agree with Mr. Baylis that this has to be de minimis. It would not make sense to register and spend staff time on gifts of $30 or $40 that aren't reasonably seen to influence us. Let's not waste our time. I would ask you to revisit that recommendation.

Lastly, the Conflict of Interest Act is all about conflicts of interest. However, the ethical question that we're dealing with in today's world, for members of Parliament and public office holders, is really about harassment. There is a House of Commons policy on preventing and addressing harassment, but there's a bizarre procedure involving an independent investigator, and there's a whole separate track to this. Actually, the policy says that ideally you should go through the whip's office, which strikes me as incredibly bizarre when we're asking people to come forward.

You don't have to answer this fully now, but do you think you would have the resources, if the act were to be amended, to address this issue under the purview of your office, where you have a common investigation process in which you're giving training and advice? Do you think it's reasonable for you to have that purview, or do you think it ought to be separate?

● (1005)

Mr. Mario Dion: I don't have to answer immediately, but I would like to answer immediately that I don't currently have the resources.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Fair enough.

Mr. Mario Dion: Moreover, the nature of what's involved is very different from what this office was created to deal with. It's difficult to imagine how we could pursue both at the same time.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Fair enough, thanks very much. With that we will break and come back in camera to discuss with you.

[*Proceedings continue in camera*]