

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney



Commission d'enquête concernant les allégations
au sujet des transactions financières et
commerciales entre Karlheinz Schreiber et
le très honorable Brian Mulroney

**Policy Review
Public Hearing**

**Examen de la Politique
Audience publique**

Commissioner

L'Honorable juge /
The Honourable Justice
Jeffrey James Oliphant

Commissaire

Held at:

Bytown Pavillion
Victoria Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, June 17, 2009

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salle Victoria
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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon resuming on Wednesday, June 17, 2009

3 at 9:05 a.m. / L'audience reprend le mercredi

4 17 juin 2009 à 9 h 05

5 48091 COMMISSIONER OLIPHANT: Good morning,
6 ladies and gentlemen. This is round three of Part II
7 and today we have with us several distinguished
8 panellists who will be more appropriately introduced by
9 my colleague, Ms Brooks in a moment or two.

10 48092 Let me simply say that I am very
11 grateful for the attendance of each of the
12 Commissioners this morning. I know how busy you are
13 and I have the feeling that you will contribute greatly
14 to the work of this Commission. I am looking very much
15 forward to hearing from each of you and to exchanges
16 that are sure to follow your presentation.

17 48093 So with that, Ms Brooks, I will turn
18 the floor over to you.

19 48094 MS BROOKS: Thank you,
20 Mr. Commissioner. I would like to introduce our
21 panellists and I am very pleased, as are all counsel
22 and I know our experts, to have a panel of such
23 quality.

24 48095 On my far right is Mary Dawson, who
25 was appointed Conflict of Interest and Ethics

1 Commissioner under the Parliament of Canada Act on July
2 9, 2007. Ms Dawson has had a long career with the
3 Government of Canada and has overseen a wide variety of
4 legal issues from within the Department of Justice.
5 She retired in 2005 as Associate Deputy Minister, a
6 position she held since 1988.

7 48096 From 1986 to 1995 Ms Dawson was the
8 Head of the Department of Justice Public Law Sector,
9 including the traditional public law areas of
10 constitutional, administrative and international law.
11 She played an important role in relation to
12 constitutional matters and was the final drafter of the
13 Patriation Package, the Constitution Act of 1982.

14 48097 On my right is Karen Shepherd, who is
15 the Interim Commissioner of Lobbying. Karen holds a
16 Masters Degree in Public Administration from Carleton
17 University and a Bachelor of Arts from Concordia. She
18 has more than 20 years of experience in the federal
19 public service, was appointed as Interim Commissioner
20 of Lobbying effective January 2, 2009.

21 48098 Prior to her appointment as Interim
22 Commissioner of Lobbying she held the position of
23 Director of Investigations and Deputy Registrar in the
24 office of the Registrar of Lobbyists from 2004 to 2008.
25 That role was within Industry Canada.

1 48099 Prior to joining the Registrar of
2 Lobbyists, Ms Shepherd held a number of positions in
3 the Industry sector of Industry Canada.

4 48100 On my left is Lynn Morrison who is
5 our Acting Integrity Commissioner here in Ontario. She
6 was appointed July 30, 2007 by Order in Council to
7 start in her role as Acting Integrity Commissioner the
8 following day. Since the inception of the office of
9 Integrity Commissioner in 1988, Ms Morrison has served
10 as the Executive Administrative Officer to the
11 Integrity Commissioner for Ontario with responsibility
12 for the Members Integrity Act 1994, the former MPP
13 Compensation Reform Act and other forms of legislation
14 in this area.

15 48101 In 1999 Ms Morrison was appointed by
16 the Integrity Commissioner as the Delegated Lobbyist
17 Registrar for Ontario under the Lobbyists Registration
18 Act 1998.

19 48102 So she brings to us experience in
20 both lobbying and ethics.

21 48103 On my far left is Paul Fraser, who
22 was appointed Conflict of Interest Commissioner of B.C.
23 on January 1, 2008. He has practised law in British
24 Columbia for over 40 years, specializing in civil and
25 criminal litigation as well as commercial and labour

1 mediation and arbitration. Over the last 12 years
2 Mr. Fraser has been appointed as Special Prosecutor in
3 British Columbia on several occasions, has appeared as
4 counsel in all superior courts of B.C. and in Canada.

5 48104 In 1991 Mr. Fraser was selected as a
6 Fellow of the American College of Trial Lawyers and
7 subsequently appointed Chair of the Canada-U.S.
8 Committee of the college. He is a former President of
9 the CBA, Canadian Bar Association, preceded by a term
10 as President of the Association's British Columbia
11 branch.

12 48105 So I am pleased to welcome these four
13 panellists with us today.

14 48106 In this panel it is structured so
15 that we hear from each of the four Commissioners who
16 will give an overview of their legislation and mandate.
17 This is intended to be a brief overview just to place
18 them in the context to give you some context to where
19 they are situated. That will be followed by a series
20 of questions that I will pose to them on behalf of the
21 Commission.

22 48107 At that point I will be inviting our
23 three retained experts, if at any point they have a
24 question or a comment to make, I will be looking to
25 them to add that to the discussion.

1 48108 I will start with Ms Dawson, who I
2 ask to give an overview of her legislation and her
3 mandate.

4 48109 Thank you.

5 48110 MS DAWSON: Thank you very much,
6 Ms Brooks, and thank you, Mr. Commissioner, Commission
7 counsel, Commission experts and members of the panel
8 for this opportunity to present information to you
9 today about my mandate and role as the Federal Conflict
10 of Interest and Ethics Commissioner.

11 48111 I know you are mostly interested in
12 the post-employment rules for current and past public
13 officeholders, but before I provide detailed
14 information on those rules I will first give you an
15 overview of my mandate, as well as descriptions of the
16 two conflict of interest regimes for which I am
17 responsible.

18 48112 The origins of the Conflict of
19 Interest Act can be traced back to 1973 when Prime
20 Minister Trudeau issued Conflict of Interest Guidelines
21 for Cabinet Ministers. Later that same year Trudeau
22 announced guidelines for a variety of different groups
23 of public servants and Governor in Council appointees.
24 They were similar to those for Ministers.

25 48113 Many of the provisions in those

1 Guidelines we find today in the Conflict of Interest
2 Act, such as the prohibition against using insider
3 information for private gain, the restriction of
4 outside activities, the requirement to divest certain
5 assets and public declaration of certain assets.

6 48114 Post-employment rules were developed
7 a little later and on January 1, 1978 they officially
8 came into force. The guidelines were modified a number
9 of times, most significantly in 1985 when Prime
10 Minister Brian Mulroney issued the Conflict of Interest
11 and Post-Employment Code for public officeholders.
12 This Code consolidated the rules for public
13 officeholders into one document.

14 48115 Predecessors to my position include
15 the Assistant Deputy Registrar General who was Canada's
16 first Conflict of Interest Administrator, followed by
17 the Ethics Counsellor who was part of the Department of
18 Industry, Trade and Commerce.

19 48116 In 2004 the Ethics Counsellor was
20 replaced by an Ethics Commissioner whose office was no
21 longer part of the public service but a separate
22 Parliamentary entity. This reflects the fact that this
23 position assumed responsibility for the new Conflict of
24 Interest Code for Members of the House of Commons,
25 while continuing to administer the Conflict of Interest

1 and Post-Employment Code for public officeholders,
2 which had been updated in 1994, 2003 and 2004.

3 48117 I became Canada's first Conflict of
4 Interest and Ethics Commissioner on July 9, 2007, the
5 date that the Conflict of Interest Act came into force.
6 As Commissioner I am an officer of Parliament and, as
7 such, I am independent from the government of the day.
8 This is particularly important because I oversee the
9 conduct of Ministers, including the Prime Minister, as
10 well as Members of the House of Commons.

11 48118 My office is an independent
12 Parliamentary entity created by the Parliament of
13 Canada Act and is part of Parliament, along with the
14 House of Commons, the Senate and the Library of
15 Parliament.

16 48119 I administer two conflict of interest
17 regimes. The first is the Conflict of Interest Act
18 which came into force in July 2007. It applies to over
19 2,700 public officeholders. Most are appointed by the
20 government through Order in Council, including
21 Ministers, Parliamentary Secretaries, Deputy Ministers,
22 heads and members of various Crown corporations and
23 Tribunals. It also includes ministerial staff who are
24 hired directly by ministers.

25 48120 The second is the Conflict of

1 Interest Code for Members of the House of Commons which
2 has been in place since 2004. It applies to all 308
3 Members of the House of Commons and has the interesting
4 attribute of having been developed by the Members
5 themselves. Generally the Act and the Code set of
6 prohibitions against activities that could or do
7 involve conflicts between public and private interests.

8 48121 My first two years as Commissioner
9 have been focused on ensuring that both the new Act and
10 the Members Code are applied with clarity, consistency
11 and common sense and with due consideration for the
12 individuals affected.

13 48122 I have also emphasized prevention,
14 providing information to the Members of the House of
15 Commons and to public officeholders about their
16 obligations and assisting them in becoming compliant
17 with the Code and the Act, respectively.

18 48123 In a few minutes I will be describing
19 the approach we are currently taking to apply the
20 provisions of the Act relating to post-employment
21 obligations, but I would like to say at the outset that
22 now that our transitional priorities have been
23 addressed we are in a better position to assess the
24 effectiveness of compliance mechanisms to ensure that
25 the post-employment provisions are being respected.

1 48124 This will continue to be challenging,
2 because there are virtually no reporting requirements.
3 For the most part, we are reliant on either voluntary
4 disclosures or information received from third parties.

5 48125 That is with respect to
6 post-employment.

7 48126 However, we will continue to address
8 this in the coming year.

9 48127 There has been some confusion about
10 the scope of my mandate, so I would like to speak very
11 briefly about what is outside my jurisdiction.

12 48128 There is a separate Conflict of
13 Interest Code for Senators administered by Mr. Jean
14 Fournier, the current Senate Ethics Officer. Except
15 for the most senior leadership positions, employees of
16 the Public Service of Canada are not covered by the
17 Act. Public servants are subject to the Values and
18 Ethics Code for the public service developed and
19 administered by Treasury Board.

20 48129 There is a separate office, the
21 Public Sector Integrity Office -- and that quite often
22 gets confused with my office because of the name,
23 because I think in Ontario that's the name that my
24 parallel is called.

25 48130 Anyway, there is the Public Sector

1 Integrity Office, headed by the Public Sector Integrity
2 Commissioner, that reviews allegations of wrongdoing by
3 public service employees.

4 48131 Then there is the Commissioner of
5 Lobbying, who is here today, who enforces the Lobbying
6 Act which came into force on July 2, 2008. That Act
7 includes the five-year ban on lobbying, which had
8 previously been part of the 2006 Conflict of Interest
9 Code.

10 48132 My office still has some
11 responsibility to administer and enforce the five-year
12 ban, but only for public officeholders who left office
13 before July 9, 2007, the day that the Conflict of
14 Interest Act came into force. Any former public
15 officeholders who left office on or after that date
16 fall under the jurisdiction of the Commissioner of
17 Lobbying.

18 48133 Another area of confusion is my
19 relationship to the Standing Committee on Access to
20 Information, Privacy and Ethics.

21 48134 While that Standing Committee reviews
22 my estimates, I do not report to it and it of course
23 does not report to me, nor do I take any regular part
24 in its deliberations. This is sometimes a matter of
25 confusion for the public.

1 48135 Now, getting down to my own
2 jurisdiction, the Members Code, as I have said, was
3 prepared and approved by the Members themselves. My
4 role is to support the House of Commons in governing
5 the conduct of its members in interpreting and applying
6 the Code.

7 48136 The Members Code is still relatively
8 new. It was adopted in April 2004 and since then it
9 has been amended three times, most recently in June of
10 this year.

11 48137 It applies to all 308 Members of the
12 House of Commons, as I indicated before, including
13 Ministers, Ministers of State and Parliamentary
14 Secretaries, who are subject to both the Act and the
15 Code. The Code only applies to Members in the conduct
16 of their duties as Members of Parliament. Section 5
17 states that Members do not breach the Code if the
18 activity is one in which they normally and properly
19 engage on behalf of constituents.

20 48138 The General Rules of Conduct outlined
21 in the Code set out a number of prohibitions such as
22 using influence and insider information, furthering
23 private interests, accepting gifts or other benefits --
24 and that is either the Members or their families --
25 that might reasonably be seen to have been given to

1 influence the exercise of an official duty or function,
2 and being a party to a contract with the Government of
3 Canada or having an interest in a private corporation
4 or partnership that contracts with the government.

5 48139 The Members Code also establishes
6 restrictions on debates and voting when a Member has a
7 private interest that might be affected.

8 48140 Within 60 days after their election
9 becomes official, Members must file a disclosure
10 statement with my office setting out information about
11 their holdings. They must also make reasonable efforts
12 to disclose the same information for their spouses or
13 common-law partners and their dependent children. A
14 disclosure summary is prepared for each Member that
15 covers the information that the Code requires be made
16 public. Members must notify us of any material change
17 throughout the year and, in addition, a Member's
18 information is reviewed on an annual basis and the
19 disclosure summary updated accordingly.

20 48141 Members are also required to publicly
21 disclose gifts and benefits they receive worth more
22 than \$500.

23 48142 My office maintains a registry of the
24 public disclosures of each Member and this is
25 accessible on our website.

1 48143 Members who are not Ministers,
2 Ministers of State or Parliamentary Secretaries are
3 allowed to continue outside employment and businesses
4 and to practise a profession, as long as they are able
5 to respect the other provisions in the Members Code.
6 Members are also not subject to specific
7 post-employment restrictions at all.

8 48144 I have the power to conduct
9 inquiries, either at the request of a Member or a
10 Senator, or on my own initiative where I have
11 reasonable grounds to believe that a Member has
12 contravened the Code.

13 48145 Now moving on to the Conflict of
14 Interest Act, I will give you a general overview of
15 that Act.

16 48146 As you will see, the rules for public
17 officeholders are more comprehensive than they are for
18 Members of the House of Commons, although many of the
19 general principles are similar. The Act replaces the
20 2006 Conflict of Interest and Post-Employment Code for
21 public officeholders.

22 48147 Under the Act public officeholders
23 are prohibited from making decisions on issues that put
24 them in conflict of interest, using insider information
25 or influence to further private interests, and

1 accepting gifts or other advantages that could
2 reasonably be seen to influence them in performing
3 their official duties.

4 48148 Public officeholders must comply with
5 the Act as a condition of their employment. The Act
6 applies to about 2,700 full and part-time employees, as
7 I indicated, employees of the Government of Canada.

8 48149 Approximately 1,100 are full-time
9 appointees called reporting public officeholders.
10 Reporting public officeholders include a broad group of
11 individuals. They include Ministers, Ministers of
12 State and Parliamentary Secretaries who are also
13 subject to the Code, as I mentioned, for Members.
14 Reporting public officeholders also include fulltime
15 government appointees such as Deputy Ministers, heads
16 of Crown Corporations or federal Tribunals and, in
17 fact, many Members.

18 48150 Finally, this group also includes
19 ministerial staff who work 15 hours a week or more.

20 48151 The Act also covers public
21 officeholders who are part-time appointees. This group
22 includes those who are appointed to boards and
23 commissions as well as ministerial staff who work less
24 than 15 hours a week. They are subject to a general
25 conflict of interest regime but do not have to file

1 confidential disclosure forms.

2 48152 My office provides confidential
3 advice to all current and former public officeholders
4 who want to understand how the Act applies in their
5 particular situation. As is the case for the Members
6 Code, the Act uses disclosure and recusals to manage
7 conflict of interest situations.

8 48153 Also like the Members Code, reporting
9 public officeholders must file a detailed confidential
10 declaration with my office within 60 days after their
11 appointment and they must publicly disclose a summary
12 of their assets, liabilities and gifts.

13 48154 Unlike the Members Code, reporting
14 officeholders are prohibited from holding controlled
15 assets and must divest themselves of these within 120
16 days after their appointment. These include, for
17 example, and particularly, publicly traded securities.

18 48155 One of my office's functions is to
19 provide advice on divestiture of controlled assets
20 through arms-length sales or blind trust agreements.

21 48156 Also unlike the Members Code, the Act
22 contains very broad restrictions on outside activities
23 for reporting public officeholders who cannot, for
24 example, practise a profession, continue as or become a
25 corporate director or officer, engage in outside

1 employment or serve as a paid consultant. Permitted
2 outside activities are publicly reported.

3 48157 All public officeholders and their
4 family members are prohibited from receiving a gift or
5 other advantage if it might reasonably be seen as an
6 attempt to influence their decision-making. They must
7 disclose and publicly declare gifts that they do
8 receive with a value of \$200 or more. Gifts with a
9 value of \$1,000 or more must be forfeited to the Crown.

10 48158 That is a requirement that does not
11 apply in the Members Code. There are some exceptions
12 under both the Act and the Code that permit gifts, for
13 example from family members and friends, or gifts that
14 are a normal expression of courtesy or protocol.

15 48159 Under the Act I can conduct
16 examinations of any present or former public
17 officeholder on the request of a Member of the Senate
18 or the House of Commons or on my own initiative where
19 there is reason to believe that the person has
20 contravened a specific section of the Act or the
21 previous Codes.

22 48160 However, I can only investigate for a
23 period going back 10 years.

24 48161 I can impose administrative monetary
25 penalties on those who do not meet various deadlines

1 set out under the Act, but that doesn't go to the
2 substantial offences -- or the substantial
3 contraventions.

4 48162 Interestingly, despite my title,
5 there is no mention of ethics in the Conflict of
6 Interest Act. In the Parliament of Canada Act, which
7 sets out my mandate, there is a provision for me to
8 provide confidential policy advice and support to the
9 Prime Minister in respect of conflict of interest and
10 ethical issues in general, but that is the only mention
11 of ethics in my mandate, aside from the title.

12 48163 Now, with respect to post-employment
13 rules, which I know you are most interested in, there
14 are no post-employment rules in the Members Code. As
15 for the Act, reporting public officeholders are
16 required to disclose in writing to me all firm offers
17 of outside employment within seven days of the offer
18 and acceptance of the offer as well within seven days.

19 48164 The post-employment rules in sections
20 33 and 34 of the Act apply to all former public
21 officeholders, while sections 35 to 42 apply only to
22 former reporting public officeholders.

23 48165 Sections 33 and 34 are the more
24 general ones.

25 48166 All former public officeholders, for

1 example, are expressly prohibited from taking improper
2 advantage of their previous public office.

3 48167 That is section 33.

4 48168 They may not switch sides by acting
5 for or on behalf of any person or organization in
6 matters relating to a specific procedure, transaction,
7 negotiation or case in which they previously acted or
8 provided advice to the government.

9 48169 That is subsection 34(1).

10 48170 They are also prohibited from
11 providing advice to any person or organization using
12 information obtained while in public office that is not
13 available to the public.

14 48171 That is section 34(2).

15 48172 There is no time limit for these
16 prohibitions so they go on forever.

17 48173 Sections 35 and 36 of the Act require
18 that former public office, reporting public
19 officeholders -- so here is where the distinction comes
20 from the two classes -- requires that former reporting
21 public officeholders observe what is commonly known as
22 a cooling-off period following their departure from
23 public office.

24 48174 The cooling-off period is two years
25 for former Ministers of the Crown and Ministers of

1 State and one year for all other former reporting
2 public officeholders.

3 48175 That is section 36.

4 48176 During this period a former reporting
5 public officeholder may not contract with, sit on the
6 board of directors of, or accept employment with any
7 entity outside the federal government with which he or
8 she has had direct and significant official dealings
9 during the one year immediately prior to leaving public
10 office.

11 48177 That is 35(1).

12 48178 In addition, he or she may not make
13 representations for or on behalf on another person to
14 any department, organization, board, commission or
15 tribunal with which he or she has had direct and
16 significant official dealings during that past year.

17 48179 That is (2) of 35.

18 48180 For Ministers this prohibition
19 extends to former Cabinet colleagues.

20 48181 That is (3).

21 48182 The Act does not provide guidance on
22 how to interpret "direct and significant official
23 dealings", but this has not given me or my office a lot
24 difficulty. It is a question of fact based on the
25 circumstances of each case.

1 48183 And I will address this in more
2 detail during the round of questions.

3 48184 I have discretion to waive or shorten
4 the cooling-off period under certain conditions set out
5 in the Act and I have done so on rare occasions.

6 48185 There is only one reporting
7 requirement during the one or two-year cooling-off
8 period. The former reporting public officeholder must
9 let me know if he or she conducts any activities
10 referred to in paragraph 5(1)(a) or (b) of the Lobbying
11 Act.

12 48186 That is my section 37 which I think
13 we will be coming back to. Those paragraphs briefly
14 involve communicating with a public officeholder
15 regarding legislation, regulations, policy or program
16 development, or the introduction of a Bill or the
17 awarding of contracts, grants, contributions, and also
18 it deals with arranging meetings between a public
19 officeholder and any other person.

20 48187 This is not a well-known requirement
21 and, interestingly, we have received no such reports.
22 It is confusing because the individuals covered by the
23 Conflict of Interest Act are not necessarily the same
24 as those covered by the Lobbying Act.

25 48188 If I have reason to believe that a

1 former public officeholder has not complied with his or
2 her post-employment obligations, though, I can use my
3 power to conduct an examination. If I determine that
4 the former reporting public officeholder has failed to
5 comply, I can order current public officeholders not
6 have official dealings with that person.

7 48189 My office has attempted to apply the
8 post-employment provisions with consistency of course
9 and common sense, but there are some challenges. Few
10 maintain any contact with my office because there is no
11 general reporting requirement during the
12 post-employment period. It is therefore difficult to
13 assess whether they are meeting their post-employment
14 obligations and more generally how effective these
15 provisions are.

16 48190 My office provides public
17 officeholders with detailed information on their
18 post-employment obligations, both at the time they
19 assume public office and as soon as we are informed of
20 their departures.

21 48191 In the past year a number of
22 reporting officeholders have approached my office prior
23 to leaving office to seek advice on how the cooling-off
24 period might restrict their post-employment activities.
25 Such discussions have proven to be very useful in

1 preventing contraventions of the Act and I am now
2 actively encouraging Ministers and senior ministerial
3 staff to stay in touch with my office regarding any
4 positions they might take during the cooling-off
5 period.

6 48192 I have also followed up on media
7 reports and information received from third parties
8 regarding post-employment activities of former
9 reporting public officeholders, particularly during
10 their cooling-off period. In those cases the
11 post-employment rules, as far as I can tell, were not
12 being contravened.

13 48193 So in conclusion, I hope that my
14 remarks have provided you with the context that you
15 need for your deliberations. I would like to leave you
16 with a final thought.

17 48194 I believe that a fine balance must be
18 found in a conflict of interest regime that succeeds in
19 preventing public officeholders from using their public
20 office to further their private interests or others,
21 but at the same time does not deter qualified and
22 competent persons from accepting appointments as public
23 officeholders.

24 48195 Indeed, the objectives of the
25 Conflict of Interest Act state just that. Both of

1 those are set out as objectives.

2 48196 The Conflict of Interest Act, in its
3 current form, is quite onerous for reporting public
4 office holders. While there are areas like
5 post-employment that may need strengthening, I believe
6 there are other areas that could be less restrictive.

7 48197 Thank you.

8 48198 MS BROOKS: Thank you, Ms Dawson.

9 48199 I would like to now ask Karen
10 Shepherd for a summary of her Act and mandate.

11 48200 MRS. SHEPHERD: Thank you.

12 48201 Good morning, Mr. Commissioner,
13 fellow commissioners, and counsel.

14 48202 It is a pleasure to be here today to
15 participate in this panel discussion. I trust that our
16 discussion will be useful to the Commission's
17 deliberations.

18 48203 As the interim Commissioner of
19 Lobbying, I am charged with administering the federal
20 Lobbying Act. As such, my remarks will focus on
21 Canada's lobbying legislation.

22 48204 In order to provide you with some
23 perspective on the development of federal lobbying
24 legislation, I will start with a brief overview of the
25 legislation.

1 48205 Canada's Lobbyists Registration Act
2 was enacted in 1988. It first came into force on
3 September 30th, 1989, and has been in force for nearly
4 20 years.

5 48206 In the beginning, the position of
6 Registrar of Lobbyists was established within the
7 Department of Consumer and Corporate Affairs, in the
8 Lobbyist Registration Branch, which was part of the
9 department's overall consumer affairs mandate.

10 48207 The Registrar of Lobbyists was
11 responsible for maintaining the lobbyist registration
12 system.

13 48208 The legislation set out a requirement
14 for Tier 1, professional, and Tier 2, employee
15 lobbyists, to register if they engaged in registrable
16 lobbying activities set out in the Act.

17 48209 While most of the essential elements
18 of what constitutes lobbying activities have remained
19 in place, much about the legislation has changed. In
20 my view, each of the amendments brought forward over
21 the past 20 years has greatly increased transparency in
22 federal lobbying activities and the accountability of
23 lobbyists and public office holders.

24 48210 In 1994, subsequent to the first
25 parliamentary review of the legislation, the government

1 introduced legislation to amend the Lobbyists
2 Registration Act. That legislation, Bill C-43,
3 proposed a significant increase in the public
4 information that all paid lobbyists would have to
5 disclose, and it provided stronger measures for
6 compliance and enforcement.

7 48211 Bill C-43 was enacted in 1995, and
8 came into force on January 31st, 1996. That
9 legislation established the four basic principles upon
10 which today's Lobbying Act and the Lobbyists' Code of
11 Conduct are founded. Those principles are in the
12 preamble of the Act.

13 48212 Free and open access to government is
14 an important matter of public interest. Lobbying
15 public office holders is a legitimate activity. It is
16 desirable that public office holders and the public be
17 able to know who is attempting to influence government,
18 and that the system for the registration of paid
19 lobbyists should not impede free and open access to
20 government.

21 48213 While the Registrar retained
22 responsibility for maintaining the Registry of
23 Lobbyists, the legislation introduced the position of
24 the Ethics Counsellor, who reported to Parliament
25 through the Minister of Industry. The Ethics

1 Counsellor was responsible for the development and
2 enforcement of a Lobbyists' Code of Conduct, as well as
3 for issuing interpretation bulletins and advisory
4 opinions as guides for lobbyists in complying with the
5 Act.

6 48214 The Lobbyists' Code of Conduct came
7 into force on March 1st, 1997.

8 48215 The Ethics Counsellor was also the
9 Prime Minister's Ethics Counsellor, and, as such, he
10 provided general advice to the Prime Minister regarding
11 ethical matters, advised public office holders on the
12 Prime Minister's Conflict of Interest Code, and
13 maintained overall responsibility for the
14 administration of the Lobbyists Registration Act. This
15 situation remained in place for nearly 10 years.

16 48216 In this decade, significant changes
17 to the lobbying regime have taken place. The Lobbyists
18 Registration Act included a provision for a four-year
19 review of the legislation by a parliamentary committee.
20 In 2001, the Standing Committee on Industry, Science
21 and Technology undertook the review, and in June 2001
22 it tabled its report, titled "Transparency in the
23 Information Age: The Lobbyists Registration Act in the
24 21st Century".

25 48217 While the standing committee

1 recognized that the system provided for some
2 transparency, it made over 40 recommendations to
3 strengthen the enforcement provisions and simplify the
4 registration requirements of the Act.

5 48218 The government concurred with most of
6 the recommendations, and in October 2002, Bill C-15,
7 which amended the Lobbyists Registration Act, was
8 introduced. It received Royal Assent in June 2003, and
9 came into force in June 2005.

10 48219 In 2004, the Parliament of Canada Act
11 was amended in order to separate the lobbyist
12 registration function from the ethics and the conflict
13 of interest functions. The newly created positions of
14 Ethics Commissioner and Senate Ethics Officer reported
15 directly to Parliament, while the Registrar of
16 Lobbyists became a part-time position in the Lobbyist
17 Registration Branch within the Department of Industry.

18 48220 The Assistant Deputy Minister of
19 Comptrollership and Administration in Industry Canada
20 assumed the responsibilities of the Registrar of
21 Lobbyists.

22 48221 In June 2005, at the same time that
23 the amendments to the Lobbyists Registration Act
24 contained in Bill C-15 came into force, the Registrar's
25 position became a full-time position. In order to meet

1 the expectations of independence, the Registrar's
2 offices were moved out of Industry Canada. Although
3 the staff and the Registrar remained Industry Canada
4 employees, the Registrar ceased to sit on Industry
5 Canada's management committee and began to function
6 more independently.

7 48222 In early 2006, the government
8 established the Office of the Registrar of Lobbyists as
9 a department, and moved it from Industry Canada to the
10 Treasury Board portfolio, so that the Registrar
11 reported to Parliament through the President of the
12 Treasury Board.

13 48223 In December of 2006, the government
14 introduced the Federal Accountability Act. This Act
15 created the position of the Commissioner of Lobbying as
16 an independent officer of Parliament, and made
17 significant changes to the Lobbyists Registration Act,
18 renaming it the Lobbying Act.

19 48224 All of these changes came into force
20 on July 2nd, 2008. This was the final step in the
21 evolution of the Office of the Commissioner of
22 Lobbying, from an office operating within a large
23 government department to one of a group of independent
24 officers of Parliament.

25 48225 The current Lobbying Act has been in

1 force for less than a year. While many of the
2 essential elements of the former Lobbyists Registration
3 Act have remained in place, much has changed,
4 particularly in terms of lobbyist registration
5 requirements.

6 48226 Under the Act, individuals must be
7 registered if they communicate with federal public
8 office holders for payment, whether formally or
9 informally, with regard to the making, developing or
10 amending of federal legislative proposals, bills or
11 resolutions, regulations, policies or programs, or the
12 awarding of federal grants, contributions or other
13 financial benefits; and in the case of consultant
14 lobbyists, the awarding of a federal government
15 contract, and arranging a meeting between their client
16 and a public office holder.

17 48227 The Act provides for three categories
18 of lobbyists: consultants, in-house corporation, and
19 in-house organization.

20 48228 Consultant lobbyists are individuals
21 who are paid to lobby on behalf of a client.
22 Consultant lobbyists may be government relations
23 consultants, lawyers, accountants or other professional
24 advisors who provide lobbying services for their
25 clients. They must file a registration for each

1 undertaking.

2 48229 In-house corporation lobbyists are
3 employees of corporations that carry on commercial
4 activities for financial gain, and who lobby as a
5 significant part of their duties. These employees are
6 usually full-time officers, who devote a significant
7 part of their time to public affairs or government
8 relations work.

9 48230 As a registrant, the most senior paid
10 officer must register the corporation and list each
11 senior officer or employee whose lobbying activities
12 equal 20 percent or more of the duties of one
13 equivalent full-time employee.

14 48231 The registration must also include a
15 second list of senior officers who engage in lobbying
16 activity, but this activity is not a significant part
17 of their duties.

18 48232 In-house organization lobbyists are
19 employees of non-profit organizations, such as
20 associations. The most senior paid officer is
21 responsible for registering the organization, and he or
22 she must register the names of all employees engaged in
23 lobbying activities if the total of these activities
24 equals 20 percent or more of the duties of one
25 equivalent full-time employee.

1 48233 All three categories of lobbyists are
2 required to disclose certain information, within time
3 limits, as specified in the Act, such as: the names of
4 their clients or corporate or organizational employers,
5 the names of the parent or subsidiary companies that
6 would benefit from the lobbying activity,
7 organizational members of coalition groups, specific
8 subject matters of lobbying, names of the federal
9 departments or agencies contacted, sources and amounts
10 of any government funding received, and communication
11 techniques to be used, such as meetings, telephone
12 calls, or grassroots lobbying.

13 48234 Corporations and organizations must
14 also provide general descriptions of their business or
15 activities.

16 48235 Breaches of the registration
17 requirements are considered offences under the Act.

18 48236 The Lobbyists' Code of Conduct is
19 designed to assure the Canadian public that lobbying
20 activities conducted at the federal level are done in
21 an ethical and transparent manner, with a view to
22 enhancing public confidence in the integrity,
23 objectivity and impartiality of government
24 decision-making.

25 48237 The code establishes mandatory

1 standards of conduct for all lobbyists communicating
2 with federal public office holders. It is composed of
3 a set of principles -- integrity, honesty, openness and
4 professionalism -- as well as an accompanying set of
5 rules organized into three categories -- transparency,
6 confidentiality and conflict of interest.

7 48238 Under the rule of transparency,
8 lobbyists have an obligation to provide accurate
9 information to public office holders and to disclose
10 the identity of the persons, corporations or
11 organizations that they represent, as well as the
12 purpose of the representation.

13 48239 They must also disclose to their
14 clients, employers or organizations their obligations
15 under the Lobbying Act and the Lobbyists' Code of
16 Conduct.

17 48240 Under the rule of confidentiality,
18 lobbyists can neither divulge confidential information
19 nor use insider information to the disadvantage of
20 their clients, employers or organizations.

21 48241 Finally, under the rule of conflict
22 of interest, lobbyists are not to use improper
23 influence nor to represent conflicting or competing
24 interests without the consent of their clients.

25 48242 The Lobbyists' Code of Conduct is an

1 integral part of the disclosure and ethical
2 requirements that apply to all lobbyists.

3 48243 Recent amendments to the Lobbying Act
4 contained a series of amendments designed to enhance
5 transparency and independence, while increasing
6 penalties for breaches of the Act.

7 48244 A five-year lobbying prohibition was
8 introduced for former designated public office holders
9 and members of a prime minister's transition team after
10 they leave public office.

11 48245 Lobbyists are now also required to
12 file monthly communication reports when meeting with
13 designated public office holders, a new category of key
14 decision-makers in government.

15 48246 Independence has been further
16 enhanced with the creation of the Office of the
17 Commissioner of Lobbying, and establishing the
18 Commissioner as an agent of Parliament, with expanded
19 investigative powers, as well as a strong education
20 mandate.

21 48247 Monetary penalties for breaches of
22 the Act have been doubled, and contingency fees have
23 been completely banned.

24 48248 As previously mentioned, the Federal
25 Accountability Act created the position of Commissioner

1 of Lobbying as an independent agent of Parliament. The
2 Commissioner reports directly to Parliament on the
3 administration of the Act, and the enforcement of the
4 Lobbyists' Code of Conduct.

5 48249 The mandate of the office is to
6 administer the Act and the Code to ensure the
7 accountability and transparency of those lobbying the
8 federal government, in order to improve public
9 confidence in the integrity of government
10 decision-making.

11 48250 The Act provides a specific mandate
12 to maintain a Registry of Lobbyists that is accessible
13 to lobbyists and to the public.

14 48251 The lobbyists' registration system is
15 the primary tool for maintaining that openness and
16 accessibility.

17 48252 In addition, the Commissioner has the
18 authority to enforce the provisions of the Act and the
19 Lobbyists' Code of Conduct, along with an explicit
20 mandate to develop and implement educational programs
21 to foster public awareness of the Act and the Code.

22 48253 Mr. Commissioner, this concludes my
23 remarks. I trust that they will be helpful in
24 explaining the evolution of Canada's lobbying regime
25 and how it fits into the overall approach to ethics in

1 government that is the subject of the Commission's
2 work.

3 48254 MS BROOKS: Thank you, Ms Shepherd.

4 48255 I now turn to Lynn Morrison for a
5 summary of her regime.

6 48256 MRS. MORRISON: Thank you.

7 48257 Good morning, Mr. Commissioner,
8 fellow commissioners, counsel, and experts.

9 48258 Commissioner, thank you for inviting
10 me to attend today to provide you with some information
11 about the Office of the Integrity Commissioner in
12 Ontario.

13 48259 Before I start, I want to give a
14 little personal background, because I was appointed to
15 the position of Acting Integrity Commissioner in 2007;
16 however, I have been with the office since the doors
17 opened in 1988, working closely with the first
18 commissioner, the Hon. Gregory Evans, to establish the
19 office, and continuing to work closely with each
20 successive commissioner.

21 48260 Ontario was the first province to
22 enact conflict of interest legislation that included
23 the appointment of the commissioner.

24 48261 I have provided the Commission with a
25 written summary of the relevant mandates of our office,

1 so my comments today will not deal in significant
2 detail with respect to the mechanisms or provisions of
3 each.

4 48262 At the direction of the first
5 commissioner, the office was, and remains, a small
6 staff of competent and discreet employees. The ability
7 to maintain a small office has been challenged, and
8 continues to be challenged, due to the addition of new
9 mandates, but I believe that we have achieved the goal
10 that Commissioner Evans articulated very early: to
11 render assistance to elected officials in navigating
12 the rules, providing appropriate scrutiny to
13 allegations of transgressions, and to increase the
14 level of awareness among elected members of the rules,
15 so that they may become better equipped to identify and
16 avoid potential conflicts.

17 48263 This latter goal of educating members
18 has been achieved, in large measure, through the
19 mandatory requirement that all elected members meet
20 with the commissioner on an annual basis for the
21 purposes of reviewing their annual disclosure
22 statement.

23 48264 However, the real opportunity
24 presented by this meeting is to allow the MPPs the
25 opportunity to have a full and frank discussion with

1 the commissioner about the rules, the issues they face
2 day-to-day, and to assist the commissioner in
3 understanding the realities of political life.

4 48265 This dialogue, I believe, is the
5 cornerstone of the success of the Members' Integrity
6 Act in Ontario.

7 48266 In addition to the annual
8 face-to-face meetings, all 107 members are able to
9 readily access me directly to obtain an opinion under
10 section 28 of our Act. In providing these opinions,
11 the confidentiality of the member is protected, and we
12 hope that we foster an environment where there is no
13 question too insignificant.

14 48267 All commissioners in Ontario have
15 strived to provide quick, frank advice, and if the
16 member discloses all of the facts, they can rely on
17 that opinion to their full defence.

18 48268 It has been my experience that an
19 individual will not be automatically aware of all of
20 the potential intersections that may arise between
21 their private life and public life prior to entering
22 public office. Hence, the strong need for a neutral,
23 independent advisor to assist the member to keep on
24 track.

25 48269 I believe this has developed a

1 culture among Ontario MPPs to at least be alive to
2 issues that require greater consideration.

3 48270 It is my view, and it has been the
4 view of previous commissioners, that the high number of
5 section 28 inquiries that are received from members has
6 a direct impact on the reducing number of formal
7 complaints made under section 30 from one MPP about
8 another.

9 48271 Before I move on to our other
10 mandates, I want to tell you about a significant change
11 that occurred in 1994. Our legislation, at that time
12 known as the Conflict of Interest Act, was renamed to
13 the Members' Integrity Act, and the position of the
14 commissioner was renamed to Integrity Commissioner.

15 48272 The amendment process was unique,
16 whereby all three parties worked together closely with
17 Commissioner Evans and myself to arrive at the current
18 language.

19 48273 This underscores the necessity that
20 the commissioner has the confidence of all members, but
21 I will return to that issue in a moment.

22 48274 The principal reason for the
23 amendment to the Act, and to enshrine the concept of
24 integrity, was an acknowledgement that the purpose of
25 the Act was not merely to arbitrate and police disputes

1 about contraventions of rules, but rather to foster a
2 culture where public officials could strive for the
3 highest level of integrity.

4 48275 Section 28 of the Act, the
5 confidential opinions, and our mandatory annual
6 meetings provide ample opportunity to assist members
7 with living up to these high expectations.

8 48276 The objective is not to make sure
9 that the members know all of the answers, but rather to
10 make sure that they know when to ask the question.

11 48277 Commissioner Evans used to liken it
12 to a little bell going off in one's head. I would be
13 remiss if I didn't follow that up with what is probably
14 a truism, that is, some people have lived so long on
15 the edge of that grey area that the thunder of the
16 bells of Big Ben in the Tower of London would not
17 arouse their conscience.

18 --- Laughter / Rires

19 48278 MRS. MORRISON: As part of the
20 association our office has with similar provincial and
21 federal offices in Canada, through the auspices of what
22 we call the Canadian Conflict of Interest Network, I
23 have had the benefit of hearing many hours of helpful
24 discussion and consideration of tough issues. One of
25 the best advocates for the system was Mr. Fraser's

1 predecessor, the Hon. Bert Oliver. He often would
2 remark that providing the member with the opportunity
3 to ask the question was oftentimes all the member
4 needed to determine for themselves the right answer to
5 their question.

6 48279 Indeed, he did say that the right
7 decision would be arrived at after he asked, "Are you
8 sure you want to do that?"

9 48280 All of that is to say that I believe
10 our system works. It provides members with the
11 opportunity to ask any question, and to get frank
12 advice. We run a low-profile operation, which we
13 believe assists members in having confidence in our
14 discretion.

15 48281 At the end of the day, however, it is
16 for the public and members to judge whether our office
17 has made an important contribution.

18 48282 I will return to the Members'
19 Integrity Act in a moment, but, as indicated earlier,
20 the ability of our office to remain small has been
21 challenged, because we have received additional
22 accountability-related duties over the years.

23 48283 We also are responsible for the
24 Lobbyists Registration Act, 1998, the Cabinet
25 Ministers' and Opposition Leaders' Expenses Review and

1 Accountability Act of 2002, and two sections of the
2 Public Service of Ontario Act, 2006, those two sections
3 being the disclosure of wrongdoing, otherwise known as
4 whistle blowing, and Ethics Executive for Ministers'
5 Staff.

6 48284 For the purposes of today, I will
7 elaborate on the two mandates of Ethics Executive for
8 Ministers' Staff and the Lobbyist Registrar.

9 48285 Under the Public Service of Ontario
10 Act, the PSOA, I was appointed the Ethics Executive
11 with respect to the application of the conflict of
12 interest rules, including post-employment obligations
13 and political activity rights for ministers' staff.

14 48286 It is important to note that the
15 accountability for ethical conduct and political
16 activity rests with the ministers.

17 48287 However, as Integrity Commissioner, I
18 am responsible for interpreting the conflict of
19 interest rules and political activity rights.

20 48288 Prior to proclamation, ministers'
21 staff were subject to a conflict of interest and
22 post-service directive, which was administered by an
23 arm's length Conflict of Interest Commissioner.

24 48289 On occasion, and prior to the
25 proclamation of the PSOA, our office was asked to

1 provide advice to ministers' staff. However, the
2 advice was provided on the basis of how the situation
3 affected the minister. However, ministers' staff were
4 always encouraged to go to the Conflict of Interest
5 Commissioner.

6 48290 The new rules now provide for more
7 structure and consistency of advice from one source.

8 48291 The Lobbyists Registration Act, which
9 has been in force for 10 years now, appoints the
10 Integrity Commissioner as Lobbyist Registrar,
11 responsible for administering the lobbyist registration
12 process, including ensuring that paid lobbyists report
13 their lobbying of public office holders by filing a
14 return and ensuring public accessibility to the
15 registry.

16 48292 Unlike the federal system, there is
17 no code of conduct for lobbyists in Ontario. However,
18 it is my experience that sophisticated lobbyists seek
19 prior advice and guidance from my office about
20 appropriate conduct on a regular basis.

21 48293 The addition of the ministers' staff
22 mandate has meshed nicely with this role, as my office
23 is able to have a greater awareness of the revolving
24 door.

25 48294 Our Act does contain some penalties

1 for inappropriate conduct on the part of lobbyists, but
2 they have never been invoked.

3 48295 It is my experience that, generally,
4 lobbyists strive to meet best practices of lobbying
5 conduct, and, again, they do seek input and advice in
6 any event.

7 48296 Further, I believe it is incumbent on
8 public office holders to take responsibility while they
9 are in service not to accept inappropriate dealings
10 from lobbyists.

11 48297 However, to create a list of
12 inappropriate dealings in a lobbying code may lead to
13 an over-legalization of proper and improper conduct,
14 and could potentially create too many legal loopholes
15 that would not assist with furthering the spirit of our
16 legislation.

17 48298 I have reviewed the research papers
18 and paid more direct attention to the papers of Ms
19 Turnbull and Mr. Levine, and have comments on the
20 following issues: post-employment, having trust and
21 respect in the commissioner, and the concept of the
22 appearance of conflict of interest.

23 48299 As indicated, I have daily
24 responsibility for post-employment for former ministers
25 and former ministers' staff.

1 48300 First, under the Members' Integrity
2 Act, it is only former ministers, not MPPs, who are
3 subject to post-employment obligations. There is no
4 positive obligation on the part of ministers or former
5 ministers to make a declaration with respect to job
6 offers. However, again, it has been my experience that
7 ministers and former ministers seek advice,
8 notwithstanding some significant statutory uncertainty
9 about whether I have jurisdiction to deal with those
10 requests. We just do it.

11 48301 I believe that they seek this advice
12 because they have become accustomed to it in their
13 in-service life, and it is prudent action to take.

14 48302 There has generally been a rapport
15 established to cause a minister to value the opinion
16 and, to be blunt, appreciate the political cover that a
17 consultation with my office can provide.

18 48303 One thing that I do wish to comment
19 on is that it does serve the public interest to
20 legitimize the fact that former elected officials will
21 indeed be seeking job opportunities in the future. As
22 is set out in the papers, the rules imposed must not be
23 overly restrictive to completely dissuade qualified
24 people from engaging in public life.

25 48304 I believe it is in the public

1 interest for commissioners and for other similar bodies
2 to plainly state and acknowledge the fact that these
3 individuals must be able to carry on earning a
4 livelihood as reasonably close to the livelihood they
5 left behind when they started public office.

6 48305 My second perspective is the life of
7 a minister's staff, referred to as exempt staff, I
8 believe, federally. This is a new mandate for our
9 office, since 2007, and my preliminary observation is
10 that there is a great need for the type of advice and
11 consultation we provide.

12 48306 Again, I believe that a culture has
13 emerged where ministers' staff who are considering
14 leaving or are leaving will arrange an exit interview
15 with my office to review the rules and specifically
16 address any issues they may have.

17 48307 As the mandate over ministers' staff
18 is relatively new, we are still fleshing out the
19 meaning of key terms in the rules, such as "substantial
20 involvement", which could lead to a post-employment
21 restriction.

22 48308 Our primary focus has been to raise
23 our profile among staff, so that a consultation with
24 the commissioner becomes routine.

25 48309 I think it is important to speak

1 briefly about the importance of trust and respect for
2 the commissioner. While I do believe that I personally
3 have established a healthy, positive relationship with
4 MPPs over the last long number of years, I wish to
5 state that my remarks are based primarily on my
6 observations of the rapport established with the
7 members by previous commissioners.

8 48310 My observation on this topic is
9 brief, but significant. I wish only to echo what I
10 perceive to be a key theme throughout Mr. Levine and Ms
11 Turnbull's papers that there should be an inherent
12 trust and respect for the office.

13 48311 This has been achieved in Ontario
14 with previous commissioners for at least two reasons:
15 the success in maintaining a high degree of
16 confidentiality, and second, all parties have agreed on
17 the individual appointed, generally, and that that
18 individual came to office with a significant personal
19 and professional reputation of good judgment that made
20 it difficult for members, the media and the public to
21 criticize.

22 48312 As for the public, they can rely on
23 the independence of our office, the preamble to the
24 Members' Integrity Act sets out expectations, and the
25 fact that the commissioner has discretion.

1 48313 Finally, I wish to note that in
2 reviewing the papers and considering my own mandate,
3 the issue of appearance provides a challenge. Under
4 the Members' Integrity Act, the first commissioner was
5 adamant that he was not an arbiter of perceived
6 conflicts, but rather of facts and actual conflicts.

7 48314 In 1994, when the Act was amended and
8 the legislature specifically decided not to include
9 apparent conflicts of interest, Commissioner Coulter
10 Osborne said:

11 "Although an apparent conflict
12 of interest does not constitute
13 a breach of the Members'
14 Integrity Act, it does have
15 political consequences, and
16 members know it."

17 48315 In our work, we are often reminding
18 Members that their actions could lead to a perception,
19 but whether they are prepared to weather the political
20 storm associated with it is their decision. In this
21 respect I often ask the question: How would you feel
22 if you saw this on the front page of the paper tomorrow
23 morning?

24 48316 In more recent years, opinions issued
25 have acknowledged that in certain cases the public

1 interest is served by the avoidance of not only a
2 conflict but of a perceived conflict and we provide
3 strong urgings not to take certain actions, not out of
4 concern for the contravention of an Act but for a
5 broader concern of maintaining the public trust in the
6 work of government.

7 48317 For Ministers' staff the rules do
8 include the consideration of appearance and this makes
9 sense. Although these staffers are political in
10 nature, they are public servants performing the work of
11 government and there is a heightened need to be
12 neutral.

13 48318 As a result, due to the nature of
14 their job, hired by and working for a Minister, the
15 rules are more restrictive than the rest of the public
16 service, other than with respect to political activity.

17 48319 I don't know what the right answer
18 is, other than to say that within our existing
19 legislation and framework in Ontario there are enough
20 tools to encourage Members to live up to the spirit
21 when a perceived conflict could damage public interest.

22 48320 However, it is important for us not
23 to forget that elected officials will always be judged
24 by their electorate and little benefit can come from
25 offices like the Integrity Commissioner weighing in on

1 a decision that is squarely that of the electorate.

2 48321 Mr. Commissioner, thank you again for
3 the opportunity today and I hope that my comments will
4 be of some assistance to you during your deliberations.

5 48322 MS BROOKS: Thank you very much,
6 Ms Morrison.

7 48323 I now turn to Paul Fraser for his
8 insight into the B.C. scheme.

9 48324 MR. FRASER: Thank you.

10 48325 Mr. Commissioner, Members of your
11 Commission and all of those whose job it is to worry
12 about what we do and how well we do it, can I say that
13 I am very pleased to be here. Indeed, I am humbled to
14 be here in your midst.

15 48326 Having said that, I am reminded of
16 what Golda Meir once said: "Don't be humble, you're
17 not that great".

18 --- Laughter / Rires

19 48327 MR. FRASER: It is a great pleasure
20 for those of us who are part of this community to have,
21 frankly, an opportunity to discuss the work that we do
22 against the background in the context of how the work
23 might be done differently and perhaps even better.

24 48328 In British Columbia we have, in
25 comparative terms, in terms of the federal and

1 provincial experience in Canada, among the most
2 venerable of the legislation in an Act which we call
3 the Members Conflict of Interest Act.

4 48329 The Act was passed in something like
5 48 hours in 1990, a record in our particular
6 jurisdiction. It was passed in circumstances where it
7 was thought, unanimously, that public confidence in the
8 system had been eroded and that something needed to be
9 done.

10 48330 The office opened in September of
11 1990. The first Commissioner was the Honourable Ted
12 Hughes, who was deservedly one of Canada's most highly
13 respected public servants. He remained Commissioner
14 until about 1997.

15 48331 Thereafter, for the next 10 years or
16 so, the Honourable Bert Oliver became the Commissioner
17 and I was appointed in January of 2008.

18 48332 The appointment was made by an all
19 party committee who had conducted a search. My
20 appointment, as were the others, was the unanimous
21 appointment of the Members of the Legislature.

22 48333 The office is, proudly, independent.
23 The work that we do is funded through grants that we
24 receive on application to an all party budgetary
25 committee. I can hire my own staff, and do, and set

1 their terms and conditions of employment. I have been
2 hired by the Legislature; I can only be fired by them.

3 48334 So in terms of putting the machinery
4 in place, I am satisfied now, as I was before I was
5 honoured to be given the job, that I am indeed
6 completely independent of the Government of British
7 Columbia.

8 48335 More importantly, in my limited
9 experience, that independence is not on a day-to-day
10 basis, or even month-to-month, the subject of any kind
11 of challenge or controversy within the government. It
12 is taken as a given and for that I obviously thank my
13 predecessors.

14 48336 I want now, Mr. Commissioner, to go
15 through, hopefully not in too dense and didactic a
16 fashion some of the provisions that I think may be of
17 assistance to you in understanding how our legislation
18 has been able to work and, some would say, prosper over
19 the years.

20 48337 It has been amended only once, in
21 1992, so that either indicates that we have stood the
22 test of time or that we are in desperate need of
23 renovation. I suppose whether one or the other of
24 those two hypotheses is true may only emerge when we
25 have questions from those of you who are intimately

1 familiar with the work that we apparently do.

2 48338 The statute that I administer covers
3 all Members of the Legislative Assembly, and it makes
4 no distinction insofar as the broad coverage that it
5 has between Members of the Executive Council and
6 Members of the House. There are some sections of
7 course that deal solely with the role and positions of
8 Members of the Cabinet. Usually that has to do with
9 what Cabinet Ministers can't do upon their appointment
10 in terms of carrying on business or a profession.

11 48339 The Act also imposes restrictions on
12 the private activities of former Ministers and
13 Parliamentary Secretaries following their retirement
14 from office.

15 48340 We have uniquely in British Columbia,
16 if you like, a duality. We have what are called real
17 conflict of interests and what are called apparent
18 conflict of interests. I pause to say that -- I hope
19 this isn't parsing words -- an apparent conflict of
20 interest which is defined in our Act is frankly
21 different from a perceived conflict of interest. The
22 distinction may be without a difference until we get
23 into slicing the salami fairly thin in the course of
24 the questions that I think may ensue.

25 48341 A real conflict of interest is

1 defined in the Act in this way:

2 "For the purposes of this Act, a
3 member has a conflict of
4 interest when the member
5 exercises an official power or
6 performs an official duty or
7 function in the execution of his
8 or her office and at the same
9 time knows that in the
10 performance of the duty or
11 function or in the exercise of
12 the power there is the
13 opportunity to further his or
14 her private interest."

15 48342 The amendment that took place in 1992
16 to the Act defined "apparent conflict of interest" in
17 these terms:

18 "... a member has an apparent
19 conflict of interest if there is
20 a reasonable perception, which a
21 reasonably well informed person
22 could properly have, that the
23 member's ability to exercise an
24 official power or perform an
25 official duty or function must

1 have been affected by his or her
2 private interest."

3 48343 Those of you who are familiar of
4 course with the inquiry into the activities of the
5 Honourable Sinclair Stevens will recognize those words
6 as the Commissioner's definition in that report of what
7 an apparent conflict of interest would be.

8 48344 In 1993 Commissioner Hughes gave the
9 first decision in this country in a decision having to
10 do with Cabinet Minister Robin Blencoe deciding what
11 the particular conflict of interest was in that
12 particular case with respect to his ministerial
13 conduct. I expect that that may be the subject of
14 questioning as we go on this morning.

15 48345 There are, however, four specific
16 prohibitions under the Act, getting back to the general
17 scheme of the Act.

18 48346 There is the general prohibition
19 against conflicts of interest.

20 48347 Second, there is a prohibition
21 against using insider information. That is section 4.

22 48348 There is a prohibition against using
23 one's influence inappropriately. That is section 5.

24 48349 And there is a prohibition against
25 accepting extra benefits. That is section 7(1).

1 48350 We don't have a Code of Conduct in
2 our jurisdiction. The reason we don't have it is open
3 to speculation, but the reality is that we have
4 embedded in our Act, as Dr. Levine has said in his
5 book, those imperatives which largely I think capture
6 many of the imperatives that would otherwise be
7 contained in a Code of Conduct.

8 48351 Additionally, under section 19 of the
9 Act a complaint -- and to a large extent we are a
10 complaint driven process -- may be laid alleging a
11 violation of section 25 of the Constitution Act. That
12 is legislation that is engaged by our legislation and
13 it essentially provides that someone who is a Member of
14 the Legislature cannot be obtaining benefits in the
15 form of money or business with the provincial
16 government and that that person can't behave in such a
17 way, either as an individual or in corporate
18 circumstances where their holdings amounted to at least
19 30 per cent, their holdings and the holdings of a
20 spouse or minor children.

21 48352 Now let me deal quickly with the
22 Commissioner's role.

23 48353 I have no jurisdiction outside of the
24 Act. That may be a penetrating glimpse of the obvious,
25 but so that you know, I have nothing to do with the

1 registration of lobbyists, nothing to do with the
2 enforcement of lobbyist legislation, nothing to do with
3 the conduct of senior public servants, either appointed
4 or people within the system as part of the larger
5 public service.

6 48354 I have, as I have said, the
7 confidence for the time being of the Legislative
8 Assembly to whom I report. I am, then, a totally
9 independent officer of the Legislative Assembly.

10 48355 I pause to say parenthetically that,
11 for what it may be worth, that in my respectful view,
12 and in the respectful view of my predecessors, clothes
13 us with a legislative privilege with respect to the
14 work that we do and with respect to the information
15 that we collect. That privilege is a privilege that
16 has been litigated from time to time in the courts and
17 is currently being litigated, is important vitally, in
18 my respectful view, to the proper operation to the work
19 that we do.

20 48356 I have four main functions.

21 48357 I have to deal with disclosures from
22 Members. I have to provide advice and opinion to
23 Members of the Legislature. I have inquiry powers, if
24 I need them, under the legislation. And I have the
25 ability under section 20 of the Act -- though this has

1 not, if ever, been implemented -- to conduct special
2 assignments at the request of the Cabinet or the
3 Legislative Assembly. Assignments -- and these are key
4 words so far as I am concerned -- that "the
5 Commissioner considers appropriate".

6 48358 The disclosure mechanism of the Act
7 is triggered in such a way that a Member must, within
8 60 days of an election and annually after that, file
9 what we call a confidential disclosure statement in a
10 form that is prescribed by our regulations.

11 48359 It is important to understand for
12 those of you who are interested in the process, in the
13 context of how it becomes public, that it is kind of a
14 two-stage process, I think not dissimilar to what
15 happens in Ontario.

16 48360 In the first instance there is a
17 confidential disclosure form which is filled in by the
18 Member. Then that morphs into, after a meeting with
19 the Commissioner, what is called a public disclosure
20 statement that both the Member and the Commissioner
21 sign off on. It is the public disclosure statement,
22 not the confidential statement, that is then filed with
23 the Clerk of the House and is available for public
24 consumption.

25 48361 I believe in Ontario the first

1 tranche is what is called a private confidential form,
2 leading ultimately to a public form.

3 48362 It is important to understand, in the
4 context of the work that you are doing, this is another
5 distinction between what happens in British Columbia
6 and what happens elsewhere; that in British Columbia
7 there is a qualitative disclosure but not a
8 quantitative disclosure.

9 48363 In Ontario, for example, as I think I
10 understand it, at the private disclosure level a Member
11 must say in dollar terms what his or her financial
12 standing is. That is not the case in British Columbia.
13 We have proceeded on the basis that what is important
14 is for the members of the public ultimately, whose
15 interests obviously we serve, for the public to know
16 how a person is invested, in what sectors and in one
17 way, without violating what we think is a privilege
18 that Members should continue to have: the sanctity of
19 their net worth.

20 48364 So on that basis we have proceeded.

21 48365 One of my predecessors has said that
22 in his view the reason that the disclosure interviews
23 in British Columbia have been, if not terribly
24 friendly, certainly productive, is that while people
25 resist the notion easily that they should have to

1 disclose all that they are required to disclose -- and
2 it is astonishing how many people come into elected
3 office not fully understanding that -- it is of some
4 comfort to them that they do not have to indicate in
5 real terms what their net worth happens to be.

6 48366 The disclosure statement by itself,
7 which after a mandated meeting with the Commissioner
8 recurs into the public disclosure statement filed with
9 the public, must be amended if there is a material
10 change in the circumstances of the Member, a material
11 change as defined in regulations and is essentially in
12 dollar serious terms anything over \$1000, or any change
13 that could otherwise be seen to be material within a
14 person's financial galaxy.

15 48367 The annual meeting that we have with
16 the Members and, as the Act says, spouse if available,
17 is obviously a very good opportunity for a relationship
18 to develop, in appropriate terms, between the
19 Commissioner and the Member. In my view, we as
20 Commissioners -- perhaps I should restrict my comments
21 to say I as a Commissioner receive far too much
22 deference from Members of the Legislature, perhaps
23 because of the awful power, which is not mine but
24 ultimately theirs in terms of putting us where we are.

25 48368 It's important and I don't want to

1 dumb this down. It's important in my view that we
2 establish a rapport because it's important, as my
3 colleagues have said, that people should want to come
4 to talk to us; that the doctor should be in and that
5 people should be able to come and tell you what their
6 needs and hopes and fears are, obviously on a
7 confidential basis, but obviously in a way that is
8 likely for them to be forthcoming.

9 48369 The Act provides certain penalties.
10 Those penalties are ultimately recommended by the
11 Commissioner but enforced -- I'm sorry, I should say in
12 the first instance applied not by the Commissioner but
13 by the Legislature, which has, upon a finding made by
14 the Commissioner, the right to decide whether the
15 penalty that is recommended by the Commissioner should
16 or should not be imposed.

17 48370 That is an important bit of our
18 machinery in the sense that at the end of the day it is
19 the Legislature who decides what the penalty should be.
20 It is the Legislature that decides what one of their
21 colleagues will suffer in circumstances where the
22 process has run its course.

23 48371 I mention quickly -- and I have my
24 eye on the clock here in terms of how long this part of
25 the process has been going on and knowing that we want

1 to get to the engagement section -- that our position
2 as an advisor is important.

3 48372 That position, in terms of the work
4 that I do, was one that was basically enhanced and
5 confirmed and adorned by Bert Oliver, who spent his
6 time in what he used to refer to as preventative
7 medicine and much of what my colleague Ms Morrison has
8 had to say has proven to be true in British Columbia in
9 terms of people having the confidence in the system, to
10 want to participate in it rather than to try to resist
11 it and give it less and not more information.

12 48373 The inquiry powers that we have are,
13 frankly, seldom used but are there in the toolbox if
14 necessary. The work that we do results, either in
15 terms of complaints and investigations, from any one of
16 these sources.

17 48374 First of all, a Member can make a
18 complaint about another Member. That has been the
19 stock in trade of the work that we did in the first
20 seven or eight years of existence as people found the
21 occasion to embarrass each other politically and to
22 bring to the fore, because what we do seems to attract
23 inevitably some public attention, the conduct of their
24 colleagues.

25 48375 Importantly our Act contains, and

1 others don't, as I understand it, that a member of the
2 public can make a complaint and members of the public
3 do.

4 48376 Third, the Executive Council, the
5 Cabinet of the province, can refer a matter to us for
6 determination or for opinion, and a Member himself or
7 herself -- and this has happened not long ago -- can
8 come to the Commissioner and ask for a formal opinion
9 with respect to conduct.

10 48377 In practical terms, very practical
11 terms, by far the largest part of the work that I do
12 involves giving people advice, answering their
13 questions, giving them an indication of whether the
14 light is red, green or yellow and doing that in
15 circumstances that are vested with the utmost of
16 confidence. As a practical matter the way that I
17 operate it, and it is the way that it has been operated
18 for some time, is that a Member can ask you an oral
19 question and receive an oral response. The information
20 always remains confidential, but the information
21 doesn't go beyond the Member and the Commissioner.

22 48378 Conversely, if the Member for
23 whatever reason wants a written opinion, clearly to be
24 able to show what the background has been in the
25 context, then that written opinion will be provided

1 after a written question has been presented. And if in
2 the course of the Member's later career an issue
3 involving the subject that comprised the opinion is
4 raised the Member chooses to refer to the written
5 opinion, then the arrangement clearly is that the
6 written opinion must be produced by the Member so that
7 those people who are reporting on these events and the
8 Commissioner himself can be sure that what has been
9 credited to him by way of an opinion is indeed the
10 case.

11 48379 We have no difficulty with the
12 Members agreeing to all of that. That is a
13 precondition essentially of delivering the opinions.

14 48380 We issue from time to time -- I am
15 very close to the end here -- what have been called
16 grandly bulletins or memoranda or advisories just to
17 give people an opportunity, Members, to understand as
18 clearly as they can what we think is a proper way to
19 interpret in practice the Act. Those directives and
20 other materials like them are put on our website and
21 are available for people to see.

22 48381 The Act contains various provisions
23 in relation to past service restrictions on Cabinet
24 Ministers and Parliamentary Secretaries. There are no
25 restrictions on MLAs. It deals with disclosure of

1 gifts. It deals with recusal and substitution
2 provisions. It deals with restitution and enforcement
3 provisions and the creation of blind trusts.

4 48382 All of those may be of more or less
5 interest to you in the work that you have to do, but
6 that sort of rounds the circle and tells you, I hope,
7 quite quickly what the scheme of our Act is all about.

8 48383 Thank you very much.

9 48384 MS BROOKS: Thank you. Thank you,
10 Paul.

11 48385 Commissioner, I am in your hands now.
12 I am ready to move into the portion of this, what Paul
13 referred to as the engagement section of this panel
14 where I will be posing a number of questions that have
15 been aimed at getting into the details of issues that
16 might be of interest to you.

17 48386 I wonder if you want to take a
18 10-minute break before I get into that or do you want
19 me to proceed now?

20 48387 COMMISSIONER OLIPHANT: I was once
21 told that adult educators will say that the maximum
22 period of time that you should be engaged in this type
23 of exercise is 50 minutes. We have been going for
24 about an hour and a half. That is no comment on the
25 value I place on what I have heard, but I think it

1 might not be a bad idea to take a break at this time.

2 48388 We are ahead of schedule, in any
3 event, and we will take a 15-minute break.

4 --- Upon recessing at 10:26 a.m. /

5 Suspension à 10 h 26

6 --- Upon resuming at 10:48 a.m. /

7 Reprise à 10 h 48

8 48389 COMMISSIONER OLIPHANT: Ms Brooks,
9 please.

10 48390 MS BROOKS: Thank you, Commissioner,
11 we are ready to go.

12 48391 I am going to put this first question
13 to Commissioner Fraser and it builds on some of his
14 remarks in describing the B.C. scheme.

15 48392 Paul, in your view is the distinction
16 between a real and a potential or apparent conflict of
17 interest important in affecting the scope of conflict
18 of interest rules?

19 48393 Why is it or is it not important and
20 how should the distinction be addressed by ethics
21 codes, if you think it should be?

22 48394 MR. FRASER: I think the distinction
23 is important and I think it is a distinction that gives
24 to the public a sense of confidence in the fair
25 workings of our government machinery.

1 48395 If members of the public who think
2 that there has been something that must have gone on or
3 could have gone on simply by the juxtaposition of where
4 people are in the firmament, who they are talking to,
5 what powers they have, and so on, would appear to
6 indicate that there is a possibility at least that a
7 conflict of interest has occurred, that is to say in
8 real terms.

9 48396 I think it is important to discuss
10 the question of apparent as opposed to perceived, as I
11 indicated earlier, conflict of interest as it appears
12 in section 2(2) of our legislation to realize that
13 there isn't a sort of a floodgates aspect to all of
14 this. It is not fair to say that anything that is
15 apparent is likely to be found to be real.

16 48397 The interpretation of the section,
17 which is very tightly drawn in terms of the imperatives
18 that must exist for the apparent conflict of interest
19 to be found, is interesting. As Dr. Levine points out
20 in his paper, helpfully, the Members of the Legislature
21 do not violate the statute merely by being in a
22 situation or in a situational situation where they may
23 have an apparent conflict. There must be an acting.

24 48398 He goes on to quote my predecessor
25 who said, in a decision a few years ago, that there is

1 only a violation of the Act if the member actually
2 exercises an official power or performs an official
3 duty or function when he or she appears to be in a
4 position to further his or her private interest.

5 48399 So there must be obviously an acting
6 consistent with the section itself. It may or may not
7 also be a bit of a bromide to those who worry about
8 adding apparent conflict of interest to the list of
9 those things that are prohibited to know that in
10 British Columbia, at least, I have interpreted the Act
11 to mean that for a Member to be found to have had an
12 apparent conflict of interest in breach of the Act, he
13 or she must have acted knowingly or have been
14 deliberately blind in all of the circumstances.

15 48400 That may be for some a contentious
16 statement to have made, but in my view, as the apparent
17 conflict of interest term is defined in our Act, that
18 is the appropriate test. I think members of the public
19 may, if our experience is valuable, may well feel that
20 real conflicts of interest are rare and difficult to be
21 proven and that on a daily basis, overwhelmed as people
22 sometimes are by their cynicism and lack of regard for
23 the political process, there are apparent conflicts
24 going on in full view all the time and there is no
25 legislation to address that.

1 48401 So it has been a valuable tool in our
2 toolbox.

3 48402 MS BROOKS: Thank you.

4 48403 I will put this question to Mary
5 Dawson.

6 48404 Do you believe that the absence of
7 potential or apparent conflicts of interest in the
8 current federal Act creates a meaningful difference
9 from the types of conflict of interest regulated by the
10 prior public officeholders code or the current code for
11 Parliamentarians?

12 48405 MS DAWSON: I have given some thought
13 to this question and I will answer it in a little bit
14 of detail.

15 48406 The previous 2006 POH code and the
16 current MP code both use those specific terms, real,
17 potential and apparent conflict of interest in their
18 principles. Now of course the principles aren't quite
19 like substantive provisions but they use them in the
20 principles. But the codes are also found -- sorry, the
21 concepts are also found in some of the specific rules
22 in the two codes as well. I could give you a couple of
23 examples, but I won't do it right now. But there are
24 two or three places in both the MP code and the
25 previous POH code where those words are used.

1 48407 Now, in the Conflict of Interest Act,
2 the principles from the 2006 POH code are not repeated
3 and nor are the specific terms of real, apparent or
4 potential use at all.

5 48408 But as I will explain in a minute,
6 some of the concepts underlying these terms are
7 reflected in specific provisions of the Act.

8 48409 In other words, the general
9 principles from the Code have been carried forward into
10 the Act by incorporating these concepts in specific
11 rules. In fact, most of the rules of course generally
12 from the Code are carried forward into the Act.

13 48410 So I will give you some examples.

14 48411 Sections 4 and 5 of the Act, to my
15 mind, appear to cover potential conflicts of interest,
16 while 6 and 11 would appear to cover apparent conflicts
17 of interest. So I will take them one at a time.

18 48412 The description of conflict of
19 interest -- well, first of all, section 4 is a bit
20 different because it is not a definition but it is a
21 description section, and it refers to exercising an
22 official power, duty or function that provides an
23 opportunity to further private interest.

24 48413 It doesn't require that the private
25 interest actually be furthered.

1 48414 So I would say this basically amounts
2 to a potential conflict of interest.

3 48415 I note, as well, with respect to the
4 description of conflict of interest, that of course
5 that carries its way forward through the Act, whenever
6 the term conflict of interest is used. So that is
7 section 4.

8 48416 Section 5 requires a public
9 officeholder to arrange his or her private affairs so
10 as to prevent themselves from being in a conflict of
11 interest. In other words, they don't put themselves
12 into a situation where they have an opportunity to
13 further a private interest. I think this also amounts
14 to a potential conflict of interest coverage.

15 48417 Moving on to the apparent, section 6
16 prohibits public officeholders from making decisions
17 related to the exercise of an official power if the
18 public officeholder knows or reasonably should know
19 that in making the decision he or she would be in a
20 conflict of interest. I think that is an apparent
21 conflict of interest.

22 48418 Section 11, which deals with gifts,
23 prohibits gifts that might reasonably be seen to have
24 been given to influence the public officeholder, and I
25 think this is also an apparent conflict of interest,

1 reasonably be seen to.

2 48419 So if there was any amendments to add
3 apparent conflict of interest, in my view it would be
4 preferable to take a look at the specific provisions
5 that you are looking at and decide whether indeed there
6 is some particular reason for adding it to one of the
7 other provisions.

8 48420 I think it would be very dangerous
9 grafting provisions and approaches from one regime onto
10 another and it has to be done with great care. Each
11 regime is drafted as an entirety for itself and it is
12 integrated with its own provisions. So I just don't
13 think you can pick up a concept from another scheme and
14 stick it onto the one that you are trying to amend.

15 48421 On a practical level, I can say that
16 the provisions that I have had to study in detail to
17 date have been adequate to deal with the specific fact
18 situations that I have had to deal with, and I have not
19 seen a need to change the scope of these provisions so
20 far. One doesn't know, there might of course be
21 provisions that could be strengthened by adding new
22 concepts, but I haven't identified them today.

23 48422 So that is my comment I think on
24 those particular words.

25 48423 MS BROOKS: Thank you.

1 48424 I am going to just ask our Commission
2 experts if you have any questions arising from these
3 two questions which deal with potential and apparent
4 conflicts of interest.

5 48425 Greg...?

6 48426 MR. LEVINE: I'm sorry, yes.

7 48427 I have a comment and then a question
8 that may draw us back to a question yesterday.

9 48428 It is the case -- I can see how you
10 can read sections 6 and 11 as getting an apparent
11 conflict of interest, but sections 4 and 5 deal with
12 real conflict, in my view.

13 48429 Conflict of interest is always in a
14 sense about an opportunity and whether or not -- the
15 best way to get at this I think is they always present
16 an opportunity to do something else, and there are
17 situations where you actually have the opportunity in a
18 sense and then there are others where it is apparent
19 that you may have or a reasonably informed person may
20 see that you have and have a reasonable perception that
21 that is the case.

22 48430 So it is a step back. It is a bit
23 different. So my own sense of that is that it adds
24 something to this code just as it works well in B.C.

25 48431 That is my diatribe.

1 48432 My question, I would like to step
2 back a second to something that was raised yesterday
3 that has to do with interests and what interests are.

4 48433 This Code uses -- it was raised by
5 Democracy Watch and I think it is important in terms of
6 understanding how the conflict of interest regime works
7 as a whole.

8 48434 And that is: What is a private
9 interest?

10 48435 It's interesting that in all of the
11 pieces of legislation, Ontario's, BC's, and the federal
12 legislation, that is defined sort of negatively.
13 Private interest is not seen to include things of
14 general application, and so on, but it's not defined
15 positively.

16 48436 MS BROOKS: So what is --

17 48437 MR. LEVINE: Yes, what does it mean?
18 What does it include, that's what I --

19 48438 MS BROOKS: I will put this question
20 first to Mary Dawson.

21 48439 MS DAWSON: That is probably the most
22 difficult question on interpreting this Code, or one of
23 the most difficult ones you can put. It is not a
24 defined term in the Act. It is a defined term in the
25 MPs' Code.

1 48440 I have had to grapple with many, many
2 requests for advice in this area for private interests.

3 48441 I think you really have to
4 inductively take a look at a lot of examples to figure
5 out just what this means, and I think it would go
6 beyond a pure financial interest. But I think there is
7 room for and a place for exclusions of things that are
8 of broad general interest.

9 48442 For example, an MP voting on a tax
10 reform bill that raises the taxes, that is a general
11 interest and surely he shouldn't have to recuse himself
12 from that. So there are lines. It is a gradation and
13 I think it would be very difficult to define that in
14 such a way as to actually put a defined definition in
15 the Code.

16 48443 But it is something more than a
17 general interest and it's something that is personal on
18 one level rather than purely philosophical or
19 political.

20 48444 You know, I could start to put some
21 boundaries around it, but putting me on the spot at the
22 moment to put the boundaries, I think that is the best
23 I can do.

24 48445 MS BROOKS: Paul, I think you have a
25 comment to make?

1 48446 MR. FRASER: I would only say that in
2 the British Columbia legislation private interest is
3 defined even though it says private interest does not
4 include, and it goes on to tell you what isn't
5 included, not what is.

6 48447 So I volunteer for your consideration
7 the fact that in British Columbia we have had now at
8 least three important decisions in which Commissioners,
9 all three of us, have decided that private interest can
10 include the private interest of members of a Member's
11 family, immediate family.

12 48448 That is something that was
13 established in Ted Hughes' time, so it is at least 12
14 years old, confirmed by Mr. Oliver and most recently by
15 me in the Coleman decision.

16 48449 MS BROOKS: Yes...?

17 48450 MR. LEVINE: Yes, it is clear that it
18 is beyond economic, though, and that Ms Dawson's
19 comment goes to that, and so does yours. It is not
20 intended to just reflect what was the history of
21 conflict of interest which was pecuniary conflict of
22 interest. It is intended to go beyond that and trying
23 to get at the limits of it, particularly in the
24 provincial and federal context. It is easier -- and I
25 said this the other day -- in the municipal context

1 actually, to identify interests that go certain ways.

2 48451 But what is not of general
3 application, and so on, becomes trickier I think in the
4 provincial and federal regime.

5 48452 Would you agree with that?

6 48453 MR. FRASER: Yes, I would indeed.

7 And the interface between financial interests and other
8 interests is one that is not entirely clear and
9 ultimately on the non-financial side becomes
10 essentially how long is the piece of string.

11 48454 There isn't much clarity in that
12 field.

13 48455 MS BROOKS: I'm going to move on and
14 ask Commissioner Morrison what are the policy
15 considerations that underlie the rules applicable to
16 former public officeholders in Ontario, for public
17 officeholders who are in the process of transitioning
18 to private life?

19 48456 Are there expectations in your
20 jurisdiction about what a public officeholder may do?

21 48457 MRS. MORRISON: I think that the
22 preamble to the Members Integrity Act first of all sets
23 up some expectations of what is expected of Members and
24 that sets the tone. As I said in my presentation, I
25 think that tone carries through their mandate as an MPP

1 and seeking advice and in an effort to do the right
2 thing, in the same light the PSOA sets up rules for
3 former public officeholders to live up to public
4 expectations, and those restrictions include of course
5 the use of -- non-use of confidential information,
6 preferential treatment, switching sides and lobbying.

7 48458 But in the context of this culture
8 that we try to develop in Ontario, Ministers' staff and
9 Ministers invariably are in our office even when they
10 are thinking about leaving, and that to me shows that
11 they are very much aware of the rules and want to do
12 the right thing.

13 48459 So the rules that are set up for
14 public officeholders regarding the confidential
15 information, et cetera, I think are very helpful.

16 48460 When we meet with these people we get
17 a lot of information in terms of what they do, what
18 they are going to be doing. Often times we will speak
19 with the Chief of Staff to ensure that there is no
20 issues that they are concerned about, and then we issue
21 an opinion to the public officeholder and a copy -- if
22 there is a direction, for example if we put in
23 protocols around that individual and their future
24 employment, a copy of that goes to the Minister, or
25 Ministers as the case may be, that they have worked for

1 in the year previous to that.

2 48461 And I think the cooling-off period is
3 also the blunt instrument that really brings it to the
4 forefront.

5 48462 MS BROOKS: Thank you.

6 48463 Karen Shepherd, do you believe that
7 the post-employment rules in the Conflicts of Interest
8 Act and the lobbying rules in the Lobbyist Act are well
9 integrated? Have you any concerns or preoccupations
10 regarding the viability of the self-reporting rule in
11 section 37 of the Conflicts of Interest Act read in
12 light of section 10.11 of the Lobbyist Act?

13 48464 MRS. SHEPHERD: Well, as Mary has
14 indicated, the post-employment rules in the Conflicts
15 of Interest Act apply to former reporting public
16 officeholders while the prohibition on lobbying
17 activity in the Lobbying Act applies only to designated
18 public officeholders, which is a different group of
19 individuals.

20 48465 There is some overlap in terms of the
21 ministerial levels and some of the GIC appointments at
22 PCO that were added as designated public officeholders
23 by regulation.

24 48466 So yes, there are different rules for
25 the different categories of persons, but Parliament has

1 seen fit to take this approach.

2 48467 In my opinion, the prohibition of
3 lobbying activity in the Lobbying Act is quite clear in
4 its application and those designated public
5 officeholders who are subject to the prohibition are
6 clearly unable to engage in any lobbying activity while
7 subject to its application.

8 48468 In terms of whether I have any
9 specific concerns regarding the viability of
10 self-reporting rule 37 of the Conflicts of Interest Act
11 versus the 10.11 of the Lobbying Act, I have to admit I
12 don't.

13 48469 I mean, the Lobbying Act has been in
14 force now, as I was indicating, for about 10 months.
15 But what I do find is that it seems to be
16 complementary, in my opinion, in terms of given that
17 section 37 applies to a larger group of individuals
18 than those who are subject to the prohibition on
19 lobbying in section 10 of the Lobbying Act.

20 48470 MS BROOKS: Just to follow up on
21 that, how regular are exemptions from the regular
22 rules, section 10.11 of the Lobbying Act?

23 48471 MRS. SHEPHERD: Well, as I was
24 indicating, the Act has only been in force for 10
25 months, so by the end of March there was seven

1 applications. There have been an additional two, so
2 that's nine applications since the Act came into force
3 last July, of which I have granted two, which are
4 posted on the website: one that the individual actually
5 was unable to apply for an exemption under the Lobbying
6 Act because they left prior to July 2nd; and one that
7 we have closed because the individual who applied did
8 not come back with additional information.

9 48472 So in terms of the rest of the five
10 that are remaining, they are still ongoing.

11 48473 MS BROOKS: Thank you.

12 48474 I'm going to ask you, Paul, does
13 British Columbia's regime permit the current public
14 officeholder from making a contract for post-public
15 office employment or service while still in office?

16 48475 Are there restrictions on whether any
17 payment can be made under that contract while the
18 public officeholder is still in office?

19 48476 MR. FRASER: There is no specific
20 prohibition under our legislation, and there can only
21 be I think a prohibition by implication in the sense
22 that among the imperatives and the conduct that is
23 prohibited under the Act you would find language that
24 could allow you, if a complaint were to be actually
25 made, that a person must have exercised his official

1 power or performed an official duty or function in a
2 way that is offside the Act in order to be in the
3 circumstance that the question anticipates or that the
4 Member has used some kind of information that is
5 insider information improperly in order presumably to
6 generate the offer at all, or under section 5, to use
7 his influence to effect a decision that might be in his
8 or her private interest.

9 48477 All of that to say that it seems to
10 me that this is an area that clearly is important and
11 needs work. We will all be looking to this Commission
12 for some assistance in all of that.

13 48478 There are some very practical
14 considerations that come into play in jurisdictions
15 such as ours where you have fixed election dates,
16 because typically what happens is that the person at
17 the head of the government will, roughly a year before
18 the fixed election is to be held, canvass Members of
19 the Cabinet to ascertain whether they expect to be
20 around in more than a year's time.

21 48479 And on the basis of those frank
22 discussions, there is inevitably a Cabinet shuffle,
23 which then puts Ministers who have forthrightly
24 declared their position in the situation where they are
25 now on the back bench and wondering how they are going

1 to spend the rest of their lives.

2 48480 If there is anything -- none of us
3 has a monopoly on experience in these areas. But if
4 there is any area that is the most difficult in terms
5 of the impact that has on the lives of politicians
6 individually and on the general wellbeing of our
7 system, it is what happens after the person has left
8 office.

9 48481 In British Columbia we don't have any
10 specific provisions that pertain to Members of the
11 Legislature who are not Ministers but with respect to
12 Ministers, like there are everywhere else, certain
13 prohibitions.

14 48482 I am interested, as someone reading
15 all of the material that you have collected in what
16 other jurisdictions have done in this respect in terms
17 of requiring people to make disclosures about firm
18 offers and so on. All I can say is that the question
19 deserves a better answer than I can give you on the
20 basis only of what is contained in our legislation when
21 I have to admit, after all, that the only time that the
22 legislation would be engaged is if there was a
23 complaint, which would only presumably occur
24 infrequently and would be sort of a lucky guess by
25 somebody.

1 48483 So if that is an answer to your
2 question, Nancy, I'm afraid it's the best I can do.

3 48484 MS BROOKS: Thank you. I thought
4 that was pretty comprehensive.

5 48485 Mary Dawson, talking to you about
6 post-employment, have you developed any guidelines on
7 what "a firm offer of post-public office employment"
8 would be, triggering the disclosure regime under
9 section 24 of the Act?

10 48486 And a follow-on question for that:
11 Have you developed any interpretation of "employment"
12 in section 10 and section 24? Does it for instance
13 require an actual employment relationship or does it
14 also extend to retainers entered into by public
15 officeholders for future services to be rendered?

16 48487 MS DAWSON: On the first half of that
17 question with respect to whether we have developed
18 guidelines, we have not developed any guidelines on the
19 issues of firm offers because actually we have not
20 experienced any confusion in this area.

21 48488 We would develop guidelines and
22 information notices if we thought that the public
23 officeholders were having some difficulty understanding
24 a provision or if indeed we found that internally there
25 was something difficult about the provision and that we

1 wanted to kind of explain.

2 48489 So we haven't gotten from either of
3 those impetuses a need. We haven't the sense that
4 there was a need to have a guideline on this.

5 48490 Just to elaborate a little bit, I
6 would interpret a firm offer to mean a serious offer.
7 It would be something less than a legally binding
8 agreement and something more than preliminary
9 discussions. A firm offer, for example, would result
10 from serious negotiations with respect to a defined
11 position. I don't think a written offer of employment
12 is essential to engage the provision and I don't think
13 that every element has to be agreed to.

14 48491 For example, the parties could still
15 be negotiating the details of salary and other
16 benefits. They could be negotiating their starting
17 date and they could be negotiating some other firm --
18 some other important aspects. But basically there
19 would have to be, you know, an apparent intention that
20 employment ensue.

21 48492 As I say, I have had a number of
22 people talk to me about this and report their
23 employment offers and to date haven't detected a lot of
24 confusion here.

25 48493 On the second one, that's difficult.

1 This is on the sections 10 and 24 and the
2 interpretation of employment.

3 48494 I have not had to interpret these
4 sections yet, but if I was faced with this situation I
5 might interpret offer of outside employment as used in
6 sections 10 and 24 broadly to include not only
7 employer/employee relationships, but also service
8 contracts.

9 48495 But I am out on a limb here a little
10 bit, because -- well, first of all, the interpretation
11 does appear consistent with the purposes of the Act
12 and, more specifically, section 5 that requires that a
13 public officeholder arrange their private affairs to
14 prevent a conflict of interest.

15 48496 But there are some statutory
16 interpretation challenges in the Act as it is written.

17 48497 Section 35, which is a
18 post-employment rule, uses the words contract of
19 service or offer of employment. So the normal rules of
20 statutory interpretation would suggest that when you
21 say offers of employment alone and you don't say
22 contracts of service -- and that's what happens in
23 sections 10 and 24 -- Parliament did not intend to
24 include service contracts.

25 48498 Because of this problem, and for

1 clarity reasons, I think an amendment could be
2 considered to sections 10 and 24 to make it clear.

3 48499 But as I say, I haven't had to deal
4 with it. But should I deal with it, I would probably
5 try and find a way of giving it some latitude.

6 48500 In the past year my office has
7 received about a dozen disclosures of outside
8 employment and in only one of those cases,
9 incidentally, was there a problem under the Act and the
10 job offer was declined in that situation.

11 48501 But, as I say, the firm offer was
12 not -- it was never a problem for us to deal with.

13 48502 MS BROOKS: Just a follow-up question
14 to that. Have you interpreted the Act to exclude
15 payments to the public officeholder while in public
16 office for services to be rendered post public
17 employment?

18 48503 MS DAWSON: I have not had any case
19 of advance payments for services brought to my
20 attention. Technically, though, if the current public
21 officeholder is not serving as a paid consultant, the
22 prohibition in 15 on outside activity does not apply.
23 That is the prohibition in the Act.

24 48504 It simply prohibits a reporting
25 public officeholder from being a paid consultant and so

1 if it is prospective, it wouldn't engage in.

2 48505 Under the MP Code there is a
3 requirement to disclose income of \$1,000 or more and to
4 publicly disclose income of \$10,000, because of course
5 MPs are allowed to be engaged in employment while they
6 are serving.

7 48506 So it may be in a case that you raise
8 that the broader general obligations -- for example
9 under 5, arranging your private affairs to avoid
10 conflict of interest; and 10, not being influenced by
11 potential outside employment -- might apply in that
12 kind of a case.

13 48507 MS BROOKS: Thank you for that.

14 48508 Lynn Morrison, in your view is there
15 any virtue in supplementing specific post-employment
16 restrictions with a more open textured rule of
17 indefinite duration that precludes a former public
18 officeholder from taking an improper advantage or some
19 similar concept of their former public office while
20 they are in private life?

21 48509 MRS. MORRISON: I think certainly in
22 Ontario my experience -- the short answer is I don't
23 see any virtue in doing that.

24 48510 I say that because section 18(4) of
25 the Members Integrity Act, certainly for former

1 Ministers, restricts them from making representations
2 to government regarding transactions or negotiations to
3 which the government is a party and in which the former
4 Minister was previously involved as a member of the
5 Executive Council, if that representation could result
6 in conferring a benefit not of general application.

7 48511 In this case "involve" is a matter of
8 interpretation of the facts. This doesn't fall
9 strictly into the one-year post-service restriction.
10 Because of the confidentiality restrictions, this may
11 go on until such time as that information is public
12 information.

13 48512 You can't preclude people from using
14 their knowledge of government, but what they can trade
15 on is their experience; not their knowledge, of course
16 in confidential information or connections, and that is
17 your preferential treatment. That is all covered in
18 the Act.

19 48513 Again, we provide post-employment
20 advice, even though we may not have that jurisdiction
21 with former Ministers, but we certainly have occasion
22 to do that.

23 48514 I think the bottom line is you can't
24 legislate morality and if you keep putting more and
25 more rules on, I think you are going to discourage

1 people from going into public life.

2 48515 I think section 18 is sufficient.

3 48516 MS BROOKS: Thank you.

4 48517 After that group of questions I'm
5 wondering if any other panel members would want to
6 comment on their co-panellists' remarks or whether any
7 of our experts would like to ask a question or comment
8 on this group of remarks?

9 48518 COMMISSIONER OLIPHANT: Ms Brooks, I
10 am no expert but I would like to ask a question, if I
11 might.

12 48519 MS BROOKS: I think that would be
13 permitted.

14 48520 COMMISSIONER OLIPHANT: I have a
15 question for Mr. Fraser and I ask this because of the
16 provision in your Act that permits complaints by
17 members of the public.

18 48521 I served for three years at least as
19 a Vice-Chair of the Judicial Conduct Committee on the
20 Canadian Judicial Council and was the beneficiary of
21 having to deal with complaints by people about supposed
22 in some cases misconduct on the part of judges.

23 48522 It was my experience that many of the
24 complaints filed were frivolous and vexatious.

25 48523 I'm wondering, first of all, when you

1 get a complaint that you believe is frivolous and/or
2 vexatious, do you advise the Member of affected of the
3 complaint and, secondly, how do you handle complaints
4 that you believe to be frivolous and vexatious?

5 48524 My experience is that people who make
6 that type of complaint have become more and more
7 persistent. They don't want to quit, they keep coming
8 back.

9 48525 I'm just wondering how you handle
10 that.

11 48526 MR. FRASER: Well, dealing with the
12 last question first, there is a temptation in respect
13 of some people who are recidivists in terms of their
14 public complaining to operate on the assumption that to
15 ignore them is probably the best solution. That, it
16 seems to me, isn't open to us under any regime we can
17 imagine.

18 48527 So the system that we follow is to
19 simply acknowledge receipt of the complaint and proceed
20 to look at the information, which we insist must be in
21 writing and that it must be sent to us by fax and not
22 electronically so that we have some way of being able
23 easily to identify who the author is and be able to
24 trace it.

25 48528 Whether we take it to the point in

1 time of advising the Member will always depend on what
2 the allegation is. If it is actionable in my view, or
3 if it is something that any one of us would want to
4 know is being said about us, then obviously I would
5 immediately do that.

6 48529 If on the other hand the complaint is
7 so vague that it would be hard to describe it, then I
8 do what I can to get the complainant to be more
9 particular and get what we used to call in the practice
10 of law further and better particulars.

11 48530 We have probably 10 of these
12 complaints a month. Most of them end at the point
13 where the person who has called on the telephone is
14 told that they have to put the complaint in writing and
15 that reduces the number to a very manageable level. As
16 a very practical matter I can't say for a moment that
17 we are hobbled by these kinds of complaints.

18 48531 Others tell me that complaints from
19 members of the public in the past have very often been
20 the public as it is constituted by the fourth estate,
21 and on a slow news day it's amazing how many complaints
22 you can get. But those complaints invariably are well
23 documented and worthy of pursuit, at least to the point
24 of deciding whether or not there are reasonable and
25 probable grounds, which is the threshold requirement to

1 take it to the next stage of investigation.

2 48532 MS BROOKS: Thank you.

3 48533 Lynn, do you have a comment on that?

4 48534 MRS. MORRISON: I just wanted to add
5 that although we don't take complaints from the public,
6 we often get calls. And depending on the nature of the
7 complaint, often times it's more appropriately sent to
8 the Ombudsman.

9 48535 But on those occasions when it is
10 regarding an MPP, we refer them to an MPP, whether it
11 is an opposition member or someone outside of their
12 jurisdiction.

13 48536 And our complaints process from
14 Members it set up in such a way that they can go to
15 their MPP and it is vetted by that MPP. If they feel
16 strongly about it, we then have a process whereby they
17 have to file an affidavit.

18 48537 And in all the years we have been in
19 existence we have only had one that has come forward
20 from a member of the public through an MPP.

21 48538 MS BROOKS: Experts, do you have any
22 questions?

23 48539 Lori, did you have one?

24 48540 MS TURNBULL: I had a question for
25 Commissioner Dawson about the section 24 offers on firm

1 employment.

2 48541 The United States does it a little
3 bit differently in that instead of focusing on offers
4 of employment, they focus on behaviour that they label
5 as seeking employment and then in their legislation
6 they give examples. If a public officeholder is
7 seeking employment by this definition, then they are
8 required to disclose that.

9 48542 So just very quickly: If the
10 employee is engaged in negotiations for employment, if
11 a potential employer has contacted the employee about
12 possible employment and the employee makes a response
13 other than rejection, the employee has contacted a
14 prospective employer about possible employment. So if
15 any of those conditions are met, then the duty to
16 disclose is engaged.

17 48543 So obviously that is kind of casting
18 a broader net, I think, than our section 24 does, so I
19 wondered if you could comment on what would happen if
20 we were to take that broader approach?

21 48544 MS DAWSON: I guess we would just get
22 a lot more reports, you know.

23 48545 I wasn't involved in the drafting of
24 this legislation, but I assume there was a cut-off of
25 how many reports the drafters of this particular Act

1 thought were useful.

2 48546 I mean, you know, in many, many cases
3 somebody may be casting about, and may cast five or ten
4 inquiry letters out.

5 48547 Philosophically I don't have a
6 problem with that, I guess, it's just a question of
7 whether it is necessary. I am a bit agnostic on it.

8 48548 MS BROOKS: I might add that
9 yesterday we had an American panellist, Professor
10 Clark, and, from her perspective, she thought that the
11 principles or the concerns that were underlying post
12 public office employment or offer were engaged at an
13 earlier stage, and she thought that the American
14 legislation moved it up to the negotiation stage, so
15 that the concern underlying it, which is that the
16 public office holder is somehow using its influence
17 perhaps while still in office, in view of its
18 potential, would be triggered.

19 48549 MS DAWSON: As a matter of fact, an
20 awful lot of public office holders do call and talk to
21 me about what they are doing, so it's just a question
22 of whether it becomes mandatory.

23 48550 Many, many of them, just as they are
24 casting about as to what they might do afterwards, will
25 talk to me about that, so we do actually hear about it

1 quite frequently.

2 48551 As I say, I could go either way on
3 that in the Act.

4 48552 MS BROOKS: Anyone else before I move
5 on?

6 48553 I am going to combine, Commissioner
7 Dawson, the next two questions for you in one, so that
8 you can address them both at the same time. They are:
9 Have you developed an understanding of improper
10 advantage, as the term is used in section 33 of the
11 Act; and have you developed an understanding of what
12 constitutes direct and significant official dealings in
13 section 35, and, if so, can an official dealing be
14 significant but not direct?

15 48554 MS DAWSON: Okay. On the first one,
16 improper advantage, section 33 is a general prohibition
17 that would catch whatever is not caught in the sections
18 that follow it. So, in that sense, it is kind of a
19 residual clause.

20 48555 The most obvious examples of what
21 constitute taking improper advantage are, of course,
22 those that are set out in section 34. Section 34(1)
23 prohibits switching sides, and 34(2) prohibits giving
24 advice using insider information.

25 48556 One thing that would be caught by 33

1 is using insider information for purposes other than
2 providing advice to clients that isn't exactly caught
3 by 34, for example, using it for the former public
4 office holder's own business.

5 48557 I think there is some value in having
6 that residual clause 33, because you can't dream up
7 every possible thing that somebody is going to do, and
8 that is what the purpose of a residual clause is.

9 48558 Every case would have to be examined
10 on its own facts, just to see whether there was
11 something there.

12 48559 "Improper" is a general term, and, as
13 I said, I don't think you can list all of the examples
14 in advance, and the value of it is that you haven't.

15 48560 I think it's effective, and I think
16 it should be left undefined.

17 48561 Now, the other question was on direct
18 and significant, which is in section 35. Neither of
19 those terms is defined in the Act, but I personally
20 find them quite clear, and I have, again, not had any
21 difficulty in applying them.

22 48562 They are fact specific, and they are
23 circumstance driven.

24 48563 I do believe that it is possible for
25 an official dealing to be significant, but not direct.

1 In my opinion, both elements must exist for the
2 post-employment obligation to apply.

3 48564 Looking at each of the three terms
4 that are used -- official dealings, significant
5 dealings and direct -- official dealings, of course,
6 relate to government business --

7 48565 I will just give you a sense of how I
8 see them.

9 48566 -- relate to government business and
10 activities that would exclude dealings that are
11 personal and social in nature.

12 48567 Significant dealings would include
13 things like negotiations, briefings, contracts, the
14 making of representations.

15 48568 For example, a reporting public
16 office holder might have had direct official dealings
17 with an individual or an organization as one of many
18 members of a discussion panel or a forum, but they
19 wouldn't necessarily be significant for the purposes of
20 his job.

21 48569 So the significant would not only be
22 determined by the type of dealing, but also by the
23 subject matter of the dealing. You know, a very short
24 conversation on a very high profile expenditure might,
25 indeed, be very significant.

1 48570 So it depends on the circumstances.

2 48571 With respect to direct, direct I
3 don't think necessarily means a personal interaction,
4 but it could also include situations where a person
5 acted on behalf of the reporting public office holder
6 in question, and it could also include situations where
7 the reporting public office holder has the authority
8 and the decision-making power in a particular matter.

9 48572 I think that's my answer.

10 48573 MS BROOKS: Thank you.

11 48574 Paul Fraser, in limiting a former
12 public officer holder from having post public office
13 dealings with entities with which he or she had contact
14 while in public office, has B.C. developed any specific
15 standard for determining whether the public office
16 holder may have such dealings or not?

17 48575 How directly involved must that
18 public office holder be to trigger this?

19 48576 MR. FRASER: The commissioner, in
20 2005, issued what is referred to as an ethics bulletin
21 to interpret what direct involvement or directly
22 involved means, and these included, one, whether the
23 ex-office holder, even if he or she had no personal
24 knowledge with an agency, person or entity, directed
25 staff to take certain action with respect to that

1 entity. Then such direction might be considered, and
2 may be considered by the commissioner to constitute
3 direct involvement.

4 48577 Second, a department's regular input
5 into policy in a specific area in which the entity
6 operates may also be considered in determining whether
7 there is evidence of direct involvement.

8 48578 And, finally, the preparation and
9 presentation of matters for cabinet approval may be
10 considered in determining whether there has been
11 evidence of direct involvement.

12 48579 I should say that the practice in our
13 office has been, from time to time, to issue bulletins
14 such as this, in an attempt to allow members to have
15 greater certainty, in terms of how the Act is likely to
16 be interpreted.

17 48580 I think I have mentioned this
18 already, but we consider that bulletins such as this
19 are immediately in the public domain, in the sense that
20 members of the public should be able to determine for
21 themselves, based on reported conduct, whether the
22 bulletin has or has not been fulfilled, or at least the
23 requirements of it fulfilled.

24 48581 I guess I can imagine situations
25 where bulletins would go out that would have to be

1 considered as confidential, but the vast majority, it
2 seems to me, of these kinds of documents, which are
3 designed to assist members, should be, and they are in
4 the public domain.

5 48582 MS BROOKS: This is for you, Karen.
6 Do you believe that the concept of lobbying under the
7 Lobbying Act should extend to contacts made to foreign
8 governments or international organizations, at least
9 when the lobbyist is a former public office holder?

10 48583 MRS. SHEPHERD: In my opinion, I
11 don't think so, for the following reasons.

12 48584 First of all, the singular focus of
13 the Lobbying Act is the lobbying of federal public
14 officials. Since the Act came into force in 1989, it
15 has been clear to me that Parliament's intention, in
16 passing the lobbying legislation, was that it apply
17 within Canada, to the federal government, and not to
18 other governments, whether domestic or international.

19 48585 For example, in terms of Canada, if I
20 were to take a lobbyist with the same issue, if they
21 were lobbying the federal government and lobbying my
22 colleague Commissioner Morrison's legislation, they
23 would have to be -- lobbying the provincial Government
24 of Ontario, they would have to be registered under the
25 federal legislation and under the provincial

1 legislation.

2 48586 In my opinion, imposing the Lobbying
3 Act on foreign officials would be difficult, if not
4 almost impossible to enforce.

5 48587 In addition, an attempt at
6 extra-jurisdictional regulation by Canada could also
7 conflict, in my opinion, with existing laws in foreign
8 countries, which Canadians might already be subject to
9 in any event.

10 48588 So if there is a decision to go that
11 way, in terms of making former public office holders
12 subject if they are lobbying outside the country, I am
13 not sure what the right mechanism is, but I don't see
14 the Lobbying Act as being the vehicle for it.

15 48589 MS BROOKS: This is along the same
16 lines for you, Paul. Are the post-employment
17 limitations in B.C. confined to the provincial
18 government for a former public office holder? Are
19 there any restrictions on the representations that a
20 public office holder may make to other Canadian
21 governments, foreign governments or international
22 organizations?

23 48590 MR. FRASER: The clear answers to
24 those questions are, yes and no.

25 --- Laughter / Rires

1 48591 MR. FRASER: There are no
2 restrictions, and there are no provisions that deal
3 with the issue at all.

4 48592 MS BROOKS: Do we have any questions
5 from our experts, or you, Commissioner, on this aspect
6 of the Lobbying Act, or the provincial legislation?

7 --- Pause

8 48593 MS BROOKS: Mary Dawson, have you
9 developed an understanding of the scope of section 34
10 of your Act? Specifically, have you established
11 whether it would apply when the former public office
12 holder confines their participation to advice or
13 contact with non-federal government entities?

14 48594 MS DAWSON: As I understand your
15 question, you are asking what prohibitions apply, and
16 who they apply to.

17 48595 With respect to 34(1), switching
18 sides, the federal government has official dealings on
19 specific files with many entities, including the
20 provinces, corporations, non-profit organizations, both
21 in Canada and abroad. So the prohibition on switching
22 sides would prevent a former public office holder from
23 switching sides on any of these files, no matter what
24 role they will be playing with respect to that
25 particular file.

1 48596 In my opinion, the prohibition
2 against acting for or on behalf of a person or an
3 organization would go so far as to prohibit assisting
4 them in any way. In other words, giving them advice or
5 contacts to any entity on the other side.

6 48597 With respect to 34(2), providing
7 advice on insider information, public office holders
8 cannot give advice to anyone using information that was
9 obtained while they were a public office holder and
10 it's not available to the public.

11 48598 I have had no requests for advice or
12 investigations on either aspect of section 34. I think
13 the concepts of switching sides and using insider
14 information are quite well known and understood by
15 people, so that's probably why.

16 48599 MS BROOKS: Lynn, in Ontario, you are
17 responsible for both lobbying and conflict of interest
18 under the integrity rules. I am wondering if you
19 believe that those rules are well integrated, and are
20 there any conflicts or contradictions between these two
21 bodies of rules?

22 48600 MRS. MORRISON: Before I make any
23 comments about that question, I want to be very clear
24 that my approach to this is based on the Ontario
25 experience of significantly less clientele than perhaps

1 Mary has at the federal level. As a result, I think
2 that there are some practicalities, in terms of
3 deciding what rules you want to impose, and how you
4 want to organize it in an office.

5 48601 In terms of Ontario, yes, it does
6 work.

7 48602 From my point of view, I have
8 referred to section 18 of the Members' Integrity Act,
9 and it makes provision for prohibitions on former
10 ministers.

11 48603 The PSOA provides for restrictions
12 for former public office holders.

13 48604 There is no question that many of
14 these people do go out into the consultation field and
15 show up on the Lobbyist Registry.

16 48605 Again, we provide opinions to both of
17 these groups of people, both during government and
18 post-government, so they mesh. I have a good sense,
19 when I see somebody working in government, and then
20 they are on the Lobbyist Registry -- I have a pretty
21 good idea of what is -- obviously, I know what is right
22 and what is wrong, and we oftentimes give the former
23 public office holder -- ethical protocols are put in
24 place that they can't lobby former ministries.

25 48606 And I make sure that goes on the

1 Lobbyist Registry.

2 48607 The only difference is the definition
3 of lobbying. Under the Lobbyists Registration Act, we
4 talk about registrable versus non-registrable
5 activities; not in those words, but there are
6 differences.

7 48608 Whereas, under the PSOA, we take a
8 much broader look at what they are doing, and it
9 doesn't matter if it's not registrable, we still put a
10 protocol around them that they cannot be involved in
11 that particular issue, if it's necessary.

12 48609 I think it works. It has worked so
13 far. I haven't had any complaints.

14 48610 MS BROOKS: This is a question for
15 both of our provincial commissioners.

16 48611 You have told us how post-employment
17 and lobbying rules are enforced in your jurisdiction.
18 Do you believe that the current rules are conducive to
19 post-employment or lobbying violations being detected?
20 What recourse do you have against a former public
21 office holder acting in violation?

22 48612 I think that, Lynn, you, at least,
23 have covered that. I am not sure that Paul has.

24 48613 Do you believe that the existing
25 enforcement regime, in other words, is effective?

1 48614 Could I ask both of you to comment on
2 that, please?

3 48615 MR. FRASER: In talking, of course,
4 in the British Columbia context, we are talking only
5 about ministers, in terms of who is prevented from
6 certain activity post-appointment.

7 48616 We don't have, in our Act, the
8 ability to track a former minister's activities. We
9 don't have a mechanism, such as exists elsewhere, to
10 hold that person to account. I hope the Commission
11 will consider that issue, for everybody, to be one that
12 is important, and I say that, Mr. Commissioner, in this
13 context. I think that change in the legislative arena
14 in which we live is best stimulated from non-partisan
15 sources.

16 48617 I think that all of us who want to
17 precipitate change and reform within our Acts, to the
18 extent that they require them, work hard at developing
19 a consensus on a non-partisan basis, with the hope that
20 the proposed changes can go forward not as a piece of
21 government legislation, but simply as the combined will
22 of those involved.

23 48618 It would obviously serve of great
24 assistance for those of us who are interested -- and we
25 all are -- in making sure that our legislation is

1 responsive to the needs that we think exist to have the
2 clear and non-partisan view of this Commission, which
3 is why we all regard it as being such an important
4 exercise.

5 48619 We don't have in our jurisdiction the
6 ability within the office to deal with any complaints
7 that may be made about former ministers.

8 48620 In fact, anecdotally, I can tell you
9 that one of the first things that I had to deal with
10 was a complaint by an existing member about a former
11 member and minister, and my predecessor had determined
12 as one of his final acts that we were without
13 jurisdiction in those circumstances, and that a former
14 member didn't fall within our jurisdiction.

15 48621 He was probably right about that.

16 48622 The member who made the complaint
17 then turned around and made the complaint as a member
18 of the public, putting himself into an appropriate
19 position to make the complaint, and ultimately I dealt
20 with it.

21 48623 But the complaint, essentially,
22 devolved not into a complaint about what the former
23 minister's conduct amounted to, but whether, in the
24 particular circumstances, the cabinet had itself
25 breached the terms of the Act by, it was alleged,

1 arranging, albeit indirectly, for the former minister
2 to be paid out of funds that the cabinet used to
3 inform -- or to fund a third party group, which, in
4 turn, retained him.

5 48624 There is a recourse in our
6 legislation, but it is a recourse that simply records
7 that jurisdiction in respect of a former minister's
8 conduct will remain in the Provincial Court of British
9 Columbia, and anyone wanting to complain about it
10 simply makes a complaint, and a summary conviction
11 proceeding may ensue.

12 48625 COMMISSIONER OLIPHANT: Just for my
13 own edification, are we talking about a railway here?

14 48626 MR. FRASER: No.

15 48627 COMMISSIONER OLIPHANT: That's not
16 what you are talking about?

17 --- Laughter / Rires

18 48628 MR. FRASER: No, we are not talking
19 about that at all.

20 48629 I hope that's an answer to the
21 question that has been posited.

22 48630 MRS. MORRISON: I won't go into
23 section 18 again, but certainly that applies.

24 48631 I think it's important to note that
25 former ministers, certainly in Ontario, like B.C. -- we

1 don't necessarily have the jurisdiction, although we
2 have been known to give advice.

3 48632 If there was a violation, there is a
4 provision in the Act that, upon conviction, they are
5 subject to a penalty of up to \$50,000.

6 48633 There is no financial penalty to
7 ministers' staff; however, I would suggest to you that
8 there is --

9 48634 If a former public office holder
10 violates the Act, or is about to, not only is their
11 employer in jeopardy, they are in jeopardy of losing
12 that contract and goodwill with government, and
13 government, in turn, will probably terminate or take
14 action to deal with it, but it is out of our realm of
15 responsibility.

16 48635 Under the Lobbyists Registration Act
17 there are penalty provisions -- failure to comply,
18 making false statements, knowingly placing a public
19 office holder in a position of real or potential
20 conflict -- again, on summary conviction, liable to a
21 fine of not more than \$25,000.

22 48636 Again, I can only speak to the
23 relationship that we build with these public office
24 holders while they are in government, and having both
25 areas of responsibility gives me a better understanding

1 of what is going on.

2 48637 So, yes, it seems to be working.

3 Again, I haven't received any complaints.

4 48638 In terms of the regime being
5 effective, I think that's up to the public and members
6 to respond to.

7 48639 Can it be better? I am certainly
8 open to any suggestions.

9 48640 MR. FRASER: Mr. Commissioner, if I
10 might, could I make this point; I am not aware that
11 there has ever been a prosecution under our summary
12 conviction provisions with respect to the past
13 conduct -- or, at least, the conduct of a past
14 minister.

15 48641 I don't want to leave the impression
16 with you that, absent specific legislative ability and
17 jurisdiction to track the conduct of former members,
18 nothing goes on in our office.

19 48642 The reality, as has been said by
20 others, is that because that issue is so important,
21 because people who are leaving public life want to have
22 plans, not just hopes, a great deal of time is spent in
23 our office talking to people who are either former
24 ministers or who are about to become former ministers,
25 in a genuine effort to help them.

1 48643 There is, of course, a very practical
2 side to things; that is, while they remain as members
3 of the House, they are entitled to our opinion with
4 respect to what their post-appointment conduct might
5 be, and while that opinion, if it's favourable to them,
6 in terms of their plans, wouldn't, of course, trump any
7 decision that might be made in a summary conviction
8 court, still it is some evidence, and certainly some
9 great comfort to members to know that at least they
10 have vetted in our office the plans they have.

11 48644 It is a very important part of the
12 work we do.

13 48645 MS BROOKS: Greg, do you have a
14 question?

15 48646 MR. LEVINE: The question relates,
16 actually, to this idea of tracking and following
17 things, and although it is a question for the Ontario
18 commissioner, Ms Morrison, it has to do with section 17
19 of your Act.

20 48647 Section 17 says that the Executive
21 Council and members shall not knowingly award or
22 approve contracts, and so on, to a former member. I am
23 wondering -- well, the section worked -- how has it
24 worked.

25 48648 I take it that you have had no

1 complaints about it.

2 48649 Is that obligation monitored in some
3 way by your office, by the Executive Council itself, or
4 ministry officials? How does it work?

5 48650 MRS. MORRISON: First of all, no, we
6 don't have a mechanism for tracking it; and you are
7 correct, we haven't received any complaints about it.

8 48651 I don't know how the Executive
9 Council deals with it, if they deal with it. They all
10 are certainly very much aware of the rules.

11 48652 I guess it's self-regulating.

12 48653 However, if there was a breach, there
13 is a complaint mechanism in place, if they choose to
14 use it.

15 48654 I think, if there was a breach, it
16 could be politically ruinous for the member involved.
17 Their reputation --

18 48655 I think it was quite clear yesterday
19 in the testimony that that certainly plays a big part
20 in a lot of this.

21 48656 Of course, then there is the \$50,000
22 penalty for former ministers.

23 48657 That's the best I can give you.

24 48658 MS BROOKS: Commissioner, did you
25 have a question?

1 --- Pause

2 48659 MS BROOKS: Yes, Craig.

3 48660 MR. FORCESE: There are a couple of
4 issues that have come up in the last couple of days
5 which go to some of the matters we have addressed in
6 the last few questions, and I just want to ask your
7 opinion of them.

8 48661 First, Commissioner Dawson, you spoke
9 about the international reach of section 34, that it is
10 not confined necessarily to switching sides within
11 Canada or in relation to Canadian clients.

12 48662 I am curious about section 35, and
13 35(2) in particular, about representations made by the
14 former public office holder to "department,
15 organization, board, commission or tribunal" with which
16 they had significant and official dealings -- direct,
17 significant and official dealings.

18 48663 The term "organization", would that
19 capture -- or any of those terms, frankly -- an
20 international organization?

21 48664 MS DAWSON: I don't like giving
22 opinions on things I haven't thought about right off
23 the top, but on the face of it, there doesn't seem to
24 be anything to limit it to anything. It could be any
25 organization.

1 48665 MR. FORCESE: Thank you.

2 48666 On enforcement, one of the issues
3 that has come up in our conversation with our other
4 experts is the idea of a penalty that is equated with
5 the harm done to the public. So if there is a
6 violation of the post-employment strictures, there is
7 an obligation to disgorge the profits that one earned
8 through violating these principles, rather than an
9 arbitrary fine of \$50,000, or what have you, which may
10 not be correlated with the actual harm to the public.

11 48667 What would your reaction be to a
12 disgorgement mechanism, which I understand to be the
13 state of the art in the United States?

14 48668 And I guess I would throw this open
15 to all of the commissioners.

16 48669 MS DAWSON: I haven't thought about
17 it. I don't want to give an opinion. That is a
18 complex new approach and, no, I really have no comment.

19 48670 MR. FRASER: Can I let you off the
20 hook a little bit, Craig?

21 48671 All I want to do is to point
22 everybody's attention to a section that suddenly
23 appears in our legislation called "Application for
24 Restitution", which reads:

25 "Despite anything in this Act,

1 if any person, whether or not
2 the person is or was a Member,
3 has realized financial gain in
4 any transaction to which a
5 violation of this Act relates,
6 any other person affected by the
7 financial gain, including the
8 government or government agency,
9 may apply to the Supreme Court
10 for an order of restitution
11 against the person who has
12 realized the financial gain."

13 (As read)

14 48672 Once again, Mr. Commissioner, British
15 Columbia leads the way. Once again, I have absolutely
16 no information that the section has ever been used for
17 anything, but there it is.

18 48673 MS BROOKS: Way out there. Okay.

19 48674 Mary, when you were giving your
20 overview remarks you said that your office was
21 attempting to apply the post-employment provisions with
22 consistency and common sense but that there were
23 challenges.

24 48675 I wonder if you could expand on what
25 the challenges are and how you think they could best be

1 addressed?

2 48676 MS DAWSON: Well, the big challenge
3 in the post-employment provisions is that there is no
4 reporting requirement in the Act at all, so once they
5 step out the door I lose track of them. So there is no
6 way to follow up on anything unless I hear about
7 something that is going on.

8 48677 So that is the biggest problem. I
9 think that the rules themselves are probably quite
10 adequate, but it would be nice to -- I think it would
11 be an improvement if there were some kind of a
12 reporting requirement, at least in the first year.

13 48678 Having said that -- I think I said in
14 my opening remarks, or maybe I said in my annual report
15 which is about to come out -- I do follow up when I
16 hear about -- when something looks a bit odd in the
17 paper and I think well, gee, I wonder if this guy is
18 complying with all the rules in the Act, I will give a
19 call and have a talk.

20 48679 Generally I have found that I haven't
21 found a problem. But there just is simply no reporting
22 requirement for the people once they have walked out
23 the door. So it is pretty hard to really do much of a
24 vigilant attempt at seeing what is going on in
25 post-employment.

1 48680 I might also mention that unlike
2 Ontario and B.C., we have no penalty regime at all for
3 failure to comply with the post-employment activities.
4 But it would be pretty hard to get there when we don't
5 even have a reporting one.

6 48681 MS BROOKS: Well, if you had a wish
7 list, what would that penalty regime look like? What
8 do you think would be an effective and proportionate
9 kind of penalty scheme?

10 48682 MS DAWSON: We don't even have
11 penalties for the substantive infractions of the
12 Code -- of the Act. We have administrative monetary
13 penalties for late filing and that sort of thing, but
14 we don't -- so I mean that's a whole new ballgame I
15 think in the context of our Act, and I wouldn't start
16 it in post-employment necessarily. So I really haven't
17 thought that through.

18 48683 MS BROOKS: Karen, do you believe
19 that the rules for post-employment lobbying violations
20 are detected by your office and is the existing
21 enforcement regime effective?

22 48684 MRS. SHEPHERD: First, I would think
23 the system of the lobbyist registration does appear to
24 be quite effective judging from the number of
25 registered lobbyists that we have. There are currently

1 more than 4,000 lobbyists registered.

2 48685 The newly instituted system of
3 reporting oral and arranged meetings -- communications,
4 sorry, was designated public officeholders also appears
5 to be quite effective, judging from the high volume.
6 There are more than 600 -- or approximately 600
7 communications per month being registered on the
8 system.

9 48686 When the Act came into force last
10 July, I mean those numbers were quite reflective. So
11 for something first coming in, I think it is doing its
12 job.

13 48687 The variety of education methods and
14 enforcement measures that my office uses does lead me
15 to believe that the existing enforcement regime is
16 effective.

17 48688 Is it possible to avoid registration
18 or the reporting of the communications that must be
19 reported? I think if somebody wants to, there are
20 always ways to try to get around legislation.

21 48689 However, I believe that my office is
22 using proactive monitoring of the media and that is
23 like there is hardly a day that goes by that there
24 isn't some reporting of lobbying activities. So the
25 office looks at, you know, the media, publicly

1 available information.

2 48690 You know, I was just looking at the
3 numbers again. I mean for last year we verified more
4 than 300 organizations or corporations and more than
5 90 per cent of them we found to be registered.

6 48691 We also scrutinize in terms of
7 scrutiny of the registry and that is before an actual
8 registration appears on the registry it is verified by,
9 you know, advisors to ensure that it is complete and
10 accurate and there is probably, you know, something
11 in -- well, there was an article in the Hill Times that
12 you may have read which is sort of talking about the
13 fact that we go back and actually ask them to spell out
14 acronyms, for example, so that it is clear to the
15 Canadian public what it is that they are lobbying on.

16 48692 A CO may mean something to you, but
17 it may mean something totally different in another
18 context. So that is another thing that we are doing.

19 48693 There are also administrative
20 reviews, which is our fact-finding exercise, if there
21 is a complaint comes in. And complaints for us can
22 actually be received from members of the public,
23 Parliamentarians or we will actually initiate something
24 ourselves if we think there is something to be looked
25 into.

1 48694 And the Act also gives the
2 Commissioner the ability to initiate an investigation
3 if there is reason to believe that compliance with the
4 Act or the Code is required. And once an investigation
5 has been initiated, then the Commissioner has the
6 ability to compel witnesses and/or documents with that
7 power.

8 48695 So combined with educational efforts,
9 it leads me to believe that the system is conducive to
10 post-employment or lobbying violations being either
11 discouraged or detected by the office.

12 48696 MS BROOKS: Thank you. I would like
13 to at this point turn it over to our experts for any
14 questions that they have of the Commissioners, that
15 haven't been either covered by the questions I have
16 asked or that are of a more general high-level nature.

17 48697 DR. THOMAS: I don't have the
18 in-depth knowledge of the details of your statutes and
19 codes that my fellow experts do, but I have an interest
20 in, an ongoing interest in the distinctive offices you
21 occupy, namely as officers of Parliament or agents of
22 Parliament.

23 48698 Commissioner Fraser suggested that
24 there is excess deference within his legislature
25 towards his opinions. I wish I could obtain that

1 status.

2 48699 And it was mentioned several times
3 that you are independent of the political executive of
4 Cabinet. But you are ultimately accountable to
5 Parliament, to the legislature presumably.

6 48700 So I'm interested in hearing you as
7 your evolving interpretations of your statutes, acting
8 on the intentions of Parliament expressed in very
9 general terms and reading meaning into them and
10 applying them in particular circumstances.

11 48701 Are there accountability forums and
12 sessions that you go to where you have to explain the
13 direction that you have taken the Act and its
14 application in specific factual circumstances and get
15 endorsement and concurrence, whatever it needs, from
16 Parliament?

17 48702 Presumably you don't want
18 Parliamentarians to be involved in your day-to-day
19 decision-making, but at the very least if there seems
20 to be drift in the direction you are going that is not
21 concurred in by Parliamentarians, then there should be
22 some discussion about that, at the very least.

23 48703 So I would be interested in anyone
24 answering that one.

25 48704 MS DAWSON: There is a number of

1 different ways that Parliamentarians can ask us
2 questions. I mean we appear once a year on our
3 estimates, for example, and those sessions are not
4 always about the financial issues but whatever they
5 want to raise. So there is that forum.

6 48705 There is no official forum to vet
7 what we are doing.

8 48706 With respect to the Act, the
9 estimates would be pretty well the only forum except to
10 say that in both of my annual reports I try very hard
11 every year to make apparent what I have been doing over
12 the past year and what sort of decisions I have been
13 taking.

14 48707 So I see that as my main
15 communications vehicle.

16 48708 But with respect to the MPs Code, it
17 is a little bit different. The MPs Code is much more
18 closely guarded by the MPs themselves. I have a
19 relationship with the Procedures and -- what is it, the
20 Procedures and House Activities Committee. And in fact
21 in the Code it requires that I am not allowed to
22 establish forums or guidelines without them being
23 approved by first the committee and then the House of
24 Commons.

25 48709 So that has put a restraint on me

1 being able to put out guidelines easily.

2 48710 But having said that, I still have my
3 annual report that I can do what I want to and I can --
4 any investigations that I have done of course are
5 public and they also try to respond to the issues there
6 in a fulsome way.

7 48711 But those are my basic vehicles.

8 48712 MR. FRASER: I don't want to complain
9 about the deference; I just want to say that sometimes
10 it is disproportionate.

11 48713 I believe, as I think we all do, in
12 the whole notion of judicial independence and while I
13 don't claim to have that going for me, I want obviously
14 to insist that I not be put in the situation of arguing
15 the merits of any decisions I have made. And there has
16 not even been a hint of that from those people who have
17 been disappointed.

18 48714 I think that what has just been said
19 is important in the sense that we have an opportunity
20 annually in our annual reports to speak to the audience
21 and anticipate their questions, the audience both
22 within the legislature and outside in terms of where we
23 are looking to expand the legislation or where, more
24 particularly, our practices are evolving so that we
25 confirm what we all know; that the rule of law only

1 succeeds when people are put in a position where they
2 know what the law is.

3 48715 And the estimates is a perfect
4 opportunity because it is there that the legislative
5 committee, the all party committee, has in effect the
6 opportunity independently of the government to make
7 recommendations, albeit to the Treasury, as to whether
8 the estimates will be approved.

9 48716 We have always taken, from what I can
10 tell looking at the transcripts, the opportunity to use
11 that as a forum to try to plumb the concerns that
12 Members may have around the table that otherwise might
13 go unexpressed.

14 48717 All of this I think to cater to, if I
15 can put it that way, and to foster a political culture
16 of ethical behaviour where, without sounding trite,
17 where ethical behaviour doesn't have a premium to it
18 but is accepted as the norm rather than the exception.

19 48718 Any opportunity that any of us has to
20 talk to members of the public, either in an organized
21 way or even individually, to the extent to which we
22 perceive in the course of our duties that there are
23 things that should be of concern to a member of the
24 public about the ethical behaviour of members of the
25 House collectively or individually, we seize upon.

1 48719 It's not difficult to do that and we
2 don't pander to those people who as members of the
3 legislature in the corporate sense employ us.

4 48720 But you know the reality is -- and I
5 would be interested if my colleagues disagree -- that
6 people are there typically in one's close experience
7 with them for the right reasons; very different reasons
8 but for the right reasons. And that is heartening and
9 should be -- it's heartening to us and it should be
10 heartening to the members of the public.

11 48721 Anybody that thinks they can become a
12 wealthy person by going into politics would be locked
13 up just for being beyond any rational thinking.

14 48722 I remember someone giving me the line
15 from The King, and Elvis said I don't like people who
16 are in politics for themselves and not for others; if
17 you want that, you can go into show business.

18 48723 That has been my experience dealing
19 day to day with working politicians.

20 48724 MRS. MORRISON: In Ontario, first of
21 all to speak to the estimates or budget, I do have to
22 appear before what we call the Board of Internal
23 Economy that is made up of representatives from each
24 party.

25 48725 I have to say, I have been told by

1 members of those committees throughout the year that
2 they are going to give me just about anything I want as
3 long as it's reasonable because they are afraid of us.
4 I don't know how true that is. But I have had the rare
5 occasion to ask for something extra beyond the budget
6 that I have submitted.

7 48726 The same is true actually with
8 opinions given under the Act. There is no question I
9 have given opinions, as have my predecessors, that were
10 not popular with the Member or the Minister and that is
11 what we are there for. We are there to protect the
12 public but also to protect the Members.

13 48727 I have talked about education. We do
14 everything we can in terms of getting out to educate
15 not only Ministers by public officeholders, the
16 Minister's office.

17 48728 In fact, in our annual reports over
18 the years we produce a selection of anonymized versions
19 of inquiries to help them -- to raise their awareness
20 as to the type of issues that may come up on a
21 day-to-day basis.

22 48729 And one last matter. I spoke about
23 it earlier, the amendments to our Act in 1994.

24 48730 We had an all party committee, one
25 representative from each committee, and we met

1 informally with the Commissioner and came up with
2 something that everybody could agree to. They went
3 back to their caucuses and they came back with their
4 feedback.

5 48731 We have actually gone through that
6 again recently and are hoping to have some revisions
7 some time in the future, but ultimately it is the
8 House's decision as to whether they want to accept
9 those.

10 48732 MS BROOKS: I think Karen Shepherd
11 has some concluding comments on this.

12 48733 MRS. SHEPHERD: In terms of an agent
13 of Parliament, as I mentioned, it has been brief, since
14 July 2, 2008. But in terms of, you know, Parliament
15 looking -- as I mentioned in my opening remarks, the
16 history of Parliament actually looking at the
17 legislation and having made changes and I guess
18 different mechanisms aside from being called in to
19 maybe report on regular basis, we do provide, you know,
20 the annual report of activities under the Act and the
21 Code and even prior to becoming an agent of Parliament
22 we were asked to come in and discuss the findings in
23 our reports.

24 48734 Also, the current Act allows not only
25 for the annual reports, but if for special reports

1 concerning any matters within the scope, powers, duties
2 and functions of the Commissioner, if in the opinion of
3 the Commissioner the matter is of such urgency or
4 importance that a report on it should not be deferred
5 until the next annual report.

6 48735 So there is another way that I can
7 now go if I thought there was a sufficient matter to
8 actually bring something to Parliament's attention.

9 48736 I guess just lastly in terms of if an
10 investigation, as I mentioned earlier, was initiated to
11 ensure compliance under the Act or the Code, then there
12 is an obligation under the Act for me to actually
13 report, to table -- to finalize the report and table
14 it.

15 48737 DR. THOMAS: Could I ask a short
16 question of Commissioner Morrison, a factual question?

17 48738 At the bottom of the table that you
18 handed out you mentioned that you also deal with the
19 Disclosure of Wrongdoing Act.

20 48739 And in terms of the focus of my study
21 for the Commission, the issue of political staff has
22 come up. And I wonder, would they be deemed to be
23 within the scope of a disclosure of wrongdoing statute?

24 48740 If I was a political staff member and
25 I observed wrongdoing in the Minister's office, would I

1 be entitled to confidential disclosure and protection
2 against retaliation?

3 48741 Yes? The answer is yes?

4 48742 MRS. MORRISON: Yes.

5 48743 DR. THOMAS: Thank you.

6 48744 MS BROOKS: Commissioner, I want to
7 just ask you for some instructions at this point.

8 48745 Lynn needs to catch a 3:30 plane and
9 I know that we haven't gone through all of our experts,
10 and they may have other questions -- I think they do --
11 and then we have Commission counsel and then counsel
12 for the parties and the parties.

13 48746 So I just wanted to let you know that
14 constraint and ask you what you wanted to do.

15 48747 I would propose that we finish with
16 the experts and try to get through counsel for the
17 Commission. I don't know if there are any questions on
18 behalf of counsel for the Commission.

19 48748 Mr. Wolson, do you have any?

20 48749 MR. WOLSON: No, I have no questions
21 at all.

22 48750 MS BROOKS: And Mr. Giuseppe
23 Battista? No.

24 48751 Evan has gone out of the chair for a
25 moment.

1 48752 COMMISSIONER OLIPHANT: He's out by
2 default. He has no questions, seeing that he left.

3 48753 MS BROOKS: All right. Okay.

4 48754 Then I would just canvass the timing.

5 48755 I wonder if I could have an
6 indication from the parties how much time they think
7 they will need.

8 48756 Mr. Auger...?

9 48757 MR. AUGER: I have no questions.
10 Thank you.

11 48758 MS BROOKS: Mr. Conacher...?

12 48759 MR. CONACHER: I have four or five
13 questions and it's difficult to determine the time. It
14 depends on the length of responses.

15 48760 MS BROOKS: Okay. And counsel for
16 the Attorney General?

17 48761 MR. LACASSE: We have no questions.

18 48762 MS BROOKS: Commissioner, I wonder,
19 it may be possible for us to finish by 10 minutes to
20 1:00 or 1:00, if you want to run through, or we could
21 take a break at this point.

22 48763 The only risk is that we --

23 48764 COMMISSIONER OLIPHANT: I'm not on
24 the hotseat here, but I think myself what we should do
25 is just move right to the questions by the parties.

1 48765 MS BROOKS: All right. Then that's
2 what we will do.

3 48766 Mr. Conacher, could you go forward,
4 please?

5 48767 MR. CONACHER: Thank you very much
6 and thank you very much for your testimony today to all
7 of the Commissioners. It has been very interesting and
8 clarifying on a few questions.

9 48768 I just wanted to clarify your
10 positions, if you have formed them, on a few other
11 issues.

12 48769 Generally the laws -- this is for the
13 Ethics and Integrity Commissioners.

14 48770 Generally the laws are Conflict of
15 Interest Acts and Commissioner Dawson noted that while
16 the word "ethics" is in the title of her position,
17 there is nothing in the Act where there is a general
18 enforceable rule about some sort of integrity standard
19 that would apply to just general activities.

20 48771 And I'm wondering what are your
21 views -- we can go in any order -- of having that kind
22 of general rule where you would be able to take
23 complaints about things that are not conflicts of
24 interest but just actions that members of the public or
25 other members of the legislature feel do not show

1 integrity, either in their official acts that are
2 official acts or even acts in their personal lives,
3 that may not be illegal, so there is no other pursuit,
4 but just would be unethical?

5 48772 MS DAWSON: Basically, I consider
6 myself within the bounds of the Act, so I am applying
7 the Act as it stands.

8 48773 But I should say that we get lots of
9 requests in the course of conversations with different
10 public officeholders as to whether something would be
11 appropriate or not. You know, there is the silly thing
12 to do or there is the legal thing to do, you know, so
13 we are a forum that people can have some discussion
14 with.

15 48774 But I am quite comfortable with not
16 having to rule on ethical issues on a legal basis.

17 48775 MS BROOKS: Do either of our other
18 provincial Ethics Commissioners have a comment?

19 48776 MRS. MORRISON: I think I tend to
20 agree with Mary trying to keep within our mandate. But
21 having said that, I think the Act, the preamble of the
22 Act may speak to this issue to some extent. And
23 depending on the question I think we would probably
24 take a look at it and provide some sort of general
25 advice as to whether or not it may be even a potential

1 or apparent conflict.

2 48777 But officially we don't have that
3 jurisdiction, I don't think.

4 48778 MR. CONACHER: Okay.

5 48779 MR. FRASER: I think the tap has to
6 be either full on or full off in some respects. Our
7 Act doesn't have an expression of ethical principle as
8 a prelude to it as they do in Ontario.

9 48780 There is a concern which is not easy
10 to express, I suppose, that I have is that if we are
11 going to do the work that we have to do effectively in
12 terms of holding people to account for their compliance
13 with the Act, given the imperatives that are listed in
14 the Act, that there would be a diminution of our
15 ability to do that and, frankly, a refocusing of our
16 task if we became a sort of a morality centre and if we
17 became sort of the length of the Chancellor's foot, if
18 you like, or the arbiter of what was appropriate and
19 what was inappropriate conduct.

20 48781 I frankly think that -- maybe it's
21 too selfish a view -- that we would lose much more than
22 we would gain in that process. That said, it is
23 discomfoting to say that and that enhances, it seems
24 to me, the imperative that all of us feel to speak as
25 often as we can privately with Members, and otherwise

1 with the public, towards a sort of a political culture
2 of ethical behaviour.

3 48782 In British Columbia politics is a
4 blood sport and, as most people know, people have made
5 reputations by being very successful at doing that and
6 people have been devastated as their reputations
7 disintegrated in front of them.

8 48783 The checks and balances that seem to
9 exist hasn't happened automatically, but over a period
10 of time seems to be that no one who has made the
11 sacrifice that people make to get into public life
12 wants to have at the end of the day as their legacy the
13 disapprobrium of a public who conclude that there has
14 not been appropriate ethical conduct.

15 48784 That by itself has sort of sustained
16 the process of enforcing the law which is known as
17 opposed to ethical conduct as another kind of quantity
18 which is essentially a kind of unenforceable situation.

19 48785 So if any of that makes any sense,
20 Mr. Conacher, that would be my response.

21 48786 MR. CONACHER: Thank you very much.

22 48787 I just wanted to follow up a bit with
23 you, Commissioner Dawson.

24 48788 Under the MPs Code the principles are
25 essentially unenforceable, but you can -- I think the

1 phrase is can inform your examination of a violation of
2 the rule. But those are general ethics standards that
3 are there.

4 48789 And also, in the post-employment
5 area, the section 33 about taking improper advantage,
6 it is sort of broader than a conflict of interest
7 standard as well.

8 48790 I guess it's just generally how you
9 are grappling with both using those principles and this
10 word improper advantage. Not that you would
11 necessarily have had any cases, but just whether your
12 thinking has reached conclusions as to how broad
13 improper advantage is and how much you can use those
14 principles if someone did complain about something that
15 wasn't a strict private interest, conflict of interest
16 situation under the MPs Code?

17 48791 MS DAWSON: Well, you are quite right
18 that there are some sections in this Act which have
19 broad enough terminology that they lead you to wander
20 down the path of ethics, and I think improper is a very
21 good example, that section 33.

22 48792 And I think you rightly point out as
23 well that the principles are in the Code and they are
24 there, as you say, to inform your interpretation. So
25 you are quite right that there is a little bit of an

1 edge of ethical judgment in some of the provisions in
2 the Code and the Act.

3 48793 MR. CONACHER: But at this point you
4 haven't had specific cases where you have really had to
5 figure out and apply the bounds of those phrases and
6 those principles or the word improper advantage?

7 48794 MS DAWSON: I actually have. I can't
8 think of the examples right off the top of my head, but
9 I know I have grappled in those areas from time to
10 time. So yes.

11 48795 But I can't sort of give you the
12 examples basically.

13 48796 MR. CONACHER: Yes, okay. I
14 understand. For Mr. Fraser and Ms Morrison, I'm
15 wondering if you can answer this if you put your mind
16 to it: that if a person covered by the Act, staff or
17 anyone, if they faced questions concerning their own
18 actions, would that constitute a private interest that
19 would then entail that they would have to recuse
20 themselves from taking part in any discussions or
21 decisions about how those questions are investigated
22 and answered?

23 48797 MR. FRASER: Sorry. If a member, to
24 use my situation -- if a Member of the Legislature
25 faced questions about their conduct and answered

1 questions in public forums and politically, is that
2 what you are saying?

3 48798 MR. CONACHER: No, if it was
4 something that needed to be investigated to determine
5 what exactly had happened. For example, if documents
6 were left at a media outlet's office and the question
7 was who left them there, would you consider -- the fact
8 that there were questions about their own actions,
9 would you then allow the public official to make
10 decisions about how those actions were investigated,
11 determining who would investigate them, how they would
12 be investigated, whether they would be investigated if
13 they had those powers to do so?

14 48799 MR. FRASER: Well, I'm absolutely
15 sure that I don't have those powers, nor would I want
16 them.

17 48800 I'm sorry, I don't want to be
18 flippant, but that's the best I can do.

19 48801 MRS. MORRISON: If I understand the
20 question, I think in Ontario if there are questions
21 raised in the House about a Member's conduct, that
22 obviously can go on and on for days. I encourage
23 Members to bring it to our office.

24 48802 In terms of public officeholders, I'm
25 not sure I understand if you are suggesting public

1 officeholder has done something inappropriately, can I
2 be proactive and investigate that?

3 48803 MR. CONACHER: No. If there was a
4 situation and there was concern about the situation and
5 the question was how had the Minister acted in that
6 situation or Ministerial staff person or anyone covered
7 by the Act and there needed to be an investigation of
8 that situation, would you allow the Minister or other
9 official to take part in discussions about that
10 investigation or make decisions?

11 48804 MRS. MORRISON: If we were actually
12 doing an investigation?

13 48805 MR. CONACHER: No, no, if it was --

14 48806 MRS. MORRISON: They can bring one
15 forward.

16 48807 MR. CONACHER: If they could -- if
17 they were wanting to do their own investigation.

18 48808 MRS. MORRISON: Anybody, any Member
19 can bring a complaint forward about another Member.

20 48809 Is that what you are getting at?

21 48810 If we investigate, we obviously would
22 be interviewing both Members.

23 48811 MR. CONACHER: No, that's fine. I
24 will move on to the next question. Thank you.

25 48812 You, in several of the Acts,

1 cannot -- you are in a conflict if you have an
2 opportunity to further your own interest or interest of
3 a friend and so I have a question for all three of you:
4 Have you put your mind to what is the scope of that
5 word "friend" is?

6 48813 Does it include -- are political
7 staff in the Minister's office, for example,
8 automatically the Minister's friends or is it only
9 based on the kind of relationship people would think of
10 as friends?

11 48814 Are people who do fundraising and
12 support work for their campaign automatically friends
13 even if they may not be socially friends?

14 48815 I'm just wondering how you define
15 that term, if at all.

16 48816 MRS. MORRISON: Just on a general
17 basis, in Ontario I really think it depends on the
18 circumstances, what the facts are. The bottom line is:
19 Is the behaviour appropriate under the Act?

20 48817 Whether it is with a member of the
21 Minister's staff or a relative, is it appropriate in
22 the circumstances?

23 48818 I really think it is based on
24 individual facts.

25 48819 MR. CONACHER: Commissioner

1 Dawson...?

2 48820 MS DAWSON: I think generally
3 speaking a friend is something more than a mere
4 acquaintance and probably significantly more than a
5 mere acquaintance.

6 48821 Friends is a word that is very
7 loosely used by a number of people in all sorts of
8 different ways. You can refer to, you know, your close
9 group of seven or eight friends as your friends or you
10 could refer to 100 people that you are working with as
11 your friends.

12 48822 So I think in the context -- you have
13 to look at the section that it's being used in and the
14 context of the section to decide in part what "friend"
15 would entail.

16 48823 Generally if it is a provision that
17 talks about restrictions on, for example, private
18 interests that relate to yourself or your family, then
19 I think it is a fairly restricted group that would be
20 friends, because that is the context you are reading
21 that in.

22 48824 So I think you have to take into
23 account particularly the circumstances that you are
24 trying to decide who a friend is.

25 48825 MR. CONACHER: Yes, okay.

1 48826 Mr. Fraser, I'm not sure whether you
2 had any response in terms of the limits of the word
3 "friend", whether it is social friends or political
4 friends or people you work with?

5 48827 MR. FRASER: Well, that term isn't
6 used of course in our Act. It may be used elsewhere.
7 It is not a term that has any definition or meaning
8 within the context of the Act.

9 48828 MR. CONACHER: Yes.

10 48829 MR. FRASER: As much as I can say is
11 that it has arisen, I suppose, in the context of the
12 Blencoe decision to some extent and it has certainly
13 arisen in the context of whether a Member's private
14 interest effectively is addressed in terms of the
15 interest of relatives, as I mentioned earlier.

16 48830 And those particular situations I
17 guess are discreet enough so that I don't have any
18 difficulty with it. But I wouldn't want to go beyond
19 that.

20 48831 One of the things, if I may say so,
21 Mr. Conacher, that I think is very important about your
22 intervention here is a difference that does exist in
23 the various jurisdictions and that is the extent to
24 which people doing our jobs have an independent
25 investigatory jurisdiction and responsibility. Maybe

1 I will just say jurisdiction for the moment.

2 48832 In British Columbia there is no such
3 independent ability sanctioned by the Act and basically
4 the Commissioner sits in wait of people to come forward
5 with work and business for the Commissioner to do.

6 48833 It raises, it seems to me, a
7 philosophical issue because that jurisdiction has been
8 given to other Commissioners elsewhere in the country.
9 So clearly it is a discussion that still remains on
10 foot.

11 48834 My own sense of it, based on my
12 limited experience of all of 16 months, is that having
13 the kind of original jurisdiction that Auditors General
14 have and that sort of thing would perhaps serve the
15 public imperative of making sure that we get to the
16 bottom of anything that may be going on that shouldn't
17 be and trying to balance that, however, with the
18 administrative ability to effectively deal with our
19 Acts on the basis that Members can come and can confess
20 and can engage with us without seeing us as an auditor
21 kind of figure.

22 48835 I'm not sure where all of us come out
23 in all of that. I'm just saying that one can imagine,
24 frankly, defending both situations as being
25 appropriate, but there is quite a difference in the

1 country.

2 48836 MR. CONACHER: Just a few more.

3 48837 Commissioner Dawson, your guideline
4 on gifts essentially sets out that if a person is
5 lobbying or dealing with an official covered by the
6 Conflict of Interest Act or will be dealing with them,
7 then various types of gifts would have to be refused
8 because those types of gifts would create a conflict.

9 48838 But the one situation it doesn't
10 cover is what if the person is dealing with them and
11 then stops dealing with them and then offers them a
12 gift.

13 48839 So I'm just wondering about that
14 situation, because when I read through the guideline on
15 gifts -- which I would like to note for the record I
16 believe is the world's best standard, so I applaud you
17 in setting that standard in your interpretation of
18 those sections of the Act in terms of taking seriously
19 the ability of gifts to influence decision-makers, even
20 small gifts, depending on the context.

21 48840 But it just came as a question to me
22 in reading through it that there is one situation that
23 seemed to be left out: that you lobby, you do it all,
24 and you haven't given any gifts and then afterwards you
25 give the gift as a reward; thanks for making that

1 decision that I really liked.

2 48841 Would the decision-maker have to
3 refuse the gift at that point?

4 48842 MS DAWSON: I think one would have to
5 have a good solid discussion with the person asking the
6 question if they received -- or they were about to
7 receive the gift. I think it would look bad probably
8 in most cases, so therefore from a practical point of
9 view probably not a great idea to accept the gift.

10 48843 But I think if I was pressed to sort
11 of go into the legality of it, I think it would depend
12 on whether there was a connection with the past
13 action --

14 48844 MR. CONACHER: Yes.

15 48845 MS DAWSON: -- and whether indeed
16 there was any likelihood of a future action.

17 48846 But, you know, it would depend on the
18 case, but it sure wouldn't look very good.

19 48847 MR. CONACHER: Yes. So you see the
20 possibility of a past action and the relationship --

21 48848 MS DAWSON: Could.

22 48849 MR. CONACHER: -- of the dealings
23 would continue to affect whether someone could then
24 accept something?

25 48850 MS DAWSON: Yes. Without sort of

1 tying myself down in black and white, yes, I think so.

2 48851 MR. CONACHER: Okay. So I asked that
3 question first with the follow-up to Commissioner
4 Shepherd: that in the past the Registrar of Lobbyist
5 issued a notice -- this was in December 2005 -- saying
6 that lobbyists can deregister as lobbyists during an
7 election and the registrar will help them do it very
8 quickly so that they can spend the 35 or so days of an
9 election campaign helping Ministers and others get
10 elected and helping the party, whichever party they
11 support, providing all those services, volunteer or
12 otherwise, and then re-register afterwards and then go
13 back to lobbying those people that they just helped get
14 elected.

15 48852 That was essentially the essence of
16 the Registrar's 2005 Notice.

17 48853 Given what the Ethics Commissioner
18 has just said about -- and the gifts rule covers gifts
19 of money, property or services, and also says if you
20 are going -- already the guideline on gifts says if you
21 were going to deal with someone in the future you can't
22 give them a gift now.

23 48854 Do you have a different standard,
24 that it is okay for a lobbyist to provide services as a
25 gift to a Minister or others and then go and lobby

1 them?

2 48855 In other words, the December 2005
3 notice that the Registrar sent to all lobbyists is not
4 the same standard as in the guideline on gifts.

5 48856 MRS. SHEPHERD: Well, actually there
6 was, as you know, a recent Federal Court of Appeal
7 decision that I think was a well reasoned decision, and
8 it determined that the previous guidance that had been
9 there on Rule 8 was unreasonable.

10 48857 So what the officer is currently
11 doing -- and I'm sort of prefacing this because it will
12 answer I think your last point -- is that we are
13 currently looking at providing new guidance. I mean,
14 the Court of Appeal decision expanded the scope of the
15 conflict of interest decision for Rule 8, the Lobbyist
16 Code of Conduct, by eliminating the distinction between
17 a real potential or apparent conflict of interest,
18 which is now changing the scope of a lot of the
19 conflict in interest in terms of the lobbying regime.

20 48858 So what I see is that lobbyists are
21 going to be held to a stricter set of rules, a higher
22 standard, and this is obviously going to, I think as a
23 consequence, probably affect the relationships between
24 public officeholders and lobbyists.

25 48859 So to get at your question of what

1 happens with electoral campaigns, I mean as soon as
2 that sort of guidance comes out, this is going to fall
3 from that in terms of, you know, I guess what will be
4 determined to be a breach in terms of conflict of
5 interest.

6 48860 In terms of just a clarification with
7 the way the system works now in terms of deregistering,
8 it is automatic. So it doesn't ask you why you want to
9 deregister. If somebody comes and says, you know, I am
10 deregistering on the 15th of the month, this system
11 will accept it for whatever reason because it could be
12 any number of things.

13 48861 MR. CONACHER: Thank you very much.

14 48862 On the same issue of relationships,
15 services provided by lobbyists, Commissioner Dawson,
16 the MPs Code, the House of Commons Code, has been
17 changed just a couple of weeks ago to exempt from the
18 definition of benefit any service provided by a
19 volunteer.

20 48863 Given the standard you have set out
21 in your guideline on gifts, gifts again defined as
22 money, property or services, which I think is
23 effectively the standard as well in the House of
24 Commons Code, is it now exempt, given these changes to
25 the definition of benefit? Services provided by

1 lobbyists on a volunteer basis to Members of Parliament
2 would now be exempt from the definition of benefit and
3 therefore could never create a conflict of interest no
4 matter how extensive the services were?

5 48864 MS DAWSON: Well, this is a brand new
6 provision which I have not had the opportunity to apply
7 at all.

8 48865 It says -- I think it is volunteer
9 services is the expression.

10 48866 MR. CONACHER: Yes.

11 48867 MS DAWSON: I'm not so sure I would
12 characterize a gift from a lobbyist as a gift from
13 somebody who is providing voluntary services.

14 48868 So I mean normally a lobbyist
15 wouldn't be caught in that kind of description.

16 48869 MR. CONACHER: If they were
17 volunteering for the Member, though?

18 48870 MS DAWSON: You know, one would have
19 to look at the actual case and see what was really
20 involved.

21 48871 But normally a volunteer service to
22 me means those people that are working in the
23 Minister's constituency office helping him out on a
24 day-to-day basis on stuffing envelopes and stuff.

25 48872 MR. CONACHER: Yes.

1 48873 MS DAWSON: But I think that is as
2 far as I could go on that.

3 48874 MS BROOKS: Mr. Conacher, just one
4 more question and then I think we will have to move on.

5 48875 MR. CONACHER: Sure.

6 48876 MS BROOKS: Thank you.

7 48877 MR. CONACHER: It's related as well
8 for Commissioner Dawson.

9 48878 Have you set definition in your own
10 mind or in giving advice to date on what is normal
11 courtesy protocol or hospitality that normally
12 accompanies the Member's position?

13 48879 In other words, what kind of gifts of
14 money, property or services are acceptable because they
15 are normal courtesy protocol or hospitality?

16 48880 MS DAWSON: I have certainly had to
17 think about that on a number of occasion so I have a
18 pretty good idea. I mean, it is basically things like
19 loot bags that you get at conventions, or it's a thank
20 you gift after you have given a speech, and that sort
21 of thing. Or it could be on international trips. It
22 could be things that are a bit bigger from different
23 governments or something.

24 48881 But I don't have a huge amount of
25 trouble, I don't think, in understanding what I think

1 that is.

2 48882 MR. CONACHER: So it's essentially
3 following your definition of gift that you have set out
4 in the guideline on gifts.

5 48883 MS DAWSON: Yes.

6 48884 MR. CONACHER: It's the small nominal
7 kinds of things you get by attending events?

8 48885 MS DAWSON: Right.

9 48886 MR. CONACHER: Okay, great. Thank
10 you very much.

11 48887 MS BROOKS: Thank you very much.

12 48888 Commissioner, we are at the end of
13 our parties' questions and I think we are finished our
14 panel at this point.

15 48889 If you have any questions or counsel,
16 then I invite them.

17 48890 COMMISSIONER OLIPHANT: I don't have
18 any questions, but I'm just -- we are just so fortunate
19 to have this particular panel here, I am wondering if
20 any of the panellists wish to avail themselves of the
21 opportunity to make a final comment before we close off
22 for the day?

23 48891 MS BROOKS: I will start from my
24 left.

25 48892 Mr. Fraser, do you have anything?

1 48893 Lynn...?

2 48894 MRS. MORRISON: I hate to repeat
3 myself, but I think it is so important, number one, to
4 have trust in the Commissioner and the jurisdictions
5 that they have and that they are doing the right thing.

6 48895 But also education. I get comments
7 from my staff that that is my number one priority in my
8 mandate, in all aspects of my mandate, is education.
9 If I had my way it would be mandatory, but I haven't
10 been able to get my way in 20 years so I'm not too
11 hopeful for the future.

12 48896 I think that's about all. Thank you.

13 48897 MS BROOKS: Karen or Mary?

14 48898 MS DAWSON: I agree very much with
15 what Lynn says. You know, it is to get people to
16 understand what the rules are that is so important.
17 And I agree as well that it is very important that the
18 Commissioners have the respect of the people that they
19 are dealing with.

20 48899 One other thing I might suggest is I
21 have, I hope, my annual reports on both the Code and
22 the Act coming out in the next couple of days and it
23 might be worth just taking a peek in there to see if
24 there is any aspect that would be of assistance in your
25 deliberations in that.

1 48900 MRS. SHEPHERD: Just sort of echoing
2 on the last thing of education, I think education is
3 important in terms of educating people regarding the
4 Act and its requirements rather than exclusively
5 relying on enforcement measures.

6 48901 In fact, the Lobbying Act I think has
7 recognized the importance of education by providing now
8 the Commissioner with an explicit mandate to develop
9 and institute educational and outreach programs to
10 ensure that lobbyists, public officeholders with whom
11 they communicate and others interested in lobbying
12 activities, you know, fully understand the Act and the
13 rationale requirements behind it.

14 48902 I think it's key and I think just
15 since April 2008 we have done more than 35
16 presentations to, you know, universities, nonprofit
17 organizations, corporations -- I said, you know,
18 universities and public officeholders and is quite
19 informative.

20 48903 MS BROOKS: Commissioner, I would
21 like to thank these panel members.

22 48904 I must say that when I first
23 contacted them, it was rather late in the day given the
24 schedules of very busy people.

25 48905 Mr. Fraser's government out in B.C.

1 had gone through an election and he is very busy with
2 the transition provisions under his Code; Lynn Morrison
3 as well, very busy with what is happening in Ontario
4 just in the normal course; and our federal
5 Commissioner.

6 48906 So I was very gratified when they
7 were so enthusiastic about coming here today.

8 48907 I think that the goal of enhancing
9 trust and certainly learning, the education component,
10 have been amply served through this presentation.

11 48908 Thanks to all of you.

12 48909 COMMISSIONER OLIPHANT: Yes. Just
13 before we leave, I would like to offer my personal
14 thanks to each of the panellists who have come. I
15 assure you that I listened closely to the wish lists
16 that were proffered by some of you about amendments
17 that you would like, and I heard someone observe that
18 perhaps a recommendation from an independent source
19 might be a little more influential in terms of amending
20 legislation or Codes, whatever govern you.

21 48910 I simply say this: that to the
22 extent that we can help, we will. But remember we have
23 a mandate and I don't want to go beyond that. So far
24 we haven't had any applications for judicial review and
25 I don't want to end the conference by triggering one.

1 48911 So thanks again for coming. I really
2 appreciate your assistance. It has been very helpful.
3 Thank you.

4 --- Pause

5 48912 COMMISSIONER OLIPHANT: Yes. Just
6 before we leave, sorry, Mr. Wolson has just reminded me
7 that our next session is Monday morning.

8 48913 We have an interesting panel of
9 former public officeholders, including a former Prime
10 Minister, former Head of the Privy Council, and it will
11 be interesting.

12 48914 That will start at 9 o'clock Monday
13 morning here in this room.

14 48915 This will be the last opportunity
15 that I have on behalf of the Commission to extend
16 thanks once again to the three experts for the
17 Commission: Professor Turnbull, Professor Thomas and
18 Mr. Levine. They have written draft papers which may
19 well be amended as a result of things that they have
20 heard here, so their work is not quite done. But the
21 opportunity to interact in a personal way comes to an
22 end at this time and I thank you once again for
23 everything that you have done for and on behalf of the
24 Commission.

25 48916 It is truly appreciated. Thank you.

1 48917 We will adjourn now, thank you. Good
2 afternoon.

3 --- Whereupon the hearing adjourned at 12:54 p.m.,
4 to resume on Monday, June 22, 2009 at 9:00 a.m. /
5 L'audience est ajournée à 12 h 54, pour reprendre
6 le lundi 22 juin 2009 à 9 h 00

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11 transcribed the foregoing to the best of
12 our skills and abilities.

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14 Nous certifions que ce qui précède est une
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