



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Access to Information, Privacy and Ethics

EVIDENCE

NUMBER 078

Tuesday, June 20, 2023

Chair: Mr. John Brassard



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• (1615)

[Translation]

The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)): Good afternoon. I call this meeting to order.

Welcome to meeting No. 78 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Today's meeting is taking place in a hybrid format, pursuant to the House Order of June 23, 2022, and therefore, members can attend in person in the room and remotely using the Zoom application.

[English]

I'd like to remind everyone, as I did at the last meeting, that although the room is equipped with a powerful audio system, feedback events can occur. These can be extremely harmful to the interpreters and cause serious injuries. The most common cause of sound feedback is an earpiece worn too close to a microphone. Therefore, we ask that all participants 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 our interpreters, I invite participants to ensure that they speak into the microphone into which their headset is plugged and avoid manipulating the earbuds by placing them on the table, away from the microphone, when they are not in use.

[Translation]

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

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Thursday, April 25, 2023, the committee is studying the appointment of the Hon. Navdeep Bains as chief corporate affairs officer at Rogers Communications.

I would now like to welcome our witnesses for today.

[English]

From the Office of the Commissioner of Lobbying, we have Nancy Bélanger, Commissioner of Lobbying, with us again, and from the Office of the Conflict of Interest and Ethics Commissioner, we have Lyne Robinson-Dalpe, director, advisory and compliance.

[Translation]

Ms. Bélanger, the floor is yours for five minutes.

Ms. Nancy Bélanger (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Good afternoon Mr. Chair and members of the Committee.

I am appearing before you today to explain the lobbying restrictions under the Lobbying Act that apply to designated public office holders when they leave federal office.

Under the act and regulations, designated positions include those held by ministers and their staff and by many senior executives within government, such as deputy ministers, chief executive officers, associate or assistant deputy ministers and other executives of comparable rank. Members of the House of Commons and the Senate are also designated public office holders.

Please let me say at the outset that I cannot discuss particulars of any matter as such information would be personal to the individual and I must respect confidentiality.

[English]

The Lobbying Act bans any former designated public office holder from lobbying as a consultant or as an employee of an organization for five years after leaving federal office.

However, if a former designated public office holder is employed by a corporation, the act only bans the individual from lobbying when it would constitute a significant part of the individual's work on behalf of the corporation. In practice, this means that such an individual can lobby as an in-house lobbyist if the lobbying is less than approximately 20% of the individual's work-related duties for the corporation.

There is no clear, rational explanation as to why the five-year restriction applies differently depending on whether the former designated public office holder is employed by an organization as opposed to a corporation. In February 2021, I raised this discrepancy in my preliminary recommendations for improving the Lobbying Act. I believe this should be studied and addressed by amending the act.

As Commissioner of Lobbying, I do not have the authority to approve or give clearance with respect to where a former designated public office holder decides to work.

[Translation]

My role is to ensure that they understand their obligations under the Lobbying Act. Failure to comply with the five-year restriction on lobbying is an offence under the act, and it is therefore important that it be clearly understood.

My role is also to investigate should there be concerns of non-compliance with this restriction.

[English]

Mr. Chair and committee members, I thank you for your attention, and I will welcome any questions.

The Chair: Thank you, Madam Bélanger.

[Translation]

Welcome to the committee, Ms. Robinson-Dalpe. The floor is yours for five minutes.

Ms. Lyne Robinson-Dalpe (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): Thank you.

Mr. Chair, honourable members of the committee, today, I will address an important aspect of the Conflict of Interest Act: the post-employment rules that are administered by our office and found in part 3 of the act. These rules are in place to ensure that individuals who leave public office do not misuse their insider knowledge or influence for personal gain. All post-employment rules apply to reporting public office holders while only certain rules apply to public office holders.

So, what exactly do these rules entail? Some are time bound and some apply indefinitely.

[English]

Firstly, after leaving public office, individuals are prohibited from accepting board positions, offers of employment or contracts for a specific period. This cooling-off period varies depending on the position held. It applies to all reporting public office holders and is for the duration of one year for most, except in the case of ministers where its duration is for two years.

The purpose of this rule is to prevent former reporting public office holders from using their connections to secure positions immediately after leaving their office where they had both direct and significant official dealings in the year prior to their departure. Direct and significant dealings are determined case by case. Most registered communications in the lobbying registry are significant dealings; however, each of them must be reviewed based on fact to ensure appropriate advice is provided.

Secondly, during this same cooling-off period, those same individuals are restricted from making representations, even if they are unpaid, to departments and organizations with which they had direct and significant official dealings in their last year of office. These rules are found in subsections 35(1) and 35(2) of the Conflict of Interest Act.

There's a third restriction in subsection 35(3) specific to former ministers that prohibits them, during the same two year cooling-off

period, from making representations to a current minister who was also a minister at the same time as they were.

Further, during the cooling-off period, communications and meetings arranged with any public office holder, as defined under the Lobbying Act, need to be captured on a form for filing activities under section 37 of the Conflict of Interest Act. It is available on our website, regardless of whether the meeting actually took place, and whether the former reporting public office holder attended the meeting. These are the rules that are time-bound and apply only to reporting public office holders.

Additional post-employment rules apply to all former public office holders, regardless of the type of position the person held, and apply indefinitely. These matters are related to the specific areas of their previous responsibilities and are found in sections 33 and 34 in part 3 of the act.

No individuals who have ever been subject to the Conflict of Interest Act can take improper advantage of their previous office for personal benefit or influence, in a manner that raises questions about integrity and conflict of interest, nor can individuals switch sides on any matter for which they acted or provided advice to the Crown by then aligning with another person or organization for the opposing side.

Finally, they cannot provide advice based upon information obtained while they were a public office holder that is not in the public domain. For these indefinite prohibitions, there are no exemptions, waivers or reductions.

The post-employment rules are to be taken seriously to protect the public interest and hold individuals accountable for their actions. Violations of the rules can lead to an examination and a subsequent report, or can even lead to the issuance of an order demanding any current public office holder to not have official dealings with the former public office holder.

In the matter that has brought us together today, I can affirm that Mr. Bains has permitted the office to confirm publicly that he sought and obtained advice from the office on the post-employment rules.

• (1620)

He is past the two year cooling-off period and is at liberty to accept employment, while keeping in mind that sections 33 and 34 of the act apply indeterminately.

[Translation]

In conclusion, the Conflict of Interest Act includes important post-employment rules to prevent former public office holders from using their influence or insider knowledge for personal gain. These rules establish cooling-off periods and restrict certain activities that apply for life. By doing so, we safeguard the integrity of our public institutions and maintain the trust of the Canadian people

Thank you.

[English]

The Chair: Thank you, Madam Robinson-Dalpe.

I understand that you're before committee. Typically we would have the ethics commissioner here. We really appreciate your being here today in the absence of an ethics commissioner.

Mr. Barrett, we're going to you for six minutes.

Go ahead, please.

• (1625)

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

Thank you to our witnesses for joining us today.

I have the same set of questions for both of you. I'll start with Ms. Robinson-Dalpé.

Ms. Robinson-Dalpé, on what date did you provide that advice to Mr. Bains?

Ms. Lyne Robinson-Dalpé: I don't have the exact date—my apologies. It was early April.

Mr. Michael Barrett: Who was the ethics commissioner at that time?

Ms. Lyne Robinson-Dalpé: At that time, we did have an interim commissioner, Ms. Richard.

Mr. Michael Barrett: Okay.

Was there any concern raised about the connection between Mr. Bains and the interim commissioner, in that there was a familial relationship between the interim commissioner and one of Mr. Bains'—

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): I have a point of order, Mr. Chair.

The Chair: Based on what standing order?

Ms. Iqra Khalid: It's on relevance. I don't think that....

The Chair: I've dealt with this before. Members have a wide range of questions they can ask. Mr. Barrett is asking those questions. It's his time.

Please continue, Mr. Barrett.

Mr. Michael Barrett: I think you had the question, Madam.

Ms. Lyne Robinson-Dalpé: When the public office holder contacted our office, the adviser was the one who received the information.

The normal course of action is that, when a public office holder has a question with regard to their obligations under the act, they contact their adviser. When the adviser receives the information and then makes an assessment of that information, at that point in time, they look at precedents and they make a recommendation, or they contact their manager or me, the director.

If there is any particular matter that should be raised with the commissioner at that point in time, it is raised with the commissioner. In this case, I did raise it with the management team to inform them of the appointment. However, there was no decision required, because Mr. Bains' two-year cooling-off period had lapsed.

Mr. Michael Barrett: Had he taken the position at the time that he sought the advice of your office? Had he already joined the company?

Ms. Lyne Robinson-Dalpé: Unfortunately, because of confidentiality issues, I did not seek permission from Mr. Bains to confirm when the advice was received.

Mr. Michael Barrett: That's fair enough. I'll say that I appreciate that you did get some latitude on what you were able to come and say.

Can you tell us how many investigations have been initiated by your office since April?

Ms. Lyne Robinson-Dalpé: I can say that there are currently no active investigations ongoing.

Mr. Michael Barrett: Okay.

With respect to waivers, is your office able to grant any waivers or initiate any investigations at this time?

Ms. Lyne Robinson-Dalpé: Waivers are in a section of the act. Therefore, in the case of public office holders seeking waivers for post-employment restrictions, we cannot provide those waivers at this point in time without a commissioner, because it's a requirement that the commissioner make that determination. It's the same thing with investigations.

Mr. Michael Barrett: No investigations or waivers can be granted.

Ms. Lyne Robinson-Dalpé: Not at this time.... However, as mentioned by my colleagues in May, we continue to monitor the activities of public office holders. If we have doubts, or if something comes to our attention that requires looking into, we will do that. We will do our due diligence on our side for when a commissioner is appointed.

Mr. Michael Barrett: For sure.

I appreciate that you can't or don't commence investigations at the request of the public, but can you say whether there has been public correspondence with respect to this matter? Is that something you can speak to?

Ms. Lyne Robinson-Dalpé: Unfortunately, again, there's a lot of information that comes from either the public or the media, which we take into consideration when we review a file. Therefore, I can't comment on how many requests we've had or anything like that. However, if there is information brought to our attention, we look into it.

• (1630)

Mr. Michael Barrett: Thank you.

How much time do I have, Mr. Chair?

The Chair: You have roughly a minute.

Mr. Michael Barrett: Okay.

Commissioner, I have all the same questions in 50 seconds.

No, I'm just joking.

Are you able to say how much correspondence, if any, you received on this matter from members of the public?

Ms. Nancy Bélanger: From the public, I've received none.

Mr. Michael Barrett: Are you able to speak to the timeline of when you were contacted by Mr. Bains, or whether you were contacted by Mr. Bains on this issue?

Ms. Nancy Bélanger: Mr. Bains has made public that he received clearance from our respective offices. On the exact date, I'm not sure, but it would have been sometime in April. I don't have it in front of me.

Of course, in my case, it's simply to ensure he understands the limitations of lobbying. Because the corporation he's working with is a corporation, it could be up to 20%, although he has made public that he does not intend to communicate with the federal government.

Mr. Michael Barrett: Also, he's the individual responsible for government affairs for the organization.

The Chair: Thank you, Mr. Barrett. I appreciate that.

Ms. Saks, I have you for six minutes. Go ahead, please.

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

Through you to Commissioner Bélanger, thank you for joining us again. Thank you to Madam Robinson-Dalpé as well.

Commissioner Bélanger, you just said a moment ago to my colleague that Mr. Bains has been quite public about the fact that he reached out to both of your offices, as a matter of fact, proactively, to ensure the position with Rogers was compliant.

Was it in fact compliant with both of your offices? Give a simple yes or no.

Ms. Nancy Bélanger: It will be compliant as long as there is no communication with the federal government above and beyond the 20% he's entitled to, because those are the rules.

Ms. Ya'ara Saks: Yes, absolutely.

Ms. Lyne Robinson-Dalpé: It's the same with our office. As long as he continues to comply with sections 33 and 34 of the act, he's in compliance.

Ms. Ya'ara Saks: That's wonderful.

If I do a bit of math in terms of timelines—you both mentioned this in your opening statements—is he past the two-year cooling-off period that would enable him to pursue the role he's been offered?

Ms. Lyne Robinson-Dalpé: Exactly. He's beyond the two years. Therefore, he can accept any employment.

Ms. Ya'ara Saks: Okay.

When we did our study on the Lobbyists' Code of Conduct, we learned that many political staff and former public office holders regularly move into industries afterwards, where their expertise in government can be utilized. We heard quite a bit about that. We had much discussion.

Would you agree that these types of moves are fairly regular in what you could call "the Ottawa bubble", or across Canada? It does happen. We raised it in the study.

Ms. Nancy Bélanger: Yes, but I don't have numbers as to whether it happens often that people from Ottawa move into the private sector.

Ms. Ya'ara Saks: Based on those who inquire at both of your offices to check whether they're in compliance or not, would you say it's fairly regular?

Ms. Nancy Bélanger: For former designated public office holders in the last year, we've probably had communications with 200 and some people about their obligations. Whether or not they choose to work in organizations or corporations, or choose to do the 20% lobbying, that, I don't know.

Ms. Ya'ara Saks: Go ahead, Madam Robinson-Dalpé.

Ms. Lyne Robinson-Dalpé: In our case, I can't comment on that.

However, I know there's an average of 300 and some reporting public office holders who leave office during a yearly period—

Ms. Ya'ara Saks: It's not one or two.

Ms. Nancy Bélanger: It's not one or two.

Ms. Ya'ara Saks: You could call that fairly regular year in and year out.

To both of you, do these individuals who check with you check regularly on their compliance? Are they in communication with you? Do you have any folks who come back to check in from time to time?

Ms. Nancy Bélanger: I would say so. Some people understand the....

The prohibition is five years of not communicating with federal officials, so they should just not lobby, except for those who work for corporations, who do have some wiggle room.

They will check as to what constitutes lobbying. If they're not sure, before they pick up a phone or decide to write a letter, they will sometimes call us, yes.

• (1635)

Ms. Ya'ara Saks: There's a proactive approach to this.

Ms. Nancy Bélanger: Absolutely.

Ms. Ya'ara Saks: Mr. Bains, as well, took a proactive approach in his reaching out to both your offices. Would that be correct?

Ms. Nancy Bélanger: Yes.

Ms. Lyne Robinson-Dalpé: Yes.

Ms. Ya'ara Saks: If we go back in history it does happen. We have cases that come up.

Baker McKenzie garnered several contracts with Global Affairs during the Harper government years. One contract was valued at about \$285,000 while Peter MacKay was minister. He's been a partner with the firm since 2015 and was the minister of foreign affairs.

Did Mr. MacKay check with your offices in 2016, when he took on that role at Baker McKenzie, before joining as partner?

Ms. Nancy Bélanger: I would not know. I was not there. I'm sorry, but I can't answer that question.

Ms. Ya'ara Saks: Would it be assumed that he would have checked? Would it be the proper practice to check at that time?

Ms. Nancy Bélanger: The office is proactive in reaching out to people when we know they are leaving office, and it's not necessarily always the other way around. I really can't answer the question of whether, in that case, he would have....

Ms. Ya'ara Saks: If he were minister of foreign affairs up until 2015 and involved with a \$285,000 contract, and then joined a legal firm in 2016 after leaving office, based on the standards that we have today, would he be in compliance?

Ms. Nancy Bélanger: I think it's probably more an answer for... Having a contract is not lobbying.

Ms. Ya'ara Saks: He was a partner in the firm. The contract was secured by the firm that he, then, joined a year later.

Ms. Lyne Robinson-Dalpé: On our side, essentially the public office holder has to have had direct and significant official dealings with the entity. It doesn't mean whether a contract was given to that organization. It's whether the minister at the time had had direct and significant official dealings with that organization.

I cannot comment on the specifics of this case. However, in general, this is how the rules are applied. The individual has to have had direct and significant official dealings.

Ms. Ya'ara Saks: As a rule of thumb the guidelines are in place and they're very clear. Would you say, in terms of what we're discussing today about Mr. Bains, that he took this proactive step in checking with both of your offices. He was past the cooling-off period. Would we say that, maybe, some of the discussion here is a little bit of the cart before the horse in terms of the concerns that are here?

Ms. Nancy Bélanger: When I'm asked to appear before a committee, I'm here.

The Chair: Thank you.

Ms. Ya'ara Saks: I think my time is up.

Thank you.

The Chair: Yes, it is.

Thank you.

[*Translation*]

Mr. Villemure, you have the floor for six minutes.

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

Thank you, Ms. Bélanger. You're a familiar presence here.

I would also like to thank you, Ms. Robinson-Dalpé, for appearing here today.

I have questions for both of you, but I'll begin with you, Ms. Bélanger.

You recently published the revised version of the Lobbyists' Code of Conduct in the *Canada Gazette*, which contains quite a few new features. Since the publication of this version, I can see that a number of parliamentarians have misunderstood some of the changes.

I'd like you to talk about sponsored travel.

Ms. Nancy Bélanger: I had to regulate sponsored trips from lobbyists, because it would have been completely inconsistent of me to say that a gift of over \$40 could create a sense of obligation, but not a trip worth several thousand dollars. I therefore introduced a rule that prohibits a registered lobbyist from lobbying anyone to whom they have offered sponsored travel. In other words, an organization listed in the registry cannot offer a gift to a public office holder they are lobbying, or intending to lobby.

Of the 28 organizations and companies that provided sponsored travel last year, only six are in the registry. That means many organizations and corporations will be able to continue to offer sponsored trips without the need for me to intervene.

However, the organizations and corporations whose names are in the registry of lobbyists and who want to provide sponsored travel will be able to continue to do so, and it will be possible for you to continue to accept it. The only requirement is that they contact our office, because there has to be a gap between when the travel occurs and when the lobbying occurs afterwards, to ensure that you do not have a sense of obligation towards them. That's because if you've received a trip worth several thousand dollars from an organization or a corporation, you are probably more likely to answer the phone when they call.

● (1640)

Mr. René Villemure: The intent is to keep people from feeling indebted, as it were.

Ms. Nancy Bélanger: It would appear that the feeling remains.

Mr. René Villemure: If a foreign organization that is not registered in Canada offers such an invitation, that's outside your area of responsibility, is it not?

Ms. Nancy Bélanger: Absolutely. It has to be an organization or company whose name is in the registry. The code applies to registered lobbyists.

Mr. René Villemure: All right.

Ms. Robinson-Dalpé, I'm going to continue with you on the same topic.

If an organization whose name is in the registry of lobbyists nevertheless decides to offer sponsored travel to a parliamentarian, as Ms. Bélanger just described, could that be a problem for the parliamentarian?

Ms. Lyne Robinson-Dalpé: The answer is no. The code governing conflicts of interest for MPs specifies clearly that sponsored travel is acceptable. There is accordingly no mandatory test with respect to the acceptance of sponsored travel. Members may accept any sponsored travel.

Nevertheless, the lobbyists should check with the Office of the Commissioner of Lobbying because we wouldn't want to put the member in an awkward position. However, as it is now written, the code does not prohibit the acceptance of sponsored travel.

Mr. René Villemure: I think that it's the small gap between the two situations that creates uncertainty among MPs. In any event, these things should be reported.

In the absence of a commissioner, as is currently the case, can you undertake an investigation?

Ms. Lyne Robinson-Dalpe: As I said earlier, the answer is no. We can't launch an investigation; only the commissioner can. However, as we explained previously, as soon we receive information, we study the issue in order to be ready to make a recommendation once a commissioner has been appointed.

Mr. René Villemure: I apologize for having asked you a question that you had already been asked in English, but I wanted to hear the answer in French.

Ms. Lyne Robinson-Dalpe: That's fine.

Mr. René Villemure: Is there a backlog of cases? I'm not asking for specific names, of course.

Ms. Lyne Robinson-Dalpe: There are in fact a number of cases that still need to be dealt with.

There are two major concerns among designated public office holders. The first is that we can't grant a reduction or exemption from requirements after they have left office. In certain instances, the situation could be harmful to an office holder's career. The second is the repayment stemming from the divestment requirement for public office holders of all controlled assets, and the requirement to cease external activities allowed under the initial compliance.

These are the sorts of cases that are mainly coming up at the moment.

Mr. René Villemure: Could you describe what you consider to be a conflict of interest?

Ms. Lyne Robinson-Dalpe: The Conflict of Interest Act, although it does not give a specific definition, describes what a conflict of interest is. A conflict of interest is a situation in which a designated public office holder takes part in an activity and exercises official power or an official duty that gives that office holder the possibility of a personal interest, whether their own, a member of their family, a relative...

Mr. René Villemure: Excuse me for interrupting. We're talking about an established conflict of interest, are we not?

Ms. Lyne Robinson-Dalpe: Yes.

Mr. René Villemure: One often hears about perceived conflicts of interest.

Ms. Lyne Robinson-Dalpe: Yes, but as written, the act does not mention perceived conflicts of interest.

Mr. René Villemure: I know.

Ms. Lyne Robinson-Dalpe: It only mentions the possibility of conflict of interest situations or a potential conflict of interest situation, meaning an opportunity to further personal interests.

The Chair: Mr. Villemure, your six minutes are up.

Mr. René Villemure: All right.

Thank you very much.

The Chair: Thank you.

[English]

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

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

Thank you to both guests for being here today. Welcome back to committee on what is certainly a topic of interest and concern among the general public.

We understand that a section of the Lobbyists' Code of Conduct states, "By complying with the rules of [the] Code, lobbyists...contribute to public confidence in the integrity of federal government institutions and decision making."

Ms. Bélanger, do you believe that Mr. Bains' role with Rogers contributes to the public confidence in government institutions?

Ms. Nancy Bélanger: Mr. Bains is, first and foremost, subject to the Lobbying Act, and until he communicates with public office holders, he's not subject to my code of conduct.

• (1645)

Mr. Matthew Green: Within the code, Mr. Bains will be responsible—if I understand correctly—to self-monitor his time to determine whether he is in contravention of the code. Is that correct?

Ms. Nancy Bélanger: If Mr. Bains decides to communicate with federal officials, the senior official at Rogers is going to have to add Mr. Bains' name to the registry. If he ever communicates with federal officials, you will know, because his name will be added to the registry.

At that time, he will be subject to the code.

Mr. Matthew Green: Of course, that would include his former colleagues. Is that correct?

Ms. Nancy Bélanger: I'm sorry. I don't understand the question.

Mr. Matthew Green: That would include his former cabinet colleagues. Is that correct?

Ms. Nancy Bélanger: His name in the registry will just be added on, because he will be communicating with federal officials. Only if he communicates with cabinet members will there be an "oral and arranged communication" then added on to the registry.

If his name is just added to the registry as someone who communicates with federal officials, until he has an "oral and arranged", you will only know the departments that he is communicating with.

Mr. Matthew Green: As reported in the media, he reached out to your office and received confirmation that he can accept the position without contravening provisions within the Lobbying Act as a former public office holder.

You confirmed with him that's without him contravening his five-year lobbying restriction as set out in subsection 10.11(1).

Ms. Nancy Bélanger: As I stated in my opening remarks, it's not my role to approve where people go to work. I just have to make sure that they do not communicate with federal officials, because if they do, it's an offence and then I investigate it and send it to the RCMP.

My role is to make sure that, wherever they go to work, they understand the rule that they cannot communicate. However, because Rogers is a corporation, he can communicate up to 20% of his time. I don't understand why that is in the act, but it's there.

Mr. Matthew Green: Thank you.

That is actually the lead-in question. I hear a bit of frustration in your voice, or at least I'm perceiving that.

Can you share a bit about why that exemption might actually undermine your ability to effectively rein in this perceived conflict of this perceived lobbying?

Ms. Nancy Bélanger: I am frustrated, and I apologize to the committee if I sound frustrated. This Lobbying Act has to be amended. There are gaps and there are loopholes, and there is a lot of lobbying that can occur without people knowing. Now is the time to start fixing it.

I feel like a broken record when I keep repeating these issues with the act. The issue here is not Mr. Bains. He has said publicly that he will not communicate with federal officials, but the act would allow him to up to 20% of his time. That's one day a week during a month. That's a lot of phone calls. That's a problem.

Mr. Matthew Green: While we're on the topic—I know it's a broken record, but it's one that I like hearing—can you please recap some of the other ways you would close the gap on the lobbying loopholes that you've identified?

Ms. Nancy Bélanger: The obvious one is the “significant part of the duties” threshold for organizations and corporations. There have to be 30 hours a month of lobbying before an organization or a corporation needs to register. That's a lot.

That gap needs to be closed. It should be transparency by default.

Mr. Matthew Green: Would you agree that, particularly for a former minister, you wouldn't need 30 hours in some instances? A phone call to an old friend in cabinet might be enough to open up doors that otherwise wouldn't be open for the corporation you're now employed by.

Ms. Nancy Bélanger: Absolutely. It doesn't make sense that if you go and work for a charitable organization, you can't pick up the phone at all, but if you go and work for a corporation, you can.

Mr. Matthew Green: Thank you. I appreciate that, and I acknowledge that your frustration isn't at us per se, but at these gaps that, as a committee, we can hopefully provide recommendations on and see the government finally move on them and close them.

Thank you. I'll concede the rest of my time.

• (1650)

The Chair: Thank you for that, Mr. Green.

Thank you, Madam Bélanger.

We are going to a second round, starting with five minutes.

[Translation]

You have the floor now, Mr. Gourde.

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

I'd like to thank the witnesses for being here. Their testimony is really very interesting.

I'd like to return to the issue of the 20% of working time that can be spent on lobbying. As you pointed out, Ms. Bélanger, it's a rather generous loophole. People manage to get good jobs after they cease to be designated public office holders, and the amount of time they are allowed to work on lobbying on behalf of the organization that has hired them will perhaps never reach as high as the permitted 20%. For example, it might involve working directly on a policy or contract worth \$100 million, \$150 million, \$200 million or \$300 million. So it's understandable why an organization would decide to invest in someone and pay them \$300,000 or \$400,000 a year, given that only three or four years later, they might well be awarded a contract. It's easy to deal with the 20%. Basically, all that's needed is to track what they do.

What I'm disappointed with is the public perception about the loopholes that interferes with your work. These loopholes shouldn't remain in place for too long, and it shouldn't be so easy to circumvent the Lobbying Act. In fact, people don't even need to circumvent the act, because it's built that way. They'll follow it to the letter, but will succeed in achieving their ends, because it's not all that difficult. That makes it hard to hold them to account.

Do you have any advice for us on this?

Ms. Nancy Bélanger: It's not complicated, and all that's required is a review of the act. The act has been enforced since 2008 and a review is required every five years. It has only ever been reviewed once, in 2012, so it's been 11 years now.

Mr. Jacques Gourde: I'd like to go back to something. Everything is based on the jobs that public office holders have after they leave office. They might, for example, be paid to provide advice. Let's say that the act is tightened up and henceforth requires total transparency. Former designated public office holders could say that they gave their advice free of charge to the organization and were not paid, but then receive a cheque 10 or 15 years later if a contract is awarded. So throughout this entire period, they could be giving advice free of charge, because they are independently wealthy. Once again, they are circumventing the act.

So, what's to be done?

Ms. Nancy Bélanger: The issue of payment is another aspect of the act that needs to be looked at.

In the Yukon, the "directing mind" concept was added. If the individual, whether paid or not, has a level of authority or management capacity, then that individual is covered by the act.

It's another aspect that needs to be looked at, but it would require a revision of the act.

Mr. Jacques Gourde: If these people appear to be hidden away, meaning that their names are not necessarily listed as being part of the organization, that would make the investigation rather special.

Ms. Nancy Bélanger: Yes.

Mr. Jacques Gourde: It's going to be hard to plug that loophole. It might be possible to deal with a few gaps, but not all of them.

Ms. Nancy Bélanger: I totally agree with you that it's impossible to cover all situations. I nevertheless think that we really can do better.

Mr. Jacques Gourde: I have a question for you now, Ms. Robinson-Dalpe, about ethics.

We are MPs, and all kinds of lobbyists try to get in touch with us to invite us to dinner. As MPs, should we always pay for the lobbyist's dinner to make sure we're not receiving any money from them? Let's say the meal cost \$75 per person. What should we do in these instances to protect ourselves? It's impossible to hide the fact that every week, there's someone who wants to have a dinner conversation with us.

Ms. Lyne Robinson-Dalpe: According to the former commissioner, whose role was equivalent to the current Conflict of Interest and Ethics Commissioner, as soon as a lobbyist is involved, a gift is unacceptable. You should therefore pay for any entry fee, your meal or anything else when a registered lobbyist is lobbying MPs from the House of Commons. Whether any actual lobbying takes place or not, a precedent has been established and we ask all MPs to pay for their own meals.

Mr. Jacques Gourde: As you said, we don't know whether they are registered lobbyists or not. Sometimes, people just want to meet us to feel things out about certain areas. Basically, we should never agree to have someone pay for a lunch or a dinner because we don't know how our conversation with that person will be used.

Ms. Lyne Robinson-Dalpe: Exactly; that's the test you're expected to undergo: can you reasonably think that the meal was paid for with a view to influencing you? In circumstances when MPs have had, or expect to have, dealings with an organization or an individual, they should not accept that kind of gift.

• (1655)

Mr. Jacques Gourde: Thank you very much.

The Chair: Thank you, Mr. Gourde.

[English]

Next we'll go to Mr. Bains for five minutes.

Go ahead, please.

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

Thank you to our witnesses for coming.

I will state that I have no relationship with Mr. Bains.

Voices: Oh, oh!

Mr. Parm Bains: I know that Monsieur Villemure will be happy to hear about that.

My first question is actually on the issue of frustration with the 20% rule. How old is that? How long has that been in place?

Ms. Nancy Bélanger: It was 2008.

Mr. Parm Bains: Okay.

We've heard that over 200 members, as I believe you've mentioned, have been advised about the rules around this before they leave, but that how many come back and actually check if they're in compliance or not varies.

In 2017, for example, the former Harper government Minister of the Economic Development Agency of Canada for the Regions of Quebec, Denis Lebel, was appointed CEO of the Quebec Forest Industry Council. Did this member reach out to the conflict of interest or the lobbying commissioners' offices to ensure the appointment was compliant?

That is for both of you.

Ms. Lyne Robinson-Dalpe: I don't recall the specific file, unfortunately.

However, as I've mentioned, if a public office holder contacts the office, we examine the file, we review all of the information that's provided and we provide guidance and advice based on information that has been obtained either through the reporting public office holder or in the media, on government websites and so on and so forth.

I cannot comment.

This is the normal course of action, usually, when a public office holder does contact the office.

Mr. Parm Bains: I'll ask Madam Bélanger.

Ms. Nancy Bélanger: I also wasn't there in 2017.

What I think would happen—our process that we would undertake—is that, when we see someone leave, we actually try to reach out. There's a lot of movement, but when we see people go, we try to reach out to give them their obligation, which is simply to not communicate with federal officials. We don't really have a role to play in where they go and work, as long as they understand the rules.

Mr. Parm Bains: I think I heard you mention someone who holds official power. Would a CEO be categorized as someone who holds official power?

Ms. Nancy Bélanger: Yes, but I don't know if I'm the one who....

Mr. Parm Bains: Okay.

On the issue of exemptions, I wanted to ask a question. The Lobbying Act contains restrictions on former designated public office holders, including a five-year prohibition on lobbying. However, individuals can apply to you for exemption from these restrictions.

Can you please remind the committee of the nature of these restrictions that are set out in the act with respect to the post-employment period and then maybe follow up with what circumstances there are to grant the exemption?

Ms. Nancy Bélanger: There is a form online that anyone who wants to be exempted from the five-year prohibition can use to make a request to the office. There is a non-exhaustive list in the act that would allow for someone.... For example, they were a student and they were in the ministerial office for four months as someone who did administrative duties only. Not all DPOHs are created equal, but this rule applies equally to everyone. That would be something to be looked at as well if the act were to be reviewed, because it could be a sliding scale, depending on your role and your position.

We do look at the role they played and at the network they've created because, really, at the end of the day, that's the purpose of the restriction. It's to not take advantage of the connections—the people you've gotten to know and the network—for the benefit of your new employer or your client. We do look at the role, the function, the network and the length of time they've been there to decide whether or not an exemption can be granted.

In the last year, I think we looked at eight. I did not grant any in the last year. I think I denied six, and two were withdrawn. That will be in my annual report, which all of you should have access to tomorrow.

Mr. Parm Bains: Could you describe, without naming names, why the exemption would be denied?

• (1700)

Ms. Nancy Bélanger: It's mainly because of the types of networks and the functions they had. If they were someone who communicated with many departments, who was involved in many departments and had a very close relationship with people of authority, with members of Parliament, then we would not grant the exemption, because they can take advantage of those jobs when they leave office to then communicate.

The Chair: Thank you, Madam Bélanger.

Thank you, Mr. No Relation Bains.

Voices: Oh, oh!

[*Translation*]

The Chair: Mr. Villemure, you have the floor for two and a half minutes.

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

Ms. Bélanger, just to reduce the level of frustration, and without talking about the 20% threshold, can you tell us which three improvements you would like to see made to the act? The Lobbyists' Code of Conduct was recently reviewed, but what about the act?

Ms. Nancy Bélanger: I always find it dangerous to underscore only three or four items where there could be improvement, because the recommendations we made in 2021 were all part of a whole. If you do something about one aspect, it will have an impact on others.

If I really had to mention exactly three, I would definitely mention the threshold for inclusion in the registry of lobbyists. The information in the registry could also be more detailed and comprehensive.

There's another matter that frustrates me. I know that I really look like someone who is frustrated, but I can assure you that's not the case. I would say that one thing that needs reviewing is the monthly communication reports. To determine whether these need to be disclosed, it's important to know if they've been arranged, and by whom they were planned. In other words, not all impromptu oral conversations need to be entered into the registry. It's somewhat tiresome, because many conversations were not entered into the registry simply because they weren't arranged. I feel that all oral communications should be disclosed.

I would also recommend a broader range of sanctions. At the moment it's either a report to Parliament or a file sent to the RCMP. There's nothing in-between.

Mr. René Villemure: Perhaps some clarification would be helpful.

Ms. Nancy Bélanger: Yes, because not all breaches equally serious.

Mr. René Villemure: I'm getting back to your comment about the fact that the act needs to be reviewed. It hasn't been since 2012, and so it's time for the government to prioritize it, because there's a lot of lobbying going on and there's no sign of it slowing down.

Ms. Nancy Bélanger: There's definitely more and more.

Mr. René Villemure: Thank you very much.

The Chair: Thank you, Mr. Villemure.

[*English*]

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

Go ahead, please.

Mr. Matthew Green: Thank you.

I'm going to put this question to both of you. A Financial Post article quotes the founding executive director of McMaster's public policy program, who stated the following:

It does seem like a sort of obvious or blatant hire that says, "This person was a Liberal insider who was (in charge of policies in) our industry...and now we're going to leverage his knowledge and insight for our benefit,"... It sort of seems like a classic instance of regulatory capture.

Do you believe that the Lobbying Act and the Conflict of Interest Act allow for regulatory capture?

We can begin with you, Ms. Bélanger.

Ms. Nancy Bélanger: I will repeat myself. Obviously, there is a gap in the Lobbying Act, and I think it needs to be fixed. I'm applying the law as stated now, and I think, if it should be broader, then it needs to be looked at.

Mr. Matthew Green: Ms. Robinson-Dalpé...?

Ms. Lyne Robinson-Dalpé: It's the same thing under the Conflict of Interest Act. We interpret the act as it is written. It was legislators who determined, for example, that sections 33 and 34 are the only two that continue to apply after a cooling-off period. Sections 33 and 34 are quite specific. It's inappropriate for us to speculate, but when a public office holder accepts the appointment, there's a violation of section 33 or 34 automatically. We have to wait for facts. If there are facts that are brought to our attention, we will look into them.

Mr. Matthew Green: Do you believe that the act could potentially allow for regulatory capture as it is now?

Ms. Lyne Robinson-Dalpe: Based on the situation that we have before us, I would say yes.

• (1705)

Mr. Matthew Green: Ms. Bélanger...?

Ms. Nancy Bélanger: I will say yes as well.

Mr. Matthew Green: Thank you.

That's all that I have.

The Chair: Thank you, Mr. Green.

Thank you to both of our witnesses.

We have two more rounds of five minutes. We're going to go to Mr. Kurek, followed by Ms. Khalid.

Go ahead, Mr. Kurek, for five minutes.

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

Thank you to our witnesses for coming here today.

One of the consistent concerns I've heard from constituents and others who have reached out is the cloud of suspicion and doubt that is raised when somebody like a former industry minister takes a job—I imagine it's a fairly well-paying job—with a company that is highly regulated and dependent on government.

It's certainly not the first time. I know John Manley, from a previous Liberal government, had also taken a job. I believe he sits on the board of Telus. It's not a unique experience.

Certainly, when you're the minister in charge of the regulatory agency that basically allows a company to live or die—and I'm simplifying things, but I think it's the way many Canadians see it—the perception of conflict is there, certainly in the eyes of the public.

Commissioner and director, would you agree with that statement that the perception of conflict and cloud of doubt exists?

Ms. Nancy Bélanger: Yes, possibly.

In this case, with respect to the lobbying, it would appear that Mr. Bains will not be lobbying federal officials. If he were to, however, he would be subject to the code of conduct. The code is pretty prescriptive, as you all know. You've all studied it, and, therefore, there are many people he would probably not likely be able to speak to in light of the code of conduct.

I'm confident that the regime—of course, with the weaknesses that exist—has some parameters in place to reduce that risk of actual conflict or a sense of obligation being created.

Mr. Damien Kurek: Ms. Robinson-Dalpe...?

Ms. Lyne Robinson-Dalpe: Under the Conflict of Interest Act, as I mentioned previously, we do not look at perceptions of conflicts of interest. The act is quite specific that conflicts of interest must be either real conflicts of interest or opportunities, so potential conflicts of interest.

Mr. Damien Kurek: Again, it's that cloud that exists. How can we be sure the former minister wouldn't be in touch with some of

his former cabinet colleagues? Certainly, the information he would have learned over the course of his time as minister would be highly relevant to the operations of a highly regulated company that is dependent on that.

Again, Ms. Robinson-Dalpe, how can we be sure of these things?

Ms. Lyne Robinson-Dalpe: The act is a good-faith system. When we look at sections 33 and 34, the office has to be provided with information to the effect that those two sections are being violated or have been contravened. We can't speculate and say, "Oh, because this person accepted a position at that company, automatically there's a contravention of sections 33 or 34." There has to be some information that leads us to believe that a contravention has occurred.

Ms. Nancy Bélanger: Can I add? With respect to the Lobbying Act, if anyone lobbies when they're restricted, it is an offence, so there is a risk that this will go to the RCMP. I'm hoping it's a deterrent and helps people from communicating when they shouldn't be. However, again, there's that 20% that's allowed.

• (1710)

Mr. Damien Kurek: Director, one of the concerns that was highlighted to me was the timing. We had an interim ethics commissioner right around the time Mr. Bains took the position. Again, it's just the timing of that, the perception and the cloud of doubt surrounding this.

Would you have any comments around the timing of that?

Ms. Lyne Robinson-Dalpe: There were no decisions required by a commissioner on this particular file. Essentially, it was based on information. The cooling-off period had lapsed. Therefore, there were no rules that required a decision. At that point, the adviser went back and communicated that the rules no longer applied and the prohibitions no longer applied, but that the former minister had to be mindful of sections 33 and 34.

The Chair: Thank you, Mr. Kurek.

Ms. Khalid, you have five minutes.

Ms. Iqra Khalid: Thank you very much, Mr. Chair.

First and foremost, through you, Mr. Chair, I'll start by thanking our witnesses for not only appearing here today but for the important work they do in building and maintaining public trust in our democratic institutions.

I think the work that you and your offices do is extremely important.

Mr. Chair, I know that there were a number of members who had asked questions that we were not able to get answers to. Perhaps we can send those questions in writing and get written responses once our witnesses are able to do so, if that's amenable to you, Chair.

The Chair: Sure. If members have questions they want to ask, they can write the commissioners' offices.

Ms. Iqra Khalid: Perfect. Thank you so much, Chair.

With that, I cede my time and I again thank you for being here today.

The Chair: Thank you, Ms. Khalid.

That leaves me some time to ask a question, which I'm going to do.

Ms. Bélanger, you've been before this committee for several appearances. During the Lobbyists' Code of Conduct study your frustration was palpable. When it comes to updating the legislation, you mentioned earlier that it was last updated in 2012.

Ms. Nancy Bélanger: It wasn't updated. It was reviewed.

The Chair: It was reviewed in 2012, which was 11 years ago. Typically, these types of reviews happen every five years.

Why hasn't it happened, in your opinion?

Ms. Nancy Bélanger: That's a good question.

When I appeared at this committee on my nomination in 2017, I was asked if I could be ready in the spring of 2018 to offer recommendations. I said that it would be four months into my job and that I'd do my best, so I prepared. I started right from the time I started my position and the time went by.

In 2021, during an appearance here, someone asked me to make some recommendations, which I did. I prepared. I called them preliminary recommendations because there was no study at the time. I thought I'd say that these were preliminary in the event that there was a study. It gave me the opportunity to change my mind or add some.

That was in February 2021, so now it's been more than two years.

The Chair: Typically, who would initiate that update?

Ms. Nancy Bélanger: In this case, according to my act, I think it would be the House. You could, if you want to.

The Chair: That's good to know.

Ms. Nancy Bélanger: That is good news—isn't it?

The Chair: I'm going to ask the committee members just to hold back. I do have a couple of pieces of information that I have to deal with. One includes the study budget.

Ms. Bélanger and Madam Robinson-Dalpe, thank you for coming before the committee today. I appreciate your willingness, especially Madam Robinson-Dalpe. I know this isn't in your job description, but you did acquit yourself very well. You were very knowledgeable in front of the committee, and I want to thank you for that.

I'm going to dismiss the witnesses and then we're going to continue. We're not going to suspend.

The first item I have is a study budget for this particular motion we are dealing with. The amount requested is up to \$500. Do I have consensus on the \$500?

Some hon. members: Agreed.

The Chair: The second thing I have is a letter that came to the committee from the chair of the Standing Committee on Finance reminding us that pre-budget consultations are taking place. If there's any direction on pre-budget consultations that this committee would like to give to the finance committee, that opportunity is available to us.

I have Mr. Kurek on that issue and then Mr. Villemure.

Go ahead, please.

• (1715)

Mr. Damien Kurek: Thank you, Chair.

I understand there are some questions around the timelines and whether or not we need this by the end of June, or if it can maybe be into the fall.

With one of the independent officers of Parliament and another office represented in the meeting here today, I think it's especially relevant that one of the concerns we've heard consistently is that, when the funding for these offices is contingent upon the political will of a current government, certainly there are some challenges with that.

I am not sure if other members have more to add to that, but that may be one of the suggestions we give to the finance committee.

I know that on the other committees I've been on we've been faced with these questions as well, but particularly relevant, I think, is that every commissioner has said that we need to take the politics out of how their offices are financed and make sure that Parliament is the one that makes that decision, since they are independent offices of Parliament.

Certainly from my perspective that would be a valuable message to pass along to the finance committee. It's not necessarily asking for more money—as a fiscal conservative that's certainly a concern—but more of a process to make sure that the politics and the appearance of conflict, especially when you have.... We were talking about a former Liberal cabinet minister who has taken a lucrative job in a corporation. There are questions surrounding the integrity of that and ensuring that it's not friends of that cabinet minister—whether it's the current government or any previous government—but Parliament, as the chief arbiter of the land, making those decisions, not a particular cabinet minister or a particular cabinet or a particular government.

I think that's a consistent theme we've heard from all of the commissioners who have come before this committee, and it would be worth passing on.

Thanks.

The Chair: Just so the committee is aware, Mr. Fonseca did submit a deadline of July 31 on a couple of issues.

Number one is whether we would like to appear before the committee, as a committee making a request or any suggestions we might have.

[Translation]

The floor is yours, Mr. Villemure.

Mr. René Villemure: I'd like to move the following motion, Mr. Chair:

That, notwithstanding the committee's decision to respond in the affirmative to the request of the Standing Committee on Finance regarding pre-budget consultations, the committee reserve the option of reviewing its priorities when the House returns in September 2023 and that, within the first week back, the committee discuss its priorities and the scheduling of its work and studies.

We'll distribute English and French versions to everyone.

[*English*]

The Chair: It is a motion.

[*Translation*]

Have you given the motion to the clerk in both languages?

Mr. René Villemure: Yes.

The Chair: All right.

You can continue, Mr. Villemure.

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

I'd like to explain why I'm moving this motion.

Apart from the point made by my colleague about the fact that the three commissioners should have more latitude and financial independence, I believe this matter deserves consideration. We've been sent this request rather late. I believe we should take it very seriously and be given the time we need to examine and respond to it more thoroughly.

The Chair: The Standing Committee on Finance is also asking us whether we would like to hold the meetings in question before the pre-budget consultations in order to determine whether we have recommendations for them.

[*English*]

On the motion, Ms. Khalid, go ahead, please.

● (1720)

Ms. Iqra Khalid: Thanks, Mr. Chair.

I agree in principle with this motion—it's absolutely fine—but I, obviously, have been waiting a very long time to start my TikTok study. I think that is the more pressing issue of the day.

I would like, if Mr. Villemure would allow, to limit this to a maximum of one meeting to have that conversation. If that's okay, one hour is preferable. I think we all know what our priorities are, but I'm really wanting to get to that TikTok study.

The Chair: Thank you for that.

We'd have to amend the motion to reflect that it just occur for one hour. We still have the issue, though—and this is the challenge that I have—that Mr. Fonseca wants us to meet before July 31.

I'm just going to get clarification on this from the clerk. Stand by a second, please.

I appreciate your patience on that. It's the first time I've had to deal with this as a chair on pre-budget consultations.

The first question that Mr. Fonseca has for the committee is whether we'd be interested in participating in next fall's pre-budget consultations. They're reaching out similarly to other committees.

The second thing that he is asking us is whether the committee would be interested in participating in the study of “any such subject matter contained in the bill.” That's something that we would have to determine, but I think Mr. Villemure's motion may address that.

It was amending it to say “one hour”. Is that right?

[*Translation*]

Are we agreed on that?

[*English*]

We're going to amend the motion to reflect one hour of committee time on this.

First of all, is there any other discussion on the amendment for one hour? Are we good?

(Amendment agreed to)

(Motion as amended agreed to)

The Chair: Lastly, I don't have any other business before us before the end of the session. We do have a meeting that's scheduled on Friday. At this point, I'm still going to hold on to that meeting, but it may be required that we cancel that meeting—just to make everybody aware of that.

That's it for today. I want to thank—

Mr. Michael Barrett: Mr. Chair, I have a motion.

The Chair: That was close. Go ahead.

Mr. Michael Barrett: I'd like to move that we adjourn.

Voices: Oh, oh!

Mr. Matthew Green: Telling jokes.... This guy has jokes.

The Chair: Okay. You had me worried too. He was going to get it.

We have a motion to adjourn.

Before we do, I just want to say thank you to the analysts, our clerk and all of the technicians for all of the work you have done this session.

Some hon. members: Hear, hear!

The Chair: I want to say thank you to Sabrina. We are, unfortunately, going to be losing Sabrina on this committee.

An hon. member: We vote nay.

The Chair: Do we have consensus on nay?

Sabrina, thanks for all your help and guidance on this and on everything. We wish you all the best in your future endeavours.

Alexandra, you're not leaving.

● (1725)

Ms. Alexandra Savoie (Analyst): No, I'm a lifer.

I was just going to say that she will be back for the consideration of the report.

The Chair: Yes. From a continuity standpoint, we appreciate that. Thank you all. The meeting is adjourned.

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