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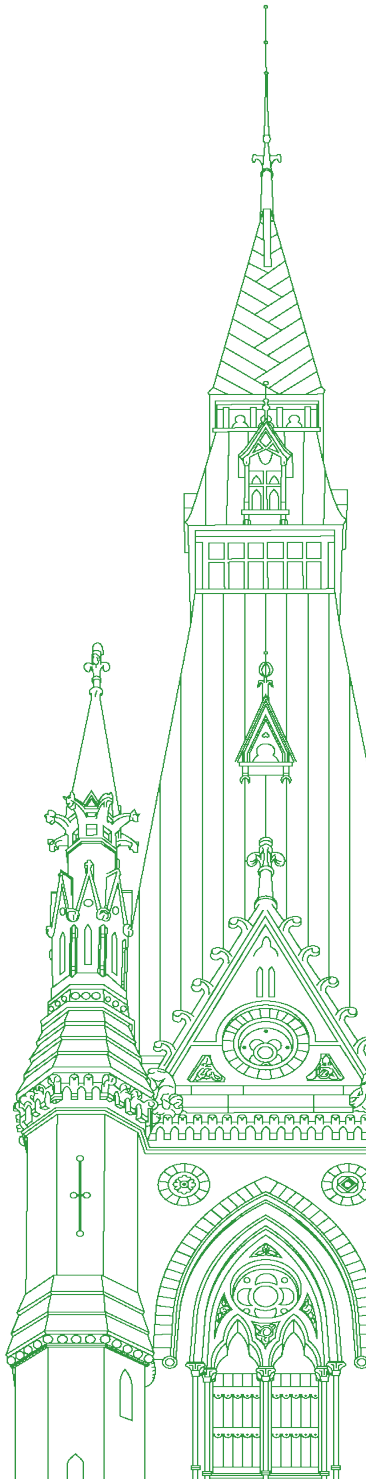

Chair: John Brassard

Standing Committee on Access to Information, Privacy and Ethics

Wednesday, November 5, 2025

● (1640)

[*English*]

The Chair (John Brassard (Barrie South—Innisfil, CPC)): Good afternoon, everyone. I'm sorry for the late start.

We are going to call this meeting to order.

I want to welcome everyone to meeting number 14 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Wednesday, September 17, 2025, the committee is resuming its review of the Conflict of Interest Act.

I'd like to welcome our witnesses for today.

As individuals, we have Mr. Andrew Stark, a professor of political science at the University of Toronto; and David McLaughlin.

Professor Stark, I want to welcome you to committee. You have up to five minutes to address the committee. Go ahead, sir.

Andrew Stark (Professor, Political Science, University of Toronto, As an Individual): Thank you very much, and thank you for inviting me to appear before the committee.

I want to note, just in the interest of full disclosure, that 40 years ago I worked in Brian Mulroney's Prime Minister's Office as the assistant to Dalton Camp, who was then Mr. Mulroney's senior adviser. I believe—if it's the same David McLaughlin—that David McLaughlin was a friend and a colleague of mine at that time. I haven't seen him since, so it's a pleasure to be reunited, if it's the right fella.

I have had no partisan involvement since well before the Progressive Conservative Party disappeared over 20 years ago. I am here as an academic. Partly because of my background, though, I want to make a brief opening statement not about the law of conflict of interest but about the politics of conflict of interest.

Suppose we know that an office-holder has been influenced in their official conduct by a personal interest that they have. We have actual evidence—maybe through emails they wrote or comments they made to a third party—that their judgment was tainted. That's not a conflict of interest. That's corruption. Their judgment in office was corrupted because it was influenced by the personal stake they had in the matter.

A conflict of interest arises when an official is merely in a position to do something in office that affects their interests. They may well be a person of sufficient integrity that they will rise above and totally ignore those interests in their actual decision-making. The problem is that we can never rummage through an official's mind and know for sure that their judgment was unimpaired by their interest. Therefore, we say to officials not to even raise the question as to whether their judgment was ever impaired. This is because that question is unanswerable. We tell them to arrange their affairs so that they aren't even in a position where their interests could affect their judgment.

Being in a conflict of interest is thus a serious matter, but it is not necessarily corruption. Conflict of interest law is prophylactic law. It doesn't prohibit wrongdoing; it prohibits officials from being in a position where they could do something wrong. It does so because any actual wrong would take place in the mind of the office-holder, a place we can never access. In a way, it's a misnomer to call the conflict of interest laws "ethics laws," because an official can violate conflict of interest law and still be a person of complete integrity.

Unfortunately, both politicians who get into conflicts of interest and their critics often misunderstand this. A minister who finds himself in a conflict of interest will defensively and indignantly believe that he is being accused of some kind of corruption, so he will angrily deny that he is in any kind of conflict of interest. That doesn't follow. Maybe his judgment wasn't corrupted at all. Maybe he feels absolutely certain in his own mind that it wasn't, but he could still have been in a conflict of interest if he was in a position where it could have been corrupted.

His opposition critics, meanwhile, will suggest that because he was in a conflict of interest, he has done something corrupt. That doesn't follow either. Just because we know a minister was in a conflict of interest, that doesn't mean anything one way or another about whether his judgment was actually corrupted.

For his critics, then, the fact that a minister is in a conflict of interest means that he is corrupt; for the minister, his certainty that he is not corrupt means that he couldn't have even been in a conflict of interest. Both sides mistakenly equate conflict of interest with corruption, so we get consumed with unnecessarily overheated conflict of interest controversies when there are so many more important things on the public agenda.

Let me close with a model of how conflicts of interest should be handled politically, in my view.

In October 2003, Canada's labour minister, Claudette Bradshaw, announced that she had inadvertently violated federal conflict of interest rules. She had accepted free travel from the Irving family of New Brunswick. As soon as it came to her attention that doing so was prohibited, she took action to reimburse the Irvings, acknowledged that she had fallen afoul of the rules, and apologized. "I apologize to the House," she said, "and I apologize to all Canadians." Opposition leader Stephen Harper then responded simply that "Claudette Bradshaw did the honourable thing". That was it. The matter was closed. Both Ms. Bradshaw and Mr. Harper handled the affair appropriately. Everybody moved on.

That, I believe, is a model of how conflict of interest controversies can and should be handled politically.

Thank you.

The Chair: Thank you, Mr. Stark.

Mr. McLaughlin, if you would like to, you can address the committee for up to five minutes, sir.

Go ahead.

David McLaughlin (As an Individual): Sure.

I have no formal opening statement. Again, I apologize for running behind. I went to the wrong entrance. If you do need some extra time for me at the end, I'm happy to stay a little longer to make that up to you.

I am no expert on conflict of interest or the state of federal law on that. I have no academic or particular expertise in that area. I have been in government at the federal and the provincial level. I ran a democratic reform commission in New Brunswick as the deputy minister. I was Clerk of the Executive Council and Cabinet Secretary in Manitoba. I've been a chief of staff in both the Prime Minister's Office and the Minister of Finance's office. I have seen things of governance, if you will, from various perspectives. If there is some general background or knowledge I can help you with, I'm happy to do it. I believe very strongly in the importance of our democratic institutions and, frankly, very much in the work you do. I feel an obligation to try to assist you in any particular way that I can.

I'll leave it at that, and I'm happy to take any questions you might have.

Hello, Andy.

Thank you.

● (1645)

The Chair: All right. Thank you, Mr. McLaughlin.

I'm sure glad the committee can reunite you two today, as we are, so this is great.

Mr. Barrett, you have the floor for six minutes, sir.

Go ahead.

Michael Barrett (Leeds—Grenville—Thousand Islands—Rideau Lakes, CPC): I'll start with you, Professor Stark.

You've made the comment that ethics rules should protect the public trust. I think that's incredibly important. At a time when the public sees their trust in democratic institutions and elected officials at all-time lows, we need to find ways to bolster public confidence.

Would adding apparent or potential conflicts of interest to the act close a loophole that currently allows compliance? Do you think doing so would address the concern that when the public currently sees a conflict, they feel like there's no action being taken?

Andrew Stark: I think that adding a clause mentioning or prohibiting the appearance of a conflict of interest is a good idea, as long as it's understood what "the appearance of a conflict of interest" is. If a conflict of interest itself arises when an official is in a position to affect their interests, even if they are actually uninfluenced by them, then the appearance of a conflict of interest is when they appear to be in a position where their interests could affect their judgment.

An example of that from the United States arose when the Comptroller of the Currency, many years ago, divested all his shares in federal banks that fell under his jurisdiction, but he was accused of being in a conflict of interest because he still had shares in state banks, whose interest he could not affect in office. However, it was deemed to be an appearance of a conflict of interest because the public might not make that distinction.

It's a finer notion, the appearance of a conflict of interest, but certainly I think that officials have an obligation to avoid not simply a conflict of interest, but the appearance of such. To put it another way, their conduct should pass muster even with the most casual observer, meaning somebody who really doesn't pay great attention to the details and might misunderstand them. His obligation is still to make sure they don't draw that conclusion.

Michael Barrett: To pick up on something you said with respect to your example about the financial interests of these public office holders, it has been suggested that a prime minister could sell controlled assets and then have the proceeds reinvested by a trustee who is independent from and free from the direction of the public office holder. Why not do that?

Andrew Stark: I see no reason for not doing that. That's a way of resolving an actual conflict of interest. What you're describing is a blind trust, where the office-holder gives their assets to a trustee, and the trustee is directed to liquidate them as soon as reasonable—that is, as soon as the trustee can find a buyer for them—and to reinvest them in instruments the office-holder does not know the identity of.

Of course, it can take some time for the trustee to do that, so during the period before the trustee has managed to sell a particular asset, the office-holder, especially if it's a prime minister or another senior office-holder, should recuse themselves or be screened from any involvement with that asset. Once it's sold, then it's no longer an interest of theirs and there's no reason for them to be recused from matters dealing with that asset.

Michael Barrett: When public office holders are screened from being involved in discussions or making decisions on matters that put them in a conflict that could benefit their own financial interests, should there be public reporting that this has occurred, so there is visibility for the sake of public confidence that the system is working? The concept of it sounds fine, but the public doesn't have visibility on whether and when it's used. It might strain most people's trust if they hear that it's going to be employees or appointees of that public office holder who are protecting them from that involvement and the decisions.

The current Prime Minister is the example I will use. He has extensive holdings in a company that's invested in transportation, infrastructure, military and power generation—all things that certainly the head of government would touch on in that role.

Do you think there should be public reporting when the screen is used?

● (1650)

Andrew Stark: That's something the committee should consider. I would agree with it, depending upon what we're talking about.

As I understand it, the Ethics Commissioner has set up a screen, as you describe it, where two officials in the Prime Minister's office are going to divert issues that might be part of the Prime Minister's portfolio from the Prime Minister's attention, but if that's all that happens, that's not enough.

For example, the Ethics Commissioner should meet periodically with those two officials to review what they have done. Perhaps there are other, more hands-on ways in which the Ethics Commissioner can be—

The Chair: Mr. Stark, I'm sorry, but we're over time here. Maybe we can get back to it in a second.

Ms. Church, you have six minutes, please.

Leslie Church (Toronto—St. Paul's, Lib.): Thanks very much, Mr. Chair.

Welcome to you both.

Professor Stark, let me pick up on what you were saying about perceptions of conflict and debunking the assumption that conflict of interest is somehow akin to corruption. I think that's actually a very neat way of getting to the heart of one of the issues we've been wrestling with.

Do you believe that perceptions of conflict, when they're not grounded in evidence, can undermine public trust? How should legislators ensure that perceptions do not overshadow facts?

Andrew Stark: I think that perceptions can undermine public trust. Again, we're talking about situations where there isn't even an actual conflict of interest, let alone corruption, but there is the appearance of one. I think that a provision in the conflict of interest legislation that requires office-holders to take care not to allow the appearance of a conflict of interest to arise would be helpful.

The difficulty or the push-back on that, just so everybody knows it, is that it's a very vague provision. It's not necessarily the case that an office-holder—and I can think of cases that involve both Conservative and Liberal governments, but I won't detail them here—or an official did violate what would have been an appearance standard, had there been one, but it's also obvious that they might not have reasonably anticipated that this could have happened.

I think an appearance standard is important, but it's also important to make sure that the penalties attached to it are appropriate, since there is a certain degree of vagueness attached to what it means.

Leslie Church: I think where we are struggling a little bit is in understanding how to define that and how to reasonably conclude...broadly in the minds of the public, in some of the examples that you raised, and how to anticipate what is an appearance in someone's mind. It seems like a very subjective determination to be made, where it's difficult to create boundaries in law to guide action.

Talk to me a little bit about your research. How important is it that conflict of interest determinations are made by independent institutions, such as the Ethics Commissioner, rather than through political debate or partisan narratives?

Andrew Stark: Before I answer that, let me just say one last thing on the appearance issue.

I am less concerned about a vague law or a provision in the law that simply prohibits the appearance of a conflict of interest, as long as it's well understood that we've moved very far from accusing the official of any kind of corruption. It's something they shouldn't do, but it should be like a Claudette Bradshaw situation: “Sorry, I can see that I may have done something that appears to be a conflict of interest, and I've taken action to correct that.” It's not actually a conflict of interest, and the other side says, “Thank you. That's well done.”

That's basically how it should work, if it can, in politics. I don't know if it can.

● (1655)

Leslie Church: I was going to say that I think we all want to aspire to our better angels, but we may find some challenges there.

David, let me turn to you in terms of your lengthy experience in governance at various levels of government.

Could you describe a little bit how you've interacted with conflict of interest frameworks? Do you have experience administering screens or working with people who had screens or blind trusts when you were working in government?

David McLaughlin: No, I have no particular experience working with screens or blind trusts as a designated public office holder. When I was in the federal government in former minister Flaherty's office, and then as president and CEO of the national round table on the environment and economy, I had to fill out my own forms, declare any particular conflicts and file all that stuff away. That's really been my only direct experience.

Leslie Church: Do you have any advice for us, then, as we're thinking about how to shape and amend our conflict of interest laws? In what ways, given your experience, do you think we could protect public office holders and protect the public trust?

David McLaughlin: There are a few things, if I could.

The principle that I tend to work with from being around politics, government and governance for quite awhile is what Ronald Reagan used to say to Mikhail Gorbachev, which was “trust, but verify”, as opposed to “verify, but trust”. You have to have a starting point for this. I think if we want to rebuild and recalibrate trust or renew trust in our system, we have to start with some semblance of trust at the outset, but you have to verify that. That's why we have conflict of interest codes, lobbying rules and all of the associated public hygiene, if you will, for our public sector.

I would suggest that you might consider or take a look at what's been happening in Manitoba recently. Again, it's no surprise, from my experience there. There was a recent conflict of interest ruling by the commissioner there against the former premier, former minister of finance and former minister of the economy over violating the caretaker convention during the period between when the PC government lost and when the NDP government was coming in. The commissioner found that although there was not a private benefit to them, they had broken the rules and the law because they had ignored, if you will, that basic convention that governs our system of responsible government, etc. The commissioner fined them. It was a public fine of, I think, $18,000 in the case of the former premier and $10,000 or $12,000 for the former ministers. The act allows for up to $50,000, so that's not insignificant.

I would urge you to look at the nature of fines, because I think it conveys a really strong sense and view of the matter at hand.

The Chair: Thank you, Ms. Church and Mr. McLaughlin.

[*Translation*]

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

Luc Thériault (Montcalm, BQ): Thank you, Mr. Chair.

Mr. Stark, I agree with you on the distinction between corruption and conflict of interest. The fact remains though that a person may place themselves in a conflict of interest voluntarily. In that case, the verdict or analysis might show that it was indeed an instance of corruption.

On the other hand, it must not be assumed from the outset that being in a conflict of interest necessarily indicates corruption. It can be completely involuntary. In that sense, ethics must be proactive.

I agree with you: If we want ethics to be as proactive as possible, we have to consider the appearance of conflict of interest. Public office holders could be told for instance that, according to the Ethics Commissioner, not only must there be no conflict of interest, but there must also be no appearance of conflict of interest. If I am careful to avoid an apparent conflict of interest, it is very likely that I will not be in a conflict of interest. So I agree with you in that regard.

Mr. Stark and Mr. McLaughlin, have you ever had to manage an ethics screen?

● (1700)

[*English*]

Andrew Stark: I apologize. I did not hear a translation of that, Monsieur Thériault. I don't know if Mr. McLaughlin, my old friend, knows enough French to answer that question. I don't know what to say about that, but for some reason—

The Chair: I'm going to stop you there, Mr. Stark. The translation was working fine in the room. I wonder if you have the proper translation on your Zoom feed. That might have been it.

[*Translation*]

I can hear the interpreter in my earpiece.

[*English*]

Mr. Stark, are you on the English translation?

Andrew Stark: I don't know, and I don't know where to find it. I'm sorry. I wasn't advised of this.

The Chair: I'm going to suspend for a second. We're going to set you up.

● (1700)

_____(Pause)_____

● (1700)

The Chair: I'm going to get back to the meeting.

I apologize, Mr. Stark. There was a technical difficulty.

[*Translation*]

Mr. Thériault, you may continue. This interruption will not be deducted from your speaking time.

Luc Thériault: My first question is for Mr. Stark.

I was saying that I agree with you about your distinction between conflict of interest and corruption. I said it can certainly happen that a person is in a conflict of interest without recognizing it.

As to the work of the Ethics Commissioner, I would say that a lot of work has to be done proactively rather than reactively. Consider for example if someone is found to be in the wrong or in a conflict of interest and is sanctioned in some way. Now, a person may be in a conflict of interest voluntarily. In that case, the commissioner might conclude that it is an instance of corruption. That said, I agree with that approach.

What interests me though is that ethics, which is a higher standard than the law, must be proactive. In my opinion, restoring public trust in an institution requires consideration of apparent conflicts of interest. I agree with you on that.

In this case, when the Ethics Commissioner meets with the elected official, he must tell him not only that he must not be in a conflict of interest, but also that he must not be in an apparent conflict of interest. So if the elected official is careful not to be in an apparent conflict of interest, it is unlikely that he will be in a conflict of interest involuntarily.

I expect you would agree with me on that. You may answer that question with a yes or a no.

My other question is more in-depth.

● (1705)

[*English*]

Andrew Stark: Thank you, Monsieur Thériault.

If you're saying that officials who take care to avoid even the appearance of a conflict of interest will necessarily also avoid being in an actual conflict of interest, I would agree with that.

If I've understood you correctly, I also think it's important for public officials—and I'm sure the Ethics Commissioner would say this for MPs and ministers—whenever they think there might be an appearance of a conflict of interest in a situation but they're not sure, to proactively ask the commissioner for their thoughts beforehand, and not simply do something and then find a retroactive adverse judgment. Certainly, a proactive discussion, which includes concerns about appearances as opposed to real conflicts of interest, is important.

[*Translation*]

Luc Thériault: Indeed. Our regulatory regime governing the conduct of elected officials includes a code for MPs and rules for public office holders.

Don't you think that separate rules should be created specifically for the prime minister? My second question will of course be about using an ethics screen.

Let me explain. The prime minister is the supreme authority of a council of ministers. When he deems that one of his ministers is in an apparent conflict of interest and that this will be problematic, he does not typically have to recuse that minister. It will be resolved. If the minister is recused, it is clearly the prime minister who decides who will be at the table.

A certain moral authority is incumbent on the prime minister, and yet the prime minister is not responsible to any moral authority. It is therefore up to his subordinates such as the Clerk of the Privy Council or chief of staff to tell the prime minister to recuse himself or to apply an ethics screen. To my mind, therefore, an ethics screen is a concept or term and does not appear to be operational right now. I have trouble understanding how it is managed.

Have you, Mr. McLaughlin and Mr. Stark, ever applied an ethics screen? Do you agree that separate rules should be created? The person who holds the highest office in the land must have exemplary conduct and be fully transparent.

[*English*]

David McLaughlin: With respect to an ethics screen, no, I have not had to apply that in a political context. As a cabinet secretary in Manitoba, I had to manage recusals of ministers on policy matters for legal reasons. That worked very well, and I reflected those in the minutes.

An ethics screen may be imperfect, but it's not illegitimate. It's a known technique, a known tool to use. I think you want to give your commissioner, as an independent officer.... I think you should be looking at how to strengthen the role and the sanctions that the independent officer has. You need to give that person the tools to manage the diversity of conflicts that can come from 300-plus members of Parliament and a 40-member cabinet, etc.

It doesn't mean that the individual is in an automatic conflict of interest. They've actually taken some steps to try to remedy that, which is the first thing. Step one is to actually remedy any potential conflicts by having the commissioner sign off on them.

I'm not convinced that the Prime Minister or the premier, as an example, really has to have an extra sanction or an extra layer, as long as they are sufficient and adequate for everybody.

● (1710)

[*Translation*]

Luc Thériault: I am not talking about sanctions. We will get back to that later on.

Mr. Stark, I will come back to you later on for the answers to my questions. My time is up, unfortunately.

[*English*]

Andrew Stark: Sure—

The Chair: The time is up. Thank you, Mr. Stark.

We'll come back to it in a minute if Mr. Thériault wishes to.

We're going to go to Mr. Cooper for five minutes, please.

Michael Cooper (St. Albert—Sturgeon River, CPC): Thank you very much, Mr. Chair.

Professor Stark, you were quoted in a May 5, 2025, article in the Financial Post stating that the primary remedies for conflict of interest are recusal, disclosure and divestment. To clarify, would you consider these three things to be the primary remedies for avoiding conflicts of interest?

Andrew Stark: Yes, I would.

Michael Cooper: Okay.

The Prime Minister has more than 500 reported conflicts of interest and 103 conflicts that are subject to the so-called ethics screen, conflicts related primarily to Brookfield. Now, it's the Prime Minister's position that decisions affecting Brookfield's interest wouldn't come to his desk, wouldn't come to his attention, by virtue of the screen. That isn't exactly true, given that the ethics screen kicks in only when a decision has a disproportionate impact on Brookfield's interest relative to that of other companies as part of a broad class.

Consequently, that would give the Prime Minister a fairly wide ambit to make decisions affecting Brookfield's interest, would it not?

Andrew Stark: Yes. That is a terrific question, and it's one of two that I was going to suggest the committee should really think about, the other being the involvement of the Ethics Commissioner beyond simply setting up a recusal regime and continuing on.

On the question of whether or not an official should be able to affect their interests if those interests are not disproportionate or are a part of a broad class, that idea comes from American legislative ethics. The idea is that if you're a legislator and you're voting on legislation that's going to affect many people and not just you, and there are 400 other members of the legislature who are involved in the decision and it's not yours alone, then it's okay for you to participate, because you're being countered by others.

It's been imported in Canada, into our ethics regime for the executive branch, and I'm not sure it's legitimate to do that, but there is a push-back, which is that if the Prime Minister can't even deal with broad issues that affect his interests coequally with others, then we're getting into a situation where the Prime Minister is not able to really act in office.

I've heard it said that the Prime Minister should simply liquidate his assets totally and put them in GICs or cash, but even then, of course, he can affect his own interests, because he can affect in various ways the interest rate, etc.

Some thought has to be given to where—from really disproportionately affecting your own interest to even affecting your own GICs—we should draw the line as to what constitutes a conflict of interest. That's an important question. It's a philosophical question that I think the committee should wrestle with.

Michael Cooper: Yes. Do you think it's appropriate that the ethics screen is administered by, among others, the Prime Minister's chief of staff, who is answerable to the Prime Minister? Doesn't that create at least the perception of a potential conflict of interest?

Andrew Stark: I think what has to happen is that the Ethics Commissioner should be checking in regularly and reporting to Canadians—not on the actual identity of assets, but to say that they've checked in and there were some issues there and they've been remedied, etc. If something serious did happen, then it's something the Ethics Commissioner should investigate.

I think the legislation, if you want my opinion, should require involvement of the Ethics Commissioner beyond simply setting up the blind trust and then saying, "That's it. You guys go and manage it."

● (1715)

Michael Cooper: As it stands, of course, the Ethics Commissioner isn't involved. He says, "Okay, Chief of Staff, you administer the ethics screen." We're supposed to trust that the chief of staff and the Clerk of the Privy Council, both of whom are answerable to the Prime Minister, are doing this, but there is no reporting mechanism. There is really no information provided to demonstrate that the ethics screen is actually working.

Would you agree that the Prime Minister, in the interests of transparency, should inform Canadians about how the ethics screen is in fact working on a day-to-day basis?

Andrew Stark: I would say that the Prime Minister could—and I think it would be a good move—voluntarily say that the Ethics Commissioner is being invited on a regular basis to review how the screen is operating and to make recommendations, to repair holes or to deal with issues that come up. If he finds that a serious breach has occurred, that should be publicly known and it should be investigated.

The Chair: Thank you, Mr. Stark and Mr. Cooper.

Mr. Saini, you have five minutes. Go ahead, sir.

Gurbux Saini (Fleetwood—Port Kells, Lib.): Thank you.

Mr. McLaughlin, as the chief of staff to the Honourable Brian Mulroney, to your knowledge, did the former prime minister have a blind trust or a screen at that time?

David McLaughlin: I don't recall. It wasn't part of my remit or role at that time to manage any of his personal, ethical or financial issues, so I honestly couldn't tell you.

Gurbux Saini: Okay.

Mr. Stark, when officials, whether they are civil servants or serving the public, take an oath of trust, is that not enough for us to accept that this is what they are doing? If we don't trust civil servants or the politicians, how do we run the country? How do we manage? Do we say that anybody who is successful in business should be excluded? That's not how democracy should work in our country.

Andrew Stark: I'll refer to what David McLaughlin mentioned: “trust, but verify.” We should trust our officials, but it's important to have a conflict of interest regime and outside monitors to assist them. The Ethics Commissioner should be seen not as an opponent, but as someone who is helping and working with officials to establish trust.

I don't think a well-run conflict of interest regime should exclude people of wealth or people who have done well in business from entering politics. There's no evidence that it has happened in, for example, the United States—excluding the current regime, which doesn't observe any of the conflict of interest laws. Very wealthy people have found the privilege of serving in government worthy of putting their holdings in a blind trust for a while, and they haven't suffered financially as a result of that, or they have recused themselves and have held on to their wealth—they don't even have to get rid of it. If disclosure is the regime, they can hold on to their wealth, but it's just disclosed.

There's no real inherent opposition between conflict of interest law and people from the business community entering politics.

Gurbux Saini: Thank you.

In your experience, is Canada's current ethics framework fundamentally sound, with the reform best guided by evidence rather than by political pressure or by individual controversies?

Andrew Stark: I think it's fundamentally sound. There are improvements that could be made. I've suggested a couple of them. I think the law is fundamentally sound. What the Prime Minister has done is fundamentally sound, but it could be better.

The Ethics Commissioner could be more involved in monitoring the ethics screen. There could be a better understanding of how we deal with matters where very powerful officials are affecting their own interests, not disproportionately but as part of a broad class. They're still affecting their interests. That is a question that the current moment with the current Prime Minister brings to our attention.

It's not often that a very powerful official is also a wealthy person in this country. Usually, wealthy people are not necessarily in the most powerful positions in the government, or the most powerful person is not a person of great wealth. This is an unusual moment, but because of that, it allows us to address some of these questions that we wouldn't otherwise.

● (1720)

Gurbux Saini: We have heard evidence from others that Canadian ethics are very sound and that they are on top of the world's other democracies. Is there any suggestion you can make about what we can bring from other countries, or even from provinces, that will make it better?

The Chair: I'm sorry, Mr. Stark. Give a very quick response, if you don't mind.

Andrew Stark: It will be quick.

I don't have any such suggestions. I'm not really *au courant* with provincial regimes. I don't think that, from my knowledge of American and British conflict of interest laws and regulations, there's anything from them that I would suggest importing.

The Chair: Thank you, Mr. Saini and Mr. Stark.

[*Translation*]

Mr. Thériault, you have the floor for five minutes.

Luc Thériault: Thank you, Mr. Chair.

Mr. Stark, I wanted to give you the chance to respond to my previous remarks, if you remember what I said.

[*English*]

Andrew Stark: Can you very quickly prompt me on that?

[*Translation*]

Luc Thériault: Have you ever used an ethics screen? Have you ever had to do that?

[*English*]

Andrew Stark: No, I have never had to do that.

[*Translation*]

Luc Thériault: Once the Ethics Commissioner receives a declaration from an MP and decides that an ethics screen must be applied, that is because, firstly, there is a potential appearance of conflict of interest and, secondly, the person could objectively be in a conflict of interest in their role.

Do you agree with me?

[*English*]

Andrew Stark: I absolutely agree.

[*Translation*]

Luc Thériault: Thank you.

In the current situation, I see a problem. I am not naming anyone; this is an example. I see someone who worked for a company with a trillion dollars in assets, who runs 900 companies and who has a personal stake in about a hundred of them. The first thing he does when he takes office is decide that he needs to enact legislation to establish major projects to reshape the Canadian economy.

So it is the Prime Minister who determines the economic direction for the country, in the five sectors in which his former employer or the company that he chaired has stakes. Isn't that an apparent conflict of interest, particularly since that legislation is intended to respond to a tariff war that will be resolved in the very short term, in 2026? Perhaps there will be some remnants after that. Some of the projects in question will be completed eight or nine years later in the Maritimes. It is not really in the Maritimes; that is just a turn of phrase.

So I have a problem: I would like to know how this unusual case should be managed. Even if we are told that individual cases should not be managed, it is nonetheless a precedent.

Is there an apparent conflict of interest, objectively speaking? I am not subjective.

● (1725)

[*English*]

Andrew Stark: We're back at the question of the Prime Minister engaging in debates over legislation or regulation or policy that affects whole industries or the entire economy, and therefore also affects his own interests as a result. I'll go back to the observation that there are three remedies for conflict of interest: recusal, divestment and disclosure.

In some of the cases that you are talking about, he can't recuse himself, because he's the Prime Minister and he has to be involved in these issues. Maybe he can't divest himself, either; maybe the blind trust hasn't found a buyer for those interests. In those cases, disclosure is what we're talking about.

In fact, there is de facto disclosure. You just articulated it: The Prime Minister is involved in massive policy decisions that affect interests of his, as well as those of many other Canadians. As Canadians, you and I can judge whether we think the Prime Minister's judgment was biased, and we can weigh that in our vote at the ballot box and in our assessments of how he's doing.

In the absence of recusal and divestment, which may not work in this case, disclosure has to happen, but we sort of have it de facto.

[*Translation*]

Luc Thériault: My concern though is that we cannot determine from the outset that a broad decision has no effect on the interests of the person in question. When a person places assets in a blind trust, does that mean that he has to recuse himself? He does not have to recuse himself 99% of the time because the scope of the Conflict of Interest Act is limited to decisions with a personal impact.

Should we not consider that broad decisions can also place someone in a potential conflict of interest?

[*English*]

Andrew Stark: I agree. That is one of the two main issues I would suggest the committee wrestle with.

I also think we're going to come to a point where, if the Prime Minister is going to be able to exercise their office, until they're able to divest their holdings and put them in GICs or in stocks the identity of which the Prime Minister doesn't know, they can't recuse themselves from everything, so disclosure has to be the remedy. This is an issue that you should wrestle with.

The Chair: Thank you, Mr. Stark.

[*Translation*]

Thank you, Mr. Thériault.

[*English*]

Next, Mr. Barrett will have five minutes.

[*Translation*]

Mr. Sari will then have the floor for five minutes.

[*English*]

Mr. Barrett, go ahead, please, for five minutes.

Michael Barrett: Mr. McLaughlin, I'm curious about the fines and the recovery of fines in the context of the Manitoba example that you gave. First of all, with regard to the upper limits of the fine, is this an order of the commissioner, or is it a recommendation to be voted on by the assembly? Also, what is the effect of the order? Does it become a provincial court order or a federal court order? Is it enforceable? If it does become an order of the court, does it then survive things like prorogation, for example?

David McLaughlin: It is a recommendation from the commissioner to the legislative assembly. The legislative assembly has a debate on it and votes on it. In this case, there was a unanimous agreement by members to accept the report of the commissioner, which included these particular fines. The commissioner explained in the report how he triaged the fines: an upper fine for the former premier—she received the highest fine on that—and then somewhat less for the other individuals.

The sanction—beyond the public sanction and public embarrassment, if you will, of litigating this in public—for these individuals was that the government could withhold or garnishee any outstanding wages, pensions and other kinds of payments that they were entitled to. So, if they did not pay the fine, then the government could take steps to basically withhold a portion of their pension or whatever it owed the individual for other things until the fine is paid off.

● (1730)

Michael Barrett: Were these powers to be given to the federal commissioner, do you think it would enhance the separation or enhance the commissioner's independence should they have the power to impose the fine without simply recommending it to the House and thereby politicizing the matter further?

David McLaughlin: It's a good question. If you're going to have a truly independent commissioner with that kind of authority, I think a cleaner version would be, then, to give the commissioner the appropriate authority through legislation, etc. That takes it out of the political cockpit—however legitimate that debate is—in terms of a vote in the House of Commons with all the attendant drama, if you will, that goes with it. It makes it very clear that it is not, in fact, a political issue but a conflict of interest issue. It gives the particular fine and sanction, and then it has the appropriate force.

I don't know how you would write that in law, but I think that would be a cleaner way of doing it.

Michael Barrett: Please answer this quickly, if you could. Do you believe that fines of the magnitude of $50,000 for violation of the Conflict of Interest Act, for serious violations of the act, are an appropriate remedy for breaches?

David McLaughlin: Whether it's $50,000 or $100,000 or something else, a higher fine definitely carries more weight. It says to the public, “This is important.” If there's a mistake here, you know, people say, “Wait a minute. Fifty thousand bucks is a lot of money, so it must be important.” I certainly think a higher fine.... You could scale it in some way, depending on the extent of the offence—for example, if there is money involved.

Again, I'm not certain how you might do that, but I would certainly push it to an upper limit, as much as you're allowed to in law.

Michael Barrett: Thank you.

Professor Stark, just answer this quickly. Would you agree with that type of regime—having fines of $50,000 to $100,000, depending on the office that's held and the offence or violation or contravention of the act?

Andrew Stark: I don't know what.... I agree with David that it's serious to be in a conflict of interest, but again, it's not necessarily corruption.

I think the best thing to do in a conflict of interest situation is for the official to have a chance to remedy it and to apologize and acknowledge it. However, in cases where that doesn't happen, yes, I think there should be fines, and they should be significant. As for what the amount should be, I don't know.

Michael Barrett: Thank you.

The Chair: Thank you, Mr. Stark and Mr. Barrett.

[*Translation*]

Mr. Sari, you have the floor for five minutes.

Abdelhaq Sari (Bourassa, Lib.): Thank you very much, Mr. Chair.

I would like to thank the two witnesses for joining us, either in person or online. It is truly a privilege to meet them and be able to draw on their knowledge. I really appreciate it.

All of the questions that have been raised lead me to consider the purpose of this committee's work. One of the objectives is of course to strengthen public trust in general. That trust can be eroded at times for various reasons, including perceptions that are shared via social media. The issue of public confidence is widespread.

So I would really like to hear what you both have to say about something. In your opinion, if a perceived conflict of interest is not based on facts, can it truly undermine public confidence in general? Should legislators ensure that those perceptions are somewhat removed from the political process?

[*English*]

David McLaughlin: I believe very strongly in the political process. I'm not naive about how contentious it can be, but I think the public has a role here. The public needs to hear these things so that it can judge appropriately. In an appearance of conflict, if it's properly litigated politically, the public will sort through it. I trust the public, in that sense. I think there's a boomerang effect on members of Parliament and institutions if it's pushed too hard, if it's clearly manufactured in some fashion.

We rely on members of Parliament and on the institutions and processes to behave properly, if you will, and to take this seriously. If there's going to be a charge or an assertion of an appearance of conflict...which is probably what this would amount to. If it were an actual conflict, it would have been dealt with. There would have been the appropriate sanctions or remedies, etc., with the commissioner.

Ultimately, I will defer to the political cockpit, the political process, for this, but it's incumbent on everybody to play their role appropriately within the framework so that the public can judge.

● (1735)

Andrew Stark: That's a very good question. There's been some debate about the appearance standard in the age of social media. It's very easy now, for political opponents and people who are just generally looking to stir it up, to make allegations. They create an appearance of a conflict of interest, almost. I think that's something that has to be considered if you're thinking about including in the legislation a provision regarding the appearance of a conflict of interest.

One thing it suggests to me is that if an appearance of a conflict of interest charge is raised in the context of a social media campaign against an official, the commissioner has the latitude to say that there was no appearance of conflict of interest here but for the irresponsible allegations being made by certain social media outlets. That is a perfectly legitimate way for the Ethics Commissioner to resolve an issue. I don't know how you write that into legislation, but it's certainly a principle that I think should apply.

[*Translation*]

Abdelhaq Sari: You're right, but on the other hand, it could also undermine a decision-maker's role in the political process.

I have more questions about your research and your perceptions. In the Canadian model, the beneficiaries are known, but the decisions made regarding assets are hidden. This model is similar to that of many democratic companies, in Europe and elsewhere.

Would you say it is a “solid” model?

[*English*]

Andrew Stark: Are you asking me that question?

Abdelhaq Sari: Yes, I will start with you.

Andrew Stark: Yes, I think our regime is solid, for sure. It's gone through many evolutions. Some of them were less solid than they are right now. I think your discussions and deliberations have identified some areas where there may need to be some improvements, but basically, yes, it's solid.

The Chair: Thank you, Mr. Stark.

[*Translation*]

Thank you, Mr. Sari.

[*English*]

That concludes our first hour for today.

Mr. McLaughlin and Mr. Stark, I want to thank you for taking the time to be here today. I apologize for the little security delay in starting the meeting. I really appreciate the information that you've provided to the committee. On behalf of the committee and Canadians, I want to thank you for your appearance today.

We are going to suspend for a minute, and then we are going in camera.

[*Proceedings continue in camera*]