

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:

Room 147
(Gowlings Moot Court Room)
Fauteux Hall, Faculty of Law
University of Ottawa
57 Louis Pasteur Street
Ottawa, Ontario
Tuesday, July 28, 2009

Tenue à :

Pièce 147
(salle du Tribunal-école Gowlings)
Pavillon Fauteux, Faculté de droit
Université d'Ottawa
57, rue Louis-Pasteur
Ottawa (Ontario)

le mardi 28 juillet 2009

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TABLE OF CONTENTS / TABLE DES MATIÈRES

	PAGE
Hearing resumes at 9:30 a.m. / L'audience débute à 9 h 30	5626
Presentation by / Présentation par Ms Susan Gray, Director, U.K. Propriety and Ethics Team	5629
Recess taken at 10:44 a.m. / Suspension à 10 h 44 Hearing resumes at 11:00 a.m. / Reprise à 11 h 00	5679
Recess taken at 11:40 a.m. / Suspension à 11 h 40 Hearing resumes at 11:47 a.m. / Reprise à 11 h 47	5711
Presentation by / Présentation par Ms Mary Dawson, Conflict of Interest and Ethics Commissioner	5713
Hearing adjourns at 12:51 p.m. / L'audience est ajournée à 12 h 51	5764

1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon resuming on Tuesday, July 28, 2009

3 at 9:30 a.m. / L'audience reprend le mardi,

4 28 juillet 2009 à 09 h 30

5 49531 MR. WOLSON: Good morning,

6 Mr. Commissioner.

7 49532 We are convening this morning to hear
8 from two witnesses. Ms Mary Dawson will be here later
9 this morning and this morning I have the pleasure of
10 introducing Ms Sue Gray to you.

11 49533 I can tell you that as a result
12 of previous hearings where experts have testified,
13 and particularly the evidence of Professor Lori
14 Turnbull who raised in her paper and discussed with
15 you the British committee system on business
16 appointments post public office.

17 49534 Having heard from Ms Turnbull and
18 having questioned a number of the witnesses who came
19 after her, we resolved that Mr. Forcese would try to
20 speak to someone in the United Kingdom so we could have
21 a representative here to tell you about the British
22 system. This morning of course we have Ms Sue Gray.

23 49535 Ms Gray joined the Cabinet Office of
24 the United Kingdom in July of 1996. She is currently
25 the Director of Propriety and Ethics, an appointment

1 which she was given in 2006.

2 49536 The responsibility of that position
3 is ministers' and civil service propriety issues.
4 Those are the issues which Ms Gray deals with on a
5 daily basis.

6 49537 In the U.K. she is involved in the
7 new Ministerial Code, the new Civil Service Code, the
8 Code for Special Advisers, and a whole range of ethical
9 and propriety issues relating to ministers, special
10 advisers and civil servants.

11 49538 I can tell you that prior to her work
12 in government Ms Gray ran a pub in Northern Ireland
13 called The Cove Bar. She feels that that employment
14 and what she's doing now suits her very well to deal
15 with issues of ethics and propriety in public office.

16 49539 Now, my colleague Mr. Forcese has
17 done excellent work I must say for you,
18 Mr. Commissioner, in reaching Ms Gray and she has
19 been provided with a list of questions that Mr. Forcese
20 composed which deal with issues that you may be
21 concerned about.

22 49540 I understand that the parties have
23 been provided with those questions. Certainly
24 Mr. Commissioner and my colleagues, Commission counsel,
25 have the questions.

1 49541 I'm just going to ask Ms Gray to tell
2 us about her involvement in the system in the United
3 Kingdom and she will, during the course of her
4 discussions, deal with those questions on the basis of
5 her discussion with you.

6 49542 I thought this morning we would then
7 simply turn the floor over to Ms Gray.

8 49543 We will take a break at some point
9 this morning. We have her here for a couple of hours
10 and we will reserve the last half hour for questions
11 from the parties and counsel and any questions that you
12 may have, sir.

13 49544 COMMISSIONER OLIPHANT: Thank you
14 very much, Mr. Wolson.

15 49545 Let me just say that it's a pleasure
16 to be back in session. It feels like a reunion to me
17 seeing a lot of familiar faces and it's a very happy
18 experience for me.

19 49546 Let me join Mr. Wolson, Ms Gray,
20 in offering to you a genuine Canadian welcome. We
21 are absolutely delighted that you have been able
22 to join us today.

23 49547 I guess with the background that you
24 have, having run a pub in Amargh in Northern Ireland
25 during the troubles, facing and staring down at Cabinet

1 Minister pales by comparison to some of the experiences
2 you must have had during those very heady days.

3 49548 So welcome to Canada and I turn the
4 floor over to you.

5 PRESENTATION BY MS GRAY / PRÉSENTATION PAR MME GRAY

6 49549 MS GRAY: Thank you. Thank you very,
7 very much. Thank you to everybody for extending to me
8 the hospitality I think that has been extended to me
9 which has been fantastic. So thank you, particularly
10 to Craig.

11 49550 In the U.K. government we have, as
12 one of the witnesses has said, an Advisory Committee on
13 Business Appointments. That committee looks at
14 applications for people taking up jobs after they have
15 left office and its looks at applications from
16 ministers, from civil servants, from diplomats and from
17 the military. So it has quite a broad remit.

18 49551 In relation to ministers, it takes
19 its authority from Ministerial Code. This is this
20 document here which is the Prime Minister's guidance to
21 his ministers and it sets the standards of what is
22 expected from ministers.

23 49552 There is a paragraph in the code
24 which says:

25 "On leaving office, Ministers

1 must seek advice from the
2 independent Advisory Committee
3 on Business Appointments about
4 any appointments or employment
5 they wish to take up within two
6 years of leaving office, apart
7 from unpaid appointments in
8 non-commercial organisations.
9 Ministers will be expected to
10 abide by the advice of the
11 Committee."

12 49553 So that's where it takes its
13 authority from.

14 49554 A little bit about how ministers are
15 appointed, because it is quite relevant as well.

16 49555 When ministers come into government
17 they get a letter of appointment and in that letter
18 appointing them as a minister -- it always feels a bit
19 off -- but that letter doesn't actually say when you
20 leave the office you will be expected to put
21 applications to the Advisory Committee. So it's
22 flagged with them from day one of their appointment.

23 49556 With certain ministers it's even
24 flagged with them before they take up office.

25 49557 We have a new category of minister in

1 the U.K. which are known affectionately as "GOATS" and
2 they are part of the Prime Minister's commitment to
3 have a government of all the talents. He brought in a
4 number of ministers who are experts and have come from
5 particular sectors. So we have had a Health Minister
6 recently who combined working as a minister with being
7 a medical consultant, and we have a couple of ministers
8 who come from the banking field.

9 49558 Now, before they are appointed I
10 actually talked to them. I take them through the rules
11 about their Declaration of Interests, making it very
12 clear that they may have to dispose of their interests,
13 set up a blind trust, you know, a whole range of issues
14 that we cover.

15 49559 But I'm also clear with them before
16 they come into office that when they leave office they
17 will have to go through this process. That process may
18 actually impose a waiting period on them so they may
19 not be able to walk straight out of ministerial life
20 back into the jobs that they had before. So we are
21 very, very clear with them what that entails.

22 49560 In terms of their Declaration of
23 Interest, they make a very detailed Declaration of
24 Interest to their department and that then comes to the
25 Cabinet Office and we cover that Declaration of

1 Interest and we publish some information. We don't
2 publish all information. Very private and personal
3 information we withhold.

4 49561 So that's the background I think in
5 which this Advisory Committee operates.

6 49562 We then have the Advisory Committee
7 on Business Appointments, which is actually an
8 independent body. It's what we refer to in the U.K. as
9 a quango, a non-departmental public body, and the
10 government sets the rules for this committee.

11 49563 We have rules for ministers, rules
12 for civil servants, rules for the diplomats and
13 military. We set the rules, we appoint the members and
14 they then get on with doing their job.

15 49564 There are normally about eight
16 members of this committee, there is a Chairman, there
17 are three politicians. They are nominated by the
18 political parties, by the three main political parties.
19 They nominate their own representative to this
20 committee. We then have others which are drawn from
21 the military, because this committee considers military
22 applications; diplomats; the civil service and we also
23 have a private sector person, because it's very
24 important I think that in this committee it has to have
25 the credibility and support with the people that it's

1 dealing with, but at the same time it must be able to
2 give a very objective view.

3 49565 So the committee, it is quite varied.

4 49566 The members don't get paid on this
5 committee, they do it for public service, and just
6 recently we have agreed that they should have a small
7 honorarium to cover their expenses, which I think is
8 going to be about 8000 pounds a year for the chairman
9 and less for members. So people join this committee
10 not to obviously make money out of it, they join it to
11 give into public service.

12 49567 They up until now have tended to deal
13 with cases by correspondence, but they have decided
14 that they are going to meet a bit more regularly, they
15 are going to consider the more difficult cases and have
16 discussions around them rather than that being held on
17 paper. That's quite important, we feel, to ensure that
18 we learn -- and lessons are learned from the process.
19 So where the rules need strengthening or tightening
20 that we pick up from the committee areas that they have
21 highlighted.

22 49568 Applications go to the committee from
23 the most senior civil servants and military and it goes
24 to the committee from all ministers and accompanying
25 that application is a statement from the permanent head

1 of the department who will say if a minister wants
2 to -- a former minister wants to go and work somewhere,
3 he or she will say whether that minister had contact
4 with that organization when they were in office,
5 whether the offer of the job could be seen as a reward
6 for past favours, whether the former minister has
7 knowledge and policy background that could actually
8 disadvantage competitors of the employer they want to
9 go and take up job.

10 49569 So we place quite a lot of
11 responsibility on the statement from the most senior
12 civil servant in the department in which that former
13 minister was.

14 49570 The committee then consider the
15 application. What they do is that when an individual
16 takes up the job with a company they then immediately
17 put on their website that the committee considered the
18 application and whether any conditions were imposed.

19 49571 So in terms of confidentiality some
20 ministers will talk to the committee about jobs they
21 are thinking about taking up, but actually if they
22 don't take that job up, for whatever reason, then there
23 is nothing made public about it. So it's a very
24 confidential exercise as well up until the point at
25 which the former minister takes up their job.

1 49572 The websites. The Advisory
2 Committee's website, the whole process is scrutinized
3 by the media, it is scrutinized by Parliament itself,
4 by politicians, and by the Advisory Committee. So,
5 for example, if somebody did take up a job and it was
6 reported in the press and the Advisory Committee
7 hadn't been consulted, they would write to that
8 former minister.

9 49573 They would also be very prepared, you
10 know, to make public the fact they hadn't been
11 consulted and they would also be willing, though, to
12 consider retrospective approval, to consider an
13 application retrospectively.

14 49574 So there is a range of issues that
15 they can actually, you know -- that they can do.

16 49575 Just taking some of these questions,
17 the Advisory Committee is set out in legislation.
18 Most of our ethics and our standards aren't set out
19 in legislation. The Ministerial Code is what we call
20 soft law and actually we have never felt the need to
21 have anything in legislation because actually the
22 system seems to work very well. It's a very strong
23 system and, you know, the lapses are very occasional
24 and very few.

25 49576 In terms of who is appointed to the

1 committee, apart from the political appointments where
2 the party leaders choose the person, the other people
3 are -- we consult the relevant department, they come
4 forward with a couple of names and there is some -- you
5 know, a chat is held with the individual member and
6 decided who would be best for the job.

7 49577 The Prime Minister actually makes the
8 appointments to this committee.

9 49578 The members and the chair previously
10 have served a little bit indefinitely. They started
11 on for three years, they were then reappointed for
12 a further three years and so it went on for a
13 little while.

14 49579 We have changed the system whereby
15 the chair and members are now appointed for single
16 non-renewable terms of five years. This is felt to be
17 very important in terms of, you know, if somebody is
18 seeking reappointment the perception could be that near
19 the time of their expiry of their appointment and
20 wanting reappointment, that they could go a bit soft on
21 the people they are dealing with, with a view to
22 getting a further term of office. So now most of our
23 appointments on the ethics site are for single
24 non-renewable terms to move away from that.

25 49580 In terms of the membership, because

1 you are drawing from specific fields who, you know --
2 one you are trying to oversee, get an understanding
3 within this committee about the nature of the work that
4 individuals do. Particularly if you take former
5 ministers, the reason it's important to have political
6 appointments on there is that there is an understanding
7 about how political life works and, you know, you have
8 to have people that move between the two. So that's
9 why they are there.

10 49581 The same with the military, the same
11 with the private sector, because while we might worry
12 about people, you know, going into the private sector
13 and how that would be perceived, it's often quite
14 useful to have a private sector view as to how the
15 industry itself will view the appointment.

16 49582 But if a member was conflicted in any
17 way they would recuse themselves for the purposes of
18 that meeting or that discussion about that individual.

19 49583 We are in the process of looking at
20 the rules again and I think we will be quite
21 interested. We look at practice overseas and we will
22 be interested to see the results of this Commission in
23 terms of the work we are doing on the rules.

24 49584 But the rules for ministers haven't
25 been revised. They came in around the mid-90s, about

1 '95, and now that they have been in operation for over
2 10 years we feel it's time to revisit them and learn
3 from practice and see where they might need amendment.

4 So we are looking to do that over the summer.

5 49585 We will be looking also at the rules
6 for civil servants and perhaps trying to have a form --
7 the two forms are quite different at the moment -- we
8 will be looking to see whether we need a bit more
9 commonality in the forms.

10 49586 I think that -- I mean that's mainly
11 how the committee works.

12 49587 In terms of enforcement, we have a
13 media that obviously scrutinizes everything so it's
14 quite powerful. We have politicians who scrutinize and
15 you know that's obviously a very good method of seeing
16 where the system is currently fit the purpose. But
17 also the committee themselves and us in the Cabinet
18 Office are always aware and looking to see where there
19 are breaches.

20 49588 What's difficult is that these
21 former ministers, once they have left office of course,
22 and if they breach -- you know, if they don't go and
23 take the advice of the Advisory Committee what
24 sanctions do you have.

25 49589 Our experience is that actually very

1 few breach. They do go and seek the advice of the
2 committee. They want to be able to say when the
3 appointment gets scrutinized or when there is criticism
4 of them perhaps taking up a job, you know, they want to
5 be able to say they have consulted the Advisory
6 Committee, the Advisory Committee have approved the
7 appointment.

8 49590 They may decide on certain
9 conditions, they may impose a lobbying ban, they may
10 decide that somebody can't take up appointment for a
11 number of months, there is a whole range, but they want
12 to be able to say they have consulted the Advisory
13 Committee. It's a very important key for them.

14 49591 And our experience is, you know, when
15 a minister leaves office they are actually thinking
16 Advisory Committee on Business Appointments. It sort
17 of seems to go hand-in-hand.

18 49592 For Cabinet Ministers there is a
19 three month automatic waiting period between leaving
20 office and taking up a job. That three month period
21 can be waived by the committee, but it's likely to be
22 exceptional and it's likely to be in circumstances
23 where perhaps it might be an academic appointment or it
24 would be with a particular charity, but it would be
25 very exceptional.

1 49593 It's actually quite exceptional
2 for Cabinet Minister to want to actually ask to
3 do something, you know, within immediately on
4 leaving office.

5 49594 The rules apply for two years after
6 leaving office and we have considered recently whether
7 that two-year period should be lengthened or whether it
8 should be shortened. And we felt that two years was
9 about the right length of time. That is about the
10 length of time it could be judged the information that
11 you got when you were in office -- the currency of that
12 information, things move on quite quickly.

13 49595 We thought about bringing it down to
14 12 months but I think perception or, you know, strength
15 of public feeling would be that actually two years
16 feels right.

17 49596 We thought about making it longer,
18 but I think we have got to understand that, you know,
19 restraint of trade, putting a restraint on people's
20 ability to go out there and work is actually quite a
21 difficult thing as well.

22 49597 So two years. I think we are going
23 to stick with the two year period.

24 49598 And we keep the work of the committee
25 under review. Although I work closely with the

1 Secretariat just in understanding the feedback from the
2 cases that they have considered, also putting people
3 their way, people phone me all the time and actually
4 want to know about the process so you put them in the
5 direction of the Advisory Committee, but they are very
6 independent committee.

7 49599 Certainly their decisions are
8 completely their own decisions and they account for
9 those decisions. They publish an Annual Report, they
10 publish monthly updates on their website of the
11 business they have undertaken and there would be
12 absolutely no question of government trying to
13 influence that committee's decision or judgment making.

14 49600 So I hope that I have covered the
15 main part of the work of the committee and I would be
16 very, very happy to take any questions or talk to any
17 of this in more detail.

18 49601 COMMISSIONER OLIPHANT: I have a
19 question I would like to ask you, Ms Gray.

20 49602 This committee appears to possess
21 quite a bit of power in terms of the future of
22 politicians, diplomats or military people leaving
23 office and I'm wondering, once a decision is made if an
24 individual who has applied feels aggrieved by the
25 decision, is there any process whereby an appeal can be

1 taken other than perhaps judicial review?

2 49603 MS GRAY: The committee, when they
3 take their decision they write to the former minister
4 setting out the judgments they have made, the reasons
5 for their decision and there is a right of appeal to
6 the committee.

7 49604 The individual can either write
8 complaining about the decision they have made and give
9 that his best shot in that process, or they can
10 actually go in front -- they can actually ask to see
11 the Advisory Committee and they can go and put their
12 case to the Advisory Committee, which is a very
13 important point because obviously when you are dealing
14 with a form you may not have captured everything on
15 that form. You know, you may have information that
16 you feel hasn't been adequately understood by the
17 committee and its important, then, that the individual
18 can go there.

19 49605 It's also important in terms of if
20 the individual wanted to challenge that decision in the
21 courts that I think it's very important that the
22 committee themselves have actually heard the full facts
23 or perhaps, you know, additional information that the
24 member feels they weren't able to cover on the forms.

25 49606 And it does happen. Only recently a

1 former minister went in front of the committee and
2 actually ask them to consider certain issues that he
3 may have felt weren't covered in an appropriate -- you
4 know, as fully as they should have been.

5 49607 COMMISSIONER OLIPHANT: Thank you.

6 49608 MR. WOLSON: The committee, Ms Gray,
7 did not meet, it was done through correspondence, but I
8 understand that that is changing.

9 49609 MS GRAY: Yes. Up until relatively
10 recently the committee met on a very exceptional basis.
11 It tended to deal with most issues by correspondence.
12 And so the Secretary and the Chair would set out the
13 merits of a particular case and they would write around
14 to all the members.

15 49610 More recently the committee had
16 decided that it would be better for them to meet
17 possibly every couple of months and -- I mean the
18 number of applications they get, a large number of them
19 will still be possible to deal with by paper because
20 they are quite straightforward, but in the more
21 difficult cases, or the cases where there is good
22 practice or practice to perhaps disseminate around
23 other departments, they feel it would be beneficial to
24 meet on a more regular basis and that's the action that
25 they have put in hand.

1 49611 MR. WOLSON: And an unrelated
2 question but one of significance for us: How do you
3 keep politics out of the decision-making?

4 49612 MS GRAY: I think that your key is
5 the individuals that the political parties nominate
6 to this committee. The political members of the
7 committee are very much people who have a lot of
8 experience in political life, they are respected by
9 all parties and they are seen to be very much acting
10 in the public interest rather than solely in their
11 pure party political interest. So they are well
12 respected members.

13 49613 They tend to be -- I think at the
14 moment they are all drawn from the House of Lords, but
15 they are people -- I think certainly two of them have
16 served as ministers, one under a Conservative
17 government and one under a Labour government -- and
18 they both served as ministers and all three of them are
19 seen as very big players, very respected members of
20 their parties.

21 49614 MR. WOLSON: Given that you will meet
22 with a minister who is leaving office and review with
23 that minister certain steps the minister will have to
24 take, in particular if that minister is seeking some
25 kind of employment, post-office employment, do you

1 think that the intrusiveness of that process is
2 preventing qualified people from seeking office?

3 49615 MS GRAY: I don't think that is
4 the case.

5 49616 I think, first of all, former
6 ministers or ministers who are moving out of government
7 are really keen to be seen to be doing the right thing.
8 They know the rules and actually it is always the
9 thing they think about. So as soon as they leave they
10 are thinking about, you know -- I mean a number of
11 them, they don't obviously have jobs to go to but they
12 are thinking about the next few months and they want to
13 be seen to do the right thing. They want to know the
14 process. They will phone up, they will ask for
15 meetings and generally it works really well.

16 49617 In terms of expertise, it's not our
17 experience that people are put off by this process. In
18 the last couple of years we have had a number of people
19 who have come in from the banking industry, coming from
20 the health sector and from the private sector more
21 generally and they know the rules, they know it may be
22 difficult for them to just walk straight out of
23 government and go back -- even go back to the sector
24 they came in from, but they understand all of that and
25 they seem to be keen still to come in and to take the

1 process and to live by that process.

2 49618 MR. WOLSON: When you say they know
3 the rules, what is the educational process or make-up
4 involved in terms of a discussion of the rules or some
5 kind of educational process available to the ministers?

6 49619 MS GRAY: When ministers come into
7 ministerial life we do induction for ministers. We
8 induct new ministers into ministerial life. That
9 induction event is normally held within the first
10 couple of weeks of appointment and all ministers
11 attend. It tends to be run as a bit of a breakfast
12 workshop and we cover issues like the Ministerial Code,
13 we go through that; we go through handling financial
14 interests, handling private interests; and we go
15 through what happens when you leave so that they have
16 that understanding from day one.

17 49620 For some of the ministers who come in
18 where their interests are quite complex or they have
19 particular questions, we talk to them about the process
20 before they start, before they join as a minister.

21 49621 So I think there is a very wide
22 understanding about the process and what it entails and
23 the possible sanctions that might apply.

24 49622 It is quite normal for the Advisory
25 Committee to impose a sanction of no lobbying, no

1 lobbying government for a particular period.

2 49623 They may also apply a sanction for
3 example on a company. If somebody wants to go and work
4 for a company, they may decide that they could work for
5 that company for example in its U.S.-based operations
6 but not within the U.K.

7 49624 Occasionally they will say to a
8 former civil servant, or to somebody, that you can't
9 work for a company ever. That is very exceptional, but
10 it will all depend on the level of decision-making that
11 that person has been involved in.

12 49625 COMMISSIONER OLIPHANT: A question,
13 if I might, please.

14 49626 Take the situation of a minister or
15 perhaps a Prime Minister who is thinking of leaving
16 office and becoming self-employed as a consultant,
17 would a person who proposes to be self-employed still
18 require the advice of the Committee on Appointments?

19 49627 MS GRAY: Absolutely. It's
20 absolutely very, very clear that -- in the rules it's
21 very clear that if you are going to work as a
22 consultant, whether for a company or self-employed, you
23 must get the advice of the Advisory Committee. That
24 applies to former ministers, former Prime Minister and
25 obviously civil servants and the other people that this

1 committee operates under.

2 49628 In fact, I think it was the former
3 Prime Minister Tony Blair who did, I think, work as a
4 self-employed -- to do that and I think that was
5 actually accounted for in the Advisory Committee's
6 Annual Report.

7 49629 Speeches are the same. If they want
8 to take regular speeches with a company they have to go
9 through the Advisory Committee.

10 49630 COMMISSIONER OLIPHANT: Even to make
11 speeches with --

12 49631 MS GRAY: For money.

13 49632 COMMISSIONER OLIPHANT: -- a company
14 like the Washington Bureau for example?

15 49633 MS GRAY: Yes.

16 49634 COMMISSIONER OLIPHANT: Okay.

17 49635 MS GRAY: Yes.

18 49636 If it's an occasional -- if it's a
19 one-off speech then the individual wouldn't normally
20 have to go through the Advisory Committee, but if it
21 is to be put on a company's marketing -- they will
22 market it for you, then they would go through the
23 Advisory Committee.

24 49637 COMMISSIONER OLIPHANT: Just
25 with your experience, in a situation like that

1 would the committee say: Yes, you can become
2 employed by a Speakers Bureau, but you will not address
3 certain subjects?

4 49638 How is that handled?

5 49639 MS GRAY: I think normally the
6 individual who might be putting forward the
7 application, they would try to frame the
8 circumstances, so the speeches they are going to make;
9 the frequency; the topics they are going to cover and,
10 you know, I think the Advisory Committee would normally
11 give its approval.

12 49640 But what it does do is it puts this
13 all into the public domain, because once the Advisory
14 Committee have been consulted and they approve it and
15 the individual takes up the job, it is then put on the
16 Advisory Committee's website immediately so that
17 everybody can see what is going on.

18 49641 MR. WOLSON: Following up on the
19 Commissioner's question, if that same individual wanted
20 to take a position internationally to promote a
21 company, what would be the steps that the committee
22 would take in determining on an international basis
23 whether that party could go forward or not?

24 49642 MS GRAY: They would take the same
25 advice -- they would follow the same process that they

1 would do if it was a U.K.-based company. They would
2 go to the permanent head, the civil service head of
3 the department, and they would ask the permanent
4 secretary whether the former minister had contact with
5 that employer when he was in office, the extent of
6 whether the international dimension, the work that he
7 plans to do internationally, could be seen still to be
8 relative to what they were doing when they were in
9 ministerial office.

10 49643 So it is wider than just thinking
11 about it within the U.K., it is all work, international
12 and at home, and they will consider a range of factors.

13 It may be that they would still decide that there
14 needs to be some sanction applied, even if it is an
15 international area of work.

16 49644 MR. WOLSON: And coming back to
17 the fundamentals, what is your relationship to
18 this committee?

19 49645 MS GRAY: In the Cabinet office in
20 terms of the policy responsibility, we set the
21 framework within which this committee operates. We set
22 the rules for it, we make the appointments and, you
23 know, if we decided the rules need changing, then
24 obviously we would change them, but we would always do
25 that in consultation with the committee.

1 49646 But it is very much an arms length
2 body from government and, while we set that context, we
3 give it its marching orders and it gets on with that
4 work itself. There is absolutely no question that
5 government would interfere with the workings of that
6 committee or try to influence them in their
7 decision-making. That just does not ever happen.

8 49647 COMMISSIONER OLIPHANT: May I ask you
9 a question, please?

10 --- Cell phone ringing

11 49648 COMMISSIONER OLIPHANT: You can
12 get your phone, it might be important. It might be
13 Mr. Brown.

14 --- Laughter / Rires

15 49649 MS GRAY: I'm sorry.

16 49650 COMMISSIONER OLIPHANT: Seeing
17 that you do have a relationship with this committee
18 that appears to me to be working very well and doing
19 important work, may I ask you, please, from whom
20 you take direction as Director of the Office of
21 Propriety and Ethics?

22 49651 MS GRAY: I work directly to the
23 Cabinet Secretary. So that's who I work to. Of course
24 he then works to the Prime Minister. So that's the
25 line of responsibility.

1 49652 COMMISSIONER OLIPHANT: Thank you.

2 49653 MR. WOLSON: If we take this

3 scenario, I am a retiring minister, I want to take up

4 employment with the --

5 --- Cell phone ringing

6 49654 MS GRAY: I'm sorry, my phone just

7 won't go off.

8 --- Pause

9 49655 MR. WOLSON: I am a retiring minister

10 and I want to take up a certain business position, I

11 decide not to go to the Advisory Committee, I take up a

12 position, what kind of sanction would there be if I

13 were to do that?

14 49656 MS GRAY: Well, obviously as a former

15 minister in terms of the sanctions that we can apply

16 it's obviously quite limited.

17 49657 However, what I would say is that

18 reputationally the former minister going -- which is

19 why actually the majority want to get the advice of the

20 Advisory Committee, going to the Advisory Committee and

21 taking up a job without -- sorry, with not going to the

22 Advisory Committee and taking up a job without their

23 approval is actually quite a big issue in the U.K. and

24 does actually get media coverage.

25 49658 It will also likely mean that there

1 will be questions raised in Parliament, both in terms
2 of parliamentary questions but also there is a Select
3 Committee that monitors the work of the Advisory
4 Committee on business appointments so we have a
5 Parliamentary Select Committee, the Public
6 Administration Select Committee, which just recently
7 did a report on lobbying and made a number of
8 recommendations about the work of this committee.

9 49659 There is also the reputational damage
10 for the employer of the individual. It's quite hard to
11 get across just when there is actually quite a public
12 outcry about, say, a former minister taking up a job
13 without having got the approval, the damage that is
14 done to that individual's reputation, plus the
15 reputation of the company.

16 49660 The other issue is, depending on the
17 job that has been taken up, you know, the nature of the
18 work, it may make it quite difficult -- if government
19 did business with that company and that company took
20 quite a lot of a reputational hit, it may make it quite
21 difficult for government itself to do work with that
22 company. So there is a range of issues.

23 49661 There is also the case that if a
24 former minister is seeking to come back into government
25 at some future point, if they have not followed the

1 advice of the Ministerial Code then obviously judgments
2 have to be made as to whether a former minister could
3 come back into office having sort of not followed the
4 advice of the Ministerial Code previously.

5 49662 So there are a whole range of issues
6 that can, I think, be taken into account and they
7 actually seem to be very effective.

8 49663 MR. WOLSON: It's obvious to me, and
9 I'm sure to everyone here, that you believe in this
10 committee and then it works in the U.K. If you were
11 going to establish such a committee in this country, or
12 in any other country, would you point, if you could, to
13 the rules that govern this committee and would you
14 recommend any changes?

15 49664 Is there an aspect of the committee's
16 work that you think could be improved?

17 49665 In effect, the downside and the
18 upside of the committee, if you would be prepared to
19 talk about that?

20 49666 MS GRAY: I think what works well is
21 I think a committee works well. I think it would be
22 quite a difficult issue to place in the hands of one
23 person. Most we have, we have a number of Advisory
24 Committees like this who advise us on various ethical
25 issues, but they all have their own remit.

1 49667 This Advisory Committee is purely
2 about former -- it's about people who have been in
3 government, it's not actually about Parliament. There
4 is a separate process for this sort of parliamentary
5 side of things.

6 49668 And I think a committee is good. I
7 think you are -- this committee is actually taking very
8 difficult decisions, I think, about individuals and
9 about their future employment and there will be a range
10 of views often about whether somebody can take up a
11 post or not and it is actually quite useful to have a
12 discussion to bring those views out and to hopefully
13 then at the end feel that there has been a good
14 discussion and a balanced decision. So the committee
15 works well in that respect.

16 49669 I think in more recent times
17 they have responded to some of the criticisms about
18 their work.

19 49670 For example, publishing decisions on
20 their website every month is relatively recent. Before
21 that it was done by way of their Annual Report so
22 people had to wait 12 months to find out what was going
23 on in terms of the business they were deciding. That
24 has all now turned around very quickly and therefore
25 you have accountability through transparency.

1 49671 We are going to look at the rules
2 over the summer working with the committee to decide
3 whether they need to be strengthened in anyway or
4 whether they are too rigid in certain places.

5 49672 Particularly important is, we have
6 not just former ministers but we do have people coming
7 into the civil service now for relatively short
8 periods, four or five years, and those people will want
9 to go back into the sectors that they came in from and
10 it's important that while we keep in mind the propriety
11 of what we are trying to do, which is to make sure that
12 there can be no question of preferential access or no
13 return for past favours, that we also do understand the
14 changing environment in which we live.

15 49673 So I think that's the area that we
16 need to make sure is still working, but we don't
17 really -- I mean most former ministers don't complain
18 about the process.

19 49674 We had a former minister recently who
20 had worked in -- his job has been to promote British
21 jobs and promote companies overseas. What he did when
22 he was about to leave, he spoke to the Advisory
23 Committee, he talked through the sort of nature of work
24 he wanted to do, established where there were red lines
25 about what couldn't be done, and actually it was a very

1 productive process.

2 49675 So I think it's difficult to see -- I
3 mean for me the committee works well and I think the
4 changes that it's making are responding to -- are
5 modernizing them in a way which I think is good.

6 49676 MR. WOLSON: Following up on one of
7 the Commissioner's earlier questions, would you favour,
8 in some kind of rule for the committee, that there be
9 an appeal process?

10 49677 MS GRAY: Yes. I think in terms of
11 fairness to individuals you have to have an appeals
12 process. You have to be able to put your case to
13 the committee. If you think something is unfair or
14 that they haven't given sufficient weight to a
15 particular argument, it's very important that you can
16 go to that committee.

17 49678 The one thing I would say that I
18 think wouldn't necessarily be where I would be would be
19 would be to enshrine this committee in legislation. I
20 think it works well in the way it does and the
21 difficulty when you get to legislation is that you have
22 to specify every specific thing they want to do. This
23 committee has great flexibility and, you know, it may
24 be asked to do something that wouldn't necessarily be
25 in their Terms of Reference but it's able to do that.

1 So I'm all for keeping it as it is.

2 49679 COMMISSIONER OLIPHANT: Another
3 question just following up on Mr. Wolson's follow-up
4 on an earlier question of mine.

5 49680 When the committee is considering an
6 application, does it sit as a full committee or does it
7 sit in panels of three for example?

8 49681 MS GRAY: It normally sits as a
9 full committee.

10 49682 It may decide that in relation to a
11 particular case it would like a couple of members to go
12 away and research it, talk to the individual and come
13 back with a recommendation, but it would be the full
14 committee that would take the decision. It would be
15 very exceptional that it would actually establish a
16 sort of little subgroup really to work on that.

17 49683 COMMISSIONER OLIPHANT: I'm familiar
18 with a situation here in Canada where the process
19 involves consideration by a small group of a larger
20 committee, if you will, and the process of appeal, if
21 you will, includes going from the decision of, say, a
22 panel of three to the full committee which might be 30.

23 I'm not suggesting you should have a committee of 30,
24 but that would be one way to appeal.

25 49684 Because otherwise what you are

1 suggesting is the committee makes a decision and then
2 the appeal is right back to that very same committee.
3 One might think there is an apprehension of bias, or
4 reasonable apprehension of bias, when you appeal to the
5 very committee that made the decision against you.

6 49685 MS GRAY: I can understand
7 that, although I don't think that is the perception
8 that individuals have. If they want to appeal to
9 the committee it really is because they feel that
10 the committee hasn't had the full facts or the
11 full background.

12 49686 I think you have a copy of the form
13 that former ministers have to complete. There is
14 actually not much room or space to explain a lot of the
15 background often. So I think they find that -- they
16 find it very helpful.

17 49687 I can see the point you are making,
18 but ultimately it is this committee's decision and I
19 think the committee feels very much that it is a
20 committee and it would be -- you know, even if it asked
21 a smaller number of people to look into a case, it
22 would be the committee that is taking the final
23 decision, not a subgroup, and therefore any appeal must
24 be to that committee.

25 49688 MR. WOLSON: Ms Brooks...?

1 49689 MS BROOKS: This really builds on a
2 number of the questions that Mr. Wolson and the
3 Commissioner have put you.

4 49690 When you think of an ideal situation
5 for the committee, would you think that at first
6 instance -- you have the form that the ministers and
7 other senior public servants fill out, do you think
8 that at the first instance there should be a process
9 for making oral submissions or having meetings as a
10 matter of course or as a matter of this would be the
11 norm rather than the exception?

12 49691 MS GRAY: There is actually I think
13 incredible flexibility with the actual committee and
14 the way it works.

15 49692 For the vast majority of applications
16 that are made they will actually be non-contentious and
17 they will be quite straightforward.

18 49693 Where a former minister is perhaps
19 unsure about the nature of work that he or she is
20 planning to do or would like to get a feel for the
21 committee's views, they are encouraged to actually go
22 and talk to the Secretary to the committee who can give
23 them some guidance, who can talk to them.

24 49694 They can of course request a meeting
25 with the committee -- not just necessarily appeal, I

1 think they could request a meeting. I'm not aware the
2 committee has had such a request or met in those
3 circumstances, but it certainly wouldn't rule it out.

4 49695 It has a purpose to protect the sort
5 of standards in public life and the people that are
6 leaving public life also have that shared purpose. So
7 for some of the time it's quite a consultative process
8 and there is this element where they can go and appeal
9 or give them further facts, but it works in quite a
10 flexible way.

11 49696 MR. WOLSON: Maitre Battista...?

12 49697 MR. BATTISTA: Yes.

13 49698 Ms Gray, you have talked a little bit
14 about the appointment process, political parties
15 nominate people. Obviously for the credibility of the
16 process each political party would choose someone who
17 would be respected by other parliamentarians and by the
18 public in general.

19 49699 How are the individuals chosen to be
20 appointed? Do people submit -- do they candidate
21 themselves? Are people approached? How is that
22 process put in place?

23 49700 MS GRAY: I think there are two
24 elements -- there are two sort of like appointment
25 elements here.

1 49701 For the non-political members, if you
2 take the military representative, the civil service
3 representative and the diplomatic representative, they
4 will all have been put forward following discussions
5 with the head of the department which has the interest,
6 so the civil service head. Often a few names will be
7 put forward and there will be a discussion around those
8 names. These aren't jobs that are normally advertised
9 through full and open competition because it's a very
10 limited field that you are looking in and it's unlikely
11 that you are looking for certain skills and therefore,
12 you know, you tend to keep it within that area.

13 49702 For the political appointments,
14 obviously I don't actually know how the leaders of the
15 parties come forward with their nominations, but I
16 would imagine that they will consider a few people who
17 they think would be suitable to the role and then
18 whatever the process will be they will then come
19 forward with their nomination. But it is their
20 nomination so the Prime Minister writes to them and he
21 will ask them to make a nomination and the leader of
22 the party then comes back with their one candidate.
23 That is quite an important point that, you know, the
24 political parties themselves are taking responsibility
25 for their candidate.

1 49703 So while I couldn't guarantee how
2 they arrived at that name, I would imagine that, like
3 with the civil service representatives, there are
4 probably a few people that are in their minds and they
5 then whittle them down to one.

6 49704 The other issues to be considered are
7 time commitment. This is a committee that probably
8 takes up about two days a month. It is basically
9 unpaid. It can get quite a bit of flak if it's seen
10 to -- you know, if somebody might feel they have been a
11 bit too easy on somebody.

12 49705 So, you know, these are people
13 that really want to come into public life to make a
14 difference and I think that's really how they do
15 the appointments.

16 49706 MR. WOLSON: Do you,
17 Mr. Commissioner, have any questions?

18 49707 My colleagues, Commission counsel?

19 49708 Mr. Roitenberg...?

20 49709 MR. ROITENBERG: How timely, how
21 quickly is the turnaround from the receipt of an
22 application until you are able to give advice? Because
23 I can foresee the fall of a government creating quite a
24 backlog for this committee.

25 49710 MS GRAY: First of all, I mean

1 currently some people going through this Advisory
2 Committee will want a response very quickly. Certain
3 appointments, you know for particular companies, if
4 they are talking to somebody about an appointment
5 and they have offered the job and it's all subject
6 to the Advisory Committee approving it, they want
7 that done very quickly because it can be a
8 market-sensitive appointment.

9 49711 So some appointments can be turned
10 around very quickly, within a couple of days if the
11 urgency requires it, and obviously if the committee can
12 do the background work that it needs to do to get the
13 full facts.

14 49712 Other appointments can take longer
15 and they can take, you know, 2 to 3 weeks, because the
16 Advisory Committee may feel it has to approach
17 competitors of the company so that, you know, they may
18 want to take into account how competitors of a
19 particular company would feel about a particular
20 appointment. That is also something that is done.

21 49713 So it can vary. If there is a real
22 large number of cases, then the committee probably
23 wouldn't increase its number, but the Secretariat would
24 probably be provided with extra resources to be able to
25 do the legwork, the background work for the committee.

1 49714 MR. ROITENBERG: Just as a
2 follow-up to that, considering how extensive the
3 research might be when you go to competitors, what type
4 of additional protections are offered the privacy of
5 the individual applicant in a situation where you then
6 go to competitors to see how they might feel of the
7 appointment?

8 49715 MS GRAY: Before doing that you would
9 obviously explain to the applicant that's what you
10 would be going to do. You could envisage a situation
11 where they may decide that they don't want that to
12 happen. Or you go to the competitors and it's very
13 much on an in-confidence basis. Our experience is that
14 competitors may have somebody a few months down the
15 road who is joining them or who wants to join them, so
16 they tend to respect that privacy background that you
17 are making those discussions in. I'm not aware of a
18 competitor breaching the confidentiality.

19 49716 What can happen occasionally, and
20 it's not the fault of the person making the
21 application, but sometimes the company which the
22 individual is going to work with, they can sometimes
23 jump the gun and make an announcement before the proper
24 approvals process has been carried through and then we
25 have to make very clear that the appointment is subject

1 to that appointment process being completed.

2 49717 COMMISSIONER OLIPHANT: Just to tidy
3 something up -- and I ask this because of a question
4 that my colleague Mr. Roitenberg asked -- when you were
5 speaking earlier I envisaged ministers who were
6 thinking of leaving office coming to the committee to
7 get advice, but the rules apply as well to those
8 ministers who perhaps don't leave office willingly but
9 are retired by their constituents.

10 49718 MS GRAY: Yes.

11 49719 COMMISSIONER OLIPHANT: So that
12 if you are defeated in an election the rules still
13 cover you.

14 49720 MS GRAY: If you have been --

15 49721 COMMISSIONER OLIPHANT: -- you are no
16 longer a minister --

17 49722 MS GRAY: Yes.

18 49723 COMMISSIONER OLIPHANT: -- but you
19 have to go even as an ordinary citizen now --

20 49724 MS GRAY: Yes.

21 49725 COMMISSIONER OLIPHANT: -- a
22 former minister --

23 49726 MS GRAY: Yes.

24 49727 COMMISSIONER OLIPHANT: -- to
25 the committee?

1 49728 MS GRAY: The rules apply to former
2 ministers for up to two years -- for two years after
3 leaving office and they apply whether you are in power,
4 whether you have been deselected or you are not an MP
5 any longer. The fact is, you were a minister and you
6 had access, you had information and they apply for the
7 two years afterwards.

8 49729 And if I could just add one further
9 point, actually ministers don't normally go through
10 this process while in office, they don't normally talk
11 to prospective employers while they are in office, this
12 is a process after they have left office.

13 49730 COMMISSIONER OLIPHANT: And just to
14 tidy up one other thing, in terms of sanctions, if I
15 understood you correctly, you really rely on social
16 stigma, if I can use that term, as the sanction, stigma
17 that might affect the applicant as well as the
18 prospective employer?

19 49731 MS GRAY: Yes.

20 49732 COMMISSIONER OLIPHANT: Okay.

21 49733 MS GRAY: It is very much -- you
22 know, it is about the individual's reputation if they
23 are seen not to have abided by their rules; it's the
24 company's reputation to have taken somebody on without
25 having checked that that process has been completed.

1 49734 Companies or consultants, they are
2 aware of the rules and actually, for most of them, they
3 want to make sure the person they are taking on has
4 actually been through that process.

5 49735 And then there is also the fact that,
6 you know, questions make Parliament. Parliament is
7 another very vocal campaigner if it feels that somebody
8 has taken a job without going through the process.

9 49736 And, of course, as I said, if that
10 former minister ever thought about coming back into
11 government and hadn't gone through the rules, that
12 would be another consideration.

13 49737 MR. WOLSON: Ms Brooks, any
14 further questions?

15 49738 MS BROOKS: You mentioned that
16 ordinarily ministers wouldn't enter into negotiations
17 with a prospective employer while a minister.

18 49739 Is there any prohibition against
19 that? While it's not ordinary, if there is no
20 prohibition but it's not an ordinary practice, does it
21 nonetheless happen that they do enter into negotiations
22 and are your rules or is your scheme aimed at
23 addressing the kinds of concerns that would be raised
24 by a minister engaging in negotiations of that sort
25 while still a minister?

1 49740 MS GRAY: It doesn't normally happen.
2 You know, it's not precluded under the rules but it
3 doesn't normally happen.

4 49741 The key thing would be that if a
5 minister was thinking about talking to a company or was
6 in discussion with somebody, they would have to tell
7 their Permanent Secretary because of the potential for
8 a conflict of interest.

9 49742 You know, if they were talking to
10 somebody while at the same time they're meeting them in
11 their official capacity, that would be something that
12 you would expect the minister to tell their Permanent
13 Secretary. So if they are having discussions, it's the
14 sort of thing they would jot down and they would say.

15 49743 But it's not actually -- it's not
16 precluded. I think just generally most ministers are
17 in government and that's the job they're doing and they
18 don't tend to be thinking about, you know, future
19 employment at that stage.

20 49744 MR. WOLSON: Mr. Battista, any
21 further questions?

22 49745 MR. BATTISTA: No questions, thank
23 you.

24 49746 MR. WOLSON: Do Commission counsel
25 have any further questions?

1 49747 MR. ROITENBERG: I just have one.

2 49748 MR. WOLSON: Okay.

3 49749 MR. ROITENBERG: You mentioned before
4 that it wasn't a concern of yours as to any dissuading
5 factors upon individuals seeking high office because
6 they all know the rules going in.

7 49750 If, in fact, such an Advisory
8 Committee were brought into play here, it would be a
9 situation where the rules would be foisted upon those
10 who were currently high office holders.

11 49751 Was there any allowance made for that
12 when the Committee was born in England?

13 49752 MS GRAY: Well, I think what is quite
14 interesting is in 2007 when Gordon Brown became Prime
15 Minister, he strengthened the requirement in the
16 Ministerial Code on this issue.

17 49753 Previously it had been much softer,
18 that ministers, you know -- it was very much ministers
19 should consult the Advisory Committee and basically
20 they were then free to take or leave the advice of the
21 Advisory Committee.

22 49754 So Gordon Brown strengthened the
23 Ministerial Code and he made very clear that people
24 must take the advice of the Committee and they must
25 abide by it.

1 49755 Now, that captured a large number of
2 people that were already in government but there were
3 no issues, there was no outcry. People, I think,
4 recognized, you know, the propriety of what he was
5 seeking to do.

6 49756 MR. WOLSON: Mr. Forcese...?

7 49757 MR. FORCESE: Thanks very much and
8 thanks, Ms Gray, for coming.

9 49758 A question about the actual procedure
10 for the two-year window once a minister leaves office.
11 So let's assume we have a highly mobile minister who
12 is going from job to job to job, for each transition,
13 presumably they go back to the Committee.

14 49759 Does the Committee then consult again
15 with the Permanent Secretary to determine whether this
16 new company had contacts of a dubious sort?

17 49760 MS GRAY: It can vary. I mean,
18 actually what some ministers and some former public
19 servants may decide to do is seek the Committee's views
20 on a sort of portfolio or business. You know, they're
21 sort of -- these are the areas I'm planning to take up
22 work, particularly if it's, I think, in the area of
23 consultancy, where actually going back to the Committee
24 every week or whatever because you're taking up a new
25 consultancy would be quite time-consuming.

1 49761 So they will set out very clearly the
2 field in which they plan to work, the area -- they can
3 do it that way. But where it is a new application for
4 a new company, then they would go back to the permanent
5 head of that department to see whether that minister
6 had contacts in that way.

7 49762 MR. FORCESE: And on the consultancy
8 arrangement, presumably the advice issued by the
9 Committee where it specifies a range of activities that
10 it views as permissible or carves off an area which is
11 impermissible, it's quite detailed then, it's not
12 simply a single line in an annual report?

13 49763 MS GRAY: No. I mean, first of all,
14 the Permanent Secretary will -- you know, depending on
15 the application they've got in front of them, depending
16 on the nature of the work and the work the individual
17 plans to go to, will merit, you know -- it may be
18 something detailed. It may have -- it may be a note
19 which is highlighting concerns. So it really does vary
20 in terms of the job.

21 49764 And then in terms of the Committee
22 and its consideration, their advice will also vary as
23 to the detail. But they will normally -- they write a
24 letter and they will give sort of the broad thrust of
25 the discussion or the consideration that has taken

1 place in reaching their decision.

2 49765 MR. FORCESE: Now, in a circumstance
3 where an individual, a former minister, has gone to the
4 Committee and decided to ignore the Committee's advice,
5 that's likely to come out or will come out because it's
6 reported and then the media will likely raise concerns
7 about that.

8 49766 What about circumstances where the
9 individual fails to go to the Committee altogether,
10 that is, there's no contact with the Committee and they
11 just plough ahead, is that likely to be detected in
12 your system?

13 49767 MS GRAY: Well, normally everything
14 that -- if the former minister is still in Parliament,
15 is still an MP, a Member of Parliament, or a peer, they
16 are required to register employment in the Register of
17 Members or Peers In Trust, which is another public
18 document. So there is a read across there and, in
19 fact, some of the recent changes are they've got to
20 register their employment, the hours they've worked and
21 the money they've received.

22 49768 So people are, on the Advisory
23 Committee themselves, scrutinizing those parliamentary
24 registers and seeing whether they were notified or they
25 were consulted about the job that that person wants to

1 take up. So it's quite hard to see the gap at the
2 moment.

3 49769 Of course, if the individual has then
4 left Parliament and is no longer in Parliament, then
5 you haven't got that same -- you haven't got that
6 check, but, you know, you've got still quite an active
7 media locally as well as nationally and if these things
8 get picked up locally, once again, it will probably get
9 drawn to the Advisory Committee's attention.

10 49770 What they then do is they write to
11 the individual, asking them why they didn't seek the
12 advice of the Advisory Committee and asking do they
13 want to do it retrospectively and reminding them of the
14 rules for the future.

15 49771 MR. FORCESE: One final question.
16 Given the composition of the Committee, the fact that
17 some of these individuals are former senior
18 politicians, former senior civil servants, has there
19 ever been any serious accusation that these persons,
20 because they come from the same walk of life as the
21 others who are now before them, that they're unduly
22 deferential?

23 49772 MS GRAY: Not that I am aware of.
24 The Parliamentary Select Committee that looked into
25 lobbying, I think one of its concerns was that, you

1 know, this Committee didn't have sufficient teeth and
2 that it was letting people walk out of government jobs
3 into other sectors. But I think, you know, in terms of
4 looking at how they go about their work, the sanctions
5 that they do apply, they don't seem to worry about
6 whether it's a former minister or a former civil
7 servant. It seems to be a very objective, a very fair
8 process in the way they deal with things.

9 49773 MR. WOLSON: Mr. Commissioner, I have
10 one general question and then I thought we would break
11 for the morning break, come back and open up questions
12 from the parties, and if we had time, some other
13 general questions for Ms Gray.

14 49774 But the one question that I have. I
15 asked you before about educational aspect in terms of
16 advising ministers, public servants about the Advisory
17 Committee on Business Appointments.

18 49775 What about education generally in
19 your capacity as Director of Propriety and Ethics,
20 education regarding ethical issues and concerns apart
21 from the Advisory Committee on Business Appointments,
22 is there much of that?

23 49776 MS GRAY: Well, we tend to -- I mean,
24 with ministers, with civil servants, with all the
25 people that we deal with, they all have their codes of

1 conduct. Those issues are debated quite a lot. I
2 mean, most of the codes of conduct are regularly
3 updated and revised and those revisions come -- I mean,
4 a lot of that work comes from external scrutiny,
5 external proposals, and obviously then from within as
6 well as it works in practice.

7 49777 So there seems to be -- there is, you
8 know, a high level of awareness about ethical issues
9 and we have a number of committees. We have
10 parliamentary committees. We have the Independent
11 Committee on Standards in Public Life. We have a range
12 of people that are commenting on these issues.

13 49778 The induction events that we run for
14 ministers and the most senior civil servants, they're
15 run when they are first appointed, but then throughout
16 their term of office, there are often further processes
17 to highlight awareness. So it feels like very much an
18 evolving process.

19 49779 COMMISSIONER OLIPHANT: Just a
20 follow-up, if I might, and then we will take a break.

21 49780 I just ask this question so that I
22 understand the function of your office.

23 49781 I think you alluded earlier to the
24 fact that somebody else deals with the Members of
25 Parliament. You deal with ministers, senior civil

1 servants, senior members of the military and senior
2 diplomats, but the ordinary, if I might use that term,
3 Member of Parliament, you have no function whatsoever
4 in respect of that individual in terms of education
5 regarding ethics or otherwise. Who does?

6 49782 MS GRAY: Parliament and government
7 are very separate so that there is no question of a
8 blur in the lines between the two.

9 49783 For Parliament they have -- and it's
10 been a subject of much debate only recently in the
11 U.K., where following issues around their expenses, the
12 government sought to put on a legal statutory footing a
13 regulator and an investigator and to have publication
14 of their interest by somebody more independent.

15 49784 But at the moment it is very much a
16 matter for the House. For both Commons and Lords they
17 have their rules which are voted on by parliamentarians
18 and they set up their structures then to police and
19 enforce those processes.

20 49785 They might look at our system and
21 they might think there were some good things and they
22 will seek to use it in theirs but government doesn't --
23 you know, I don't have any responsibility in relation
24 to MPs. And, in fact, MPs who leave Parliament, there
25 is no process for -- well, there is no process for MPs

1 or peers taking up jobs after they've left office.

2 49786 We're just purely concerned about
3 ministers because they are -- it's slightly different,
4 I think, in that the reason why we have such strict
5 rules about ministers, you know, we have a higher --
6 MPs, Members of Parliament, have to declare their
7 interests but ministers have to declare their interests
8 and it's a much higher level of disclosure. We want to
9 know who they've got their mortgages with, we want to
10 know who they bank with, because ministers are
11 decision-makers and they are taking decisions all the
12 time about things that could affect their private
13 interests. In Parliament, it is a different level and
14 they are required, if they have an interest, to
15 actually declare that in a debate or anything but I
16 think the process is different.

17 49787 COMMISSIONER OLIPHANT: Thank you.

18 49788 Mr. Wolson, what do you suggest in
19 terms of a break?

20 49789 MR. WOLSON: Well, we have until
21 noon, so perhaps 10 minutes -- 11:45, so we have less
22 time. So 10 minutes and then we can have questions
23 from the parties, and if we have time, some general
24 questions that I will pose.

25 49790 COMMISSIONER OLIPHANT: All right.

1 We will break for 10 minutes but just before we do, a
2 word of welcome to Mary Dawson, who is the Conflict of
3 Interest and Ethics Commissioner for Canada. She
4 joined us a bit earlier. I didn't want to interrupt
5 the proceedings but you're more than welcome to be here
6 and you will be joining us in a more formal way a
7 little bit later this morning.

8 49791 We will break for 10 minutes.

9 --- Upon recessing at 10:44 a.m. / Suspension à 10h44

10 --- Upon resuming at 11:00 a.m. / Reprise à 11 h 00

11 49792 MR. WOLSON: Mr. Commissioner, if you
12 are ready to convene, we are ready to go.

13 49793 I think what we will do, with your
14 permission, is go to 11:40 and then take a five-minute
15 break so we can convene the next panel.

16 49794 That said, if there are no further
17 questions from you, Mr. Forcese, or from you,
18 Mr. Commissioner, or my co-counsel, I will then ask the
19 parties if they have any questions.

20 49795 COMMISSIONER OLIPHANT: Absolutely.
21 Go ahead.

22 49796 MR. WOLSON: Does the Attorney
23 General, Mr. Landry or Mr. Lacasse, have any questions?

24 49797 MR. LANDRY: We have no questions,
25 Mr. Wolson.

1 49798 MR. WOLSON: Mr. Auger...?

2 49799 MR. AUGER: Thank you, Mr. Wolson. I
3 just have one question.

4 49800 You mentioned that the Committee is
5 largely composed of members drawn from the House and
6 I'm curious to know whether or not the Committee has
7 any, for lack of a better word, lay members or ordinary
8 citizens.

9 49801 Given that the object obviously is to
10 build public trust, I can't help but think of the
11 analogy to law societies where there are lay members
12 and I'm wondering if (a) that exists in your system and
13 (b) whether or not that is something you would
14 advocate.

15 49802 MS GRAY: I suppose the only possible
16 person you could regard as a lay member is the person
17 who is sort of representative of the private sector, so
18 business, but I wouldn't see them in the way you just
19 described as a lay member.

20 49803 I think it is a very interesting
21 proposal. As to whether -- you know, the members are
22 drawn from the fields in which they have expertise, and
23 personally I am not a fan of big committees. So I
24 think that everybody has to be able to make a
25 contribution.

1 49804 I'm not sure either with the public
2 that having a lay member on the Committee is what gives
3 you public confidence. I think public confidence is
4 secured by your process, by being able to be
5 transparent about what you are doing and by having a
6 system which can stand up to scrutiny.

7 49805 So I'm not personally sure that
8 seeking somebody just because they are an ordinary
9 member of the public would be necessarily the right
10 thing to do. But I think it is to encourage discussion
11 if needed and I think they do that through the way they
12 publish their work.

13 49806 MR. WOLSON: Mr. Conacher, questions?

14 49807 MR. CONACHER: Thank you for your
15 presentation. Very informative. I just had a few
16 questions really of clarification following upon some
17 of the questions from Commission Counsel and the
18 Research Director.

19 49808 The independent advisor is mentioned
20 in the Ministerial Private Interest Rules that we
21 have --

22 49809 MS GRAY: Yes.

23 49810 MR. CONACHER: -- been provided with
24 and I'm just trying to sort out where that person fits
25 into the overall structure, how they are appointed,

1 what independence do they have, what role, what powers
2 in terms of, I'm guessing, advising while ministers are
3 in office, considering their obligations under the
4 Code --

5 49811 MS GRAY: Okay.

6 49812 MR. CONACHER: -- versus the
7 post-employment Advisory Committee.

8 49813 MS GRAY: The independent advisor on
9 Ministers' Interests is actually a new appointment. It
10 was made by Gordon Brown when he took up office in
11 2007. It is very much an adviser on ministers'
12 financial interests, so it's about ministers being in
13 office.

14 49814 And what happens, how the process
15 works is that when a minister is appointed to office,
16 they have to complete a declaration of their interests.
17 I think, as I said earlier, we require more
18 information from them as ministers than we do for
19 Members of Parliament because the decision-making role
20 they have is greater.

21 49815 That declaration is given to the
22 Permanent Secretary in charge of a department initially
23 and that Permanent Secretary has a discussion with the
24 Minister. The reason for that is that the Permanent
25 Secretary is the person best placed to know the nature

1 of his department's work, the contracts, the
2 discussions that are going on. And after that
3 discussion, the Permanent Secretary will record with
4 the Minister any action that needs to be taken.

5 49816 That declaration and that action is
6 then forwarded to the Cabinet Office, to my team, and
7 we also give a view as to whether we think the action
8 taken is sufficient to avoid a conflict of interest.

9 49817 And then the final check is with the
10 independent advisor who looks at all the paperwork for
11 each Minister, looks at the declaration, looks at the
12 action taken, looks at any Cabinet Office advice given,
13 and will give a view as to whether the steps that have
14 been taken are sufficient to avoid a conflict or the
15 perception of a conflict. In the U.K. perception is a
16 very big issue rather than just actual.

17 49818 The current advisor is Sir Phillip
18 Moore and he was appointed. There wasn't a
19 competition. I mean this is felt to be a role which is
20 very personal to the Prime Minister in terms of who he
21 wants to give advice to his ministers. So it's the
22 duration of the Prime Minister's appointment.

23 49819 When Philip came to this job, he
24 previously was the Parliamentary Commissioner for
25 Standards in the House of Commons. So he, up until

1 this job, did the job in Parliament in terms of
2 recording MPs' interests and investigating -- he was
3 the person who investigated allegations about MPs.

4 49820 Phillip also can investigate
5 allegations of a breach of the Ministerial Code and
6 normally -- he's had one investigation to do in that
7 respect and he did that quite recently. Normally, you
8 know, these issues, if there are issues about whether
9 ministers can keep interests or not, are dealt with in
10 a department. In the case that Phillip investigated,
11 it was really whether the individual in question has
12 given a full declaration of his interests at the time
13 of appointment.

14 49821 Phillip is paid a set amount for the
15 year. His salary is ,30,000 and that covers all his
16 work on interests. It would cover any investigation
17 that he has to undertake and that is all a matter of
18 public record.

19 49822 The report that he did on the
20 allegation into the Ministerial Code was made public.
21 There were a few redactions which related to the
22 personal details of the individual, it was very
23 personal information. But his report was made public.

24 49823 So that is really Phillip's role.
25 But it is very much about a minister in their job

1 currently.

2 49824 Interestingly, we did think about
3 whether Phillip could be a member of the Advisory
4 Committee on Business Appointments so that, you know,
5 knowing about ministers while they're in, whether he
6 could use that. But I think actually he was -- he
7 thought it could work but, you know, we were also able
8 to see a situation where he might have to recuse
9 himself if he had known certain things or had
10 investigated, say, somebody as a Minister and then
11 looking at them after they had left office.

12 49825 So it was felt that he shouldn't be a
13 member of that Advisory Committee but it was certainly
14 something that we did think about.

15 49826 MR. CONACHER: Okay. And so that
16 position is non-statutory, no fixed term of office?

17 49827 MS GRAY: No, it is not --

18 49828 MR. CONACHER: He is the Prime
19 Minister's advisor and Cabinet's advisor?

20 49829 MS GRAY: Yes. It is not in statute.
21 I mean, by statute, we mean, you know, an act.

22 49830 MR. CONACHER: Yes.

23 49831 MS GRAY: It is not in an act. It is
24 in the Ministerial Code.

25 49832 MR. CONACHER: Right.

1 49833 MS GRAY: And his appointment letter
2 makes clear it is for the duration of -- it is a
3 personal appointment and it is the duration of that
4 Prime Minister's term of office.

5 49834 MR. CONACHER: Yes. Okay. So less
6 independent, called an independent advisor but
7 structurally less independent than the Advisory
8 Committee because there is no fixed term of office for
9 this person?

10 49835 MS GRAY: There is no fixed term of
11 office and he reports to the Prime Minister.

12 49836 However, I would challenge the
13 independence issue because Phillip, when he -- he gave
14 evidence to the Parliamentary Select Committee that
15 monitors all of these issues, the Public Administration
16 Select Committee, and he was asked that question. His
17 evidence is actually very interesting to read.

18 49837 But he did say that if he was
19 asked -- you know, if he put in a report to the Prime
20 Minister and the Prime Minister tried to hide something
21 or cover up, Phillip would walk. Phillip would -- you
22 know, obviously your way of dealing with these things
23 is that you either report on it in your annual report,
24 and I think all of our independent committees can do
25 that, or if you are so unhappy, you actually resign and

1 you make clear why you are resigning.

2 49838 It is a part-time role and clearly
3 this is somebody who values his independence. He sees
4 himself as an independent advisor.

5 49839 MR. CONACHER: Okay. But at the same
6 time he could be fired at anytime for any reason by the
7 Prime Minister and has no structural independence?

8 49840 MS GRAY: No, but I have to say just
9 firing somebody in the U.K. for no reason or for -- you
10 know, you would have to give a reason and the
11 likelihood is that individual will speak out.

12 49841 MR. CONACHER: Yes, okay.

13 49842 Turning to the Guidelines that we
14 have before us on the acceptance of appointments or
15 employment by former ministers of the Crown, I just
16 wanted to clarify.

17 49843 The Guidelines, paragraph 4, say:

18 "Former Ministers should ask..."

19 49844 But does their Code say they must
20 ask?

21 49845 MS GRAY: Yes. And that amendment to
22 the Ministerial Code was --

23 49846 MR. CONACHER: By Gordon Brown.

24 49847 MS GRAY: -- by Gordon Brown and that
25 is, you know -- that is very clear in the letters that

1 go to ministers both on appointment from the Cabinet
2 Secretary, when they leave office, in the letter from
3 the Cabinet Secretary, and it is followed up.
4 Immediately somebody leaves office, they are written to
5 by the Chairman of the Advisory Committee on Business
6 Appointments, who sets out the rules. All of those
7 letters make clear it is a must.

8 49848 MR. CONACHER: Okay. So the
9 Guidelines are just a bit out of date?

10 49849 MS GRAY: They are and we are
11 updating them over the summer.

12 49850 MR. CONACHER: Yes, okay. Great.

13 49851 Questions 11 and 12 that were
14 provided to you in advance, I didn't quite hear his
15 full information on that process and it seems very key
16 to me that if this Committee is going to operate
17 properly and actually do a proper review, they need
18 this information from their department as to what
19 relationship the prospective employer or competitors
20 had with the minister.

21 49852 Does the Committee have any
22 investigative powers or right to see information,
23 actually conduct audits itself to establish that, okay,
24 we know exactly who dealt with this minister while they
25 were in office or is it they just trust what the

1 department provides?

2 49853 MS GRAY: First of all, the
3 consultation about a former minister will be with the
4 most senior civil servant in that department, the
5 Permanent Secretary. And yes, they obviously trust
6 what that Permanent Secretary would say.

7 49854 The other thing is, of course, you
8 know, if anybody had been less than forthcoming, that
9 will get picked up inevitably in the future. But that
10 is not -- it is not in a Permanent Secretary's interest
11 not to be clear about the full facts. Why would it be?
12 And it is not in the former minister's interests
13 either. So that is how they do it.

14 49855 The Advisory Committee do audit
15 departments but they audit them in relation to the more
16 junior levels. They obviously rely on somebody who is
17 a civil servant. We have our obligations under the
18 Civil Service Code to be honest. Therefore, on the
19 very top of the civil service -- the reason why it is
20 dealt with at the civil service rather than at the
21 ministerial level is you have got the Civil Service
22 Code, the impartiality, and hopefully, you know, all
23 those facts would come out.

24 49856 The Permanent Secretary will make it
25 his business -- I mean, you know, in relation to one or

1 two cases that have come up over the years I have
2 spoken to the permanent secretaries and I am really
3 aware of the trouble they go to to establish the full
4 facts and checking former ministers' diaries. Those
5 records are all kept and they are kept for a period of,
6 you know, anything up to sort of 30 years depending on
7 the sensitivity. So you have got the audit trail.

8 49857 MR. CONACHER: Is the Committee
9 empowered to see all of that information? Can any of
10 it be withheld from the Committee?

11 49858 MS GRAY: I am not aware that the
12 Committee has ever asked to see such information but I
13 think if the Committee had a concern that they weren't
14 being provided with the full facts, I think they would
15 talk to the department and I'm sure arrangements would
16 be made to try and allay any concerns they have.

17 49859 MR. CONACHER: Okay. When they are
18 doing that review of that information, has the
19 Committee provided some sort of definition of what is
20 relevant? In Canada the phrase is "direct and
21 significant official dealings."

22 49860 MS GRAY: No. I mean --

23 49861 MR. CONACHER: Like where would they
24 draw the line and say, okay, this company has dealt
25 with this minister?

1 49862 MS GRAY: Well, I think they would
2 want to know whether this company had dealt with the
3 minister. They wouldn't impose --

4 49863 MR. CONACHER: "Dealt with" meaning?

5 49864 MS GRAY: Meaning met them, meaning
6 had discussions with them, meaning made a decision
7 could have influenced that company. So I don't think
8 we would try to rely on -- you know, there would be
9 several categories that would probably be caught by
10 this.

11 49865 MR. CONACHER: Okay. In the Canadian
12 act, a minister's not in a conflict. So there would no
13 conflict that would arise in terms of a post-employment
14 position if the minister is dealing with a matter of
15 general application.

16 49866 For example, the banking law affects
17 all banks and therefore the minister would be exempt
18 from taking a job with a bank because no conflict could
19 be created because of this blanket exemption.

20 49867 So is there that kind of blanket
21 exemption as well? Are you talking about a minister --

22 49868 MS GRAY: There wouldn't be a blanket
23 exemption like that. I mean, you would want to know --
24 if a former minister was going to work with a bank, you
25 would want to know if it could be seen that he might

1 have got his job, you know, because of a reward for a
2 past favour, whether the change that he had been part
3 of, whether it applied to all banks or whether it
4 actually -- where was that change initiated from, did
5 it come from the banking sector.

6 49869 MR. CONACHER: Right.

7 49870 MS GRAY: There is a whole range of
8 things but, you know, you couldn't just say, just
9 because they made a decision which affected the whole
10 industry, therefore, they would be exempt from having
11 to put this forward, because in the public's mind the
12 fact that they made a legislative change which
13 benefited the industry to which they were going to work
14 for one part of that industry could still be seen to be
15 an issue. So it wouldn't be as straightforward as
16 that.

17 49871 MR. CONACHER: Right.

18 49872 MS GRAY: I think it would have to be
19 case-by-case consideration and that would be taken on
20 the merits of the individual case.

21 49873 MR. CONACHER: Okay. But would cover
22 things like policy changes --

23 49874 MS GRAY: Oh, yes!

24 49875 MR. CONACHER: -- the minister had
25 made that affected that company --

1 49876 MS GRAY: Yes.

2 49877 MR. CONACHER: -- not just specific
3 contracts with that company?

4 49878 MS GRAY: No, no. No, no. It's
5 policy -- yes.

6 49879 MR. CONACHER: I'm happy to hear
7 that. I wish we had it here.

8 49880 Why is that information not made
9 public, the information concerning the ministers'
10 contractual regulatory or other relationships with the
11 department, between the department and --

12 49881 MS GRAY: Sorry, what information?

13 49882 MR. CONACHER: The information about
14 the contractual regulatory or other relationships that
15 the prospective employer has with the department.

16 49883 MS GRAY: I think the Advisory
17 Committee don't see the need to do that. I mean what
18 they do is they make their decision on the basis of the
19 information they have in front of them and they will
20 then defend that decision. But, you know, I think they
21 take into account a whole range of factors and it is
22 just not felt necessary to go into that level of
23 detail.

24 49884 So basically what you are suggesting
25 is the Permanent Secretary's citation, in a way, should

1 be made public?

2 49885 MR. CONACHER: Yes. So then the
3 public would know the basis, the full information that
4 is the basis of the Committee's decision, and also
5 maybe the public would be able to come forward and say,
6 actually, I'm a lobbyist, I saw these two meeting and
7 this is not disclosed, they actually have met or, you
8 know, whatever.

9 49886 MS GRAY: Well separately, we have
10 another -- I mean, separately we have disclosure about
11 ministers' meetings with outside interest groups.

12 49887 MR. CONACHER: Okay.

13 49888 MS GRAY: I mean there is a whole map
14 out there, I think, that gets taken into account but
15 there is no question -- I mean, people don't actually
16 normally expect to see that level of detail. I think
17 there is a big issue about privacy of individuals as
18 well. I think you have to find a balance between
19 proportionality, transparency, privacy of individuals,
20 and I think the Committee try to do all of this in a
21 very rounded way.

22 49889 They do make public where they have
23 given approval, and, of course, people can challenge
24 that. The public and the media can actually say, it's
25 a disgrace that "X" is being allowed to go and work for

1 "Y" and the Committee then may feel the need to defend
2 their decision.

3 49890 MR. CONACHER: Right.

4 49891 MS GRAY: But it is not a matter of
5 routine.

6 49892 MR. CONACHER: Yes. And just to
7 clarify, it is not a legal decision that anyone from
8 the public could challenge in court and say, no, you
9 have made a completely illegal --

10 49893 MS GRAY: I am not sure that -- yes.
11 I am not sure it would be illegal.

12 49894 MR. CONACHER: Okay. But I am
13 talking about the Committee's decision is not
14 appealable by anybody. The public couldn't take the
15 Committee --

16 49895 MS GRAY: No.

17 49896 MR. CONACHER: -- to court and say,
18 you didn't follow your guidelines?

19 49897 MS GRAY: No.

20 49898 MR. CONACHER: Okay. My final
21 question is: Does the Committee audit former
22 ministers? And also this applies to Crown servants and
23 their role with former Crown servants. Do they audit
24 their post-employment, post-public service activities
25 ever because again, it's getting at the situation that

1 Craig Forcese had raised, that if a minister doesn't go
2 to the Committee --

3 49899 MS GRAY: Yes.

4 49900 MR. CONACHER: -- then how do you
5 determine if -- let's say they are working overseas --

6 49901 MS GRAY: Yes.

7 49902 MR. CONACHER: -- you may never know,
8 they may --

9 49903 MS GRAY: Well, you may -- I mean,
10 you know, you may never know. I think --

11 49904 MR. CONACHER: Do they audit tax
12 forms or do --

13 49905 MS GRAY: No. I mean, I think --

14 49906 MR. CONACHER: -- they do that kind
15 of proactive enforcement?

16 49907 MS GRAY: Sorry. I think you have
17 got to be proportionate in what you are suggesting. I
18 mean, the vast majority of applications -- you know,
19 the vast majority of people do go to this Advisory
20 Committee and they do follow the rules.

21 49908 We have a media which, you know,
22 looks at all of this, and okay, perhaps it shouldn't be
23 the media that is actually trying to identify this for
24 us, but that is what happens.

25 49909 We have Parliament, we have the

1 Advisory Committee themselves and we have people within
2 government who will come forward and say, hang on a
3 minute, you know, there has been a meeting and I just
4 met "X" at a particular meeting, did they go through
5 the Advisory Committee?

6 49910 So there is a whole range of things
7 that happen. But, you know, I think you also have to
8 balance that with resources, use of resources,
9 proportionality, and I certainly would not contemplate
10 auditing people's tax returns to see whether that
11 system has worked. I think, you know, we have a system
12 that is actually -- I mean, yes, there will always be
13 one or two people that don't abide by it but you have
14 then got to decide what the penalty is for that.

15 49911 MR. CONACHER: How many -- it's since
16 1995, yes? How many been found to have not gone to the
17 Committee and just gone on to --

18 49912 MS GRAY: I would say a handful. I
19 am not aware of the exact number.

20 49913 MR. CONACHER: Okay. Thank you very
21 much.

22 49914 MS GRAY: Okay.

23 49915 MR. WOLSON: Mr. Commissioner, we
24 have about 20 minutes left. Ms Gray has come a great
25 distance to tell us about this Committee and to answer

1 all of our questions. As Director of Propriety and
2 Ethics, I would be remiss if I didn't ask her some
3 general questions regarding ethical rules and
4 guidelines, which may assist you, the same questions
5 that we have asked other panellists who have appeared
6 before you on Part II.

7 49916 So with your concurrence, I would
8 like to ask some of those general questions. I can
9 advise you that Mr. Forcese has provided these
10 questions to MsGray. I have asked her, she is
11 comfortable dealing with them this morning, and while I
12 may not get to all of them in the 20 minutes that we
13 have, I am going to ask some if you would permit that.

14 49917 COMMISSIONER OLIPHANT: I would
15 certainly be interested in hearing the perspective of
16 Ms Gray in terms of the questions that you wish to
17 pose.

18 49918 MR. WOLSON: Thank you.

19 49919 Ms Gray, (Off microphone) ...ethical
20 rules, is the objective to shape behaviour or to
21 communicate publicly commitment to values or is it
22 something else entirely?

23 49920 MS GRAY: I think it's a range of
24 issues. I think by having ethical codes, ethical
25 rules, you are being clear about the standards of

1 behaviour that you expect from the individuals holding
2 that office. It is making clear to people what you
3 expect from them. Therefore, it is to shape their
4 behaviour.

5 49921 But I think you need to have
6 transparency. I think by having -- I think the other
7 thing is by having transparent rules about what you
8 expect, that is how people will challenge that
9 behaviour and bring about either change or make sure
10 that for the future people are clear about what they
11 are needed to do.

12 49922 And I think if people -- you know, if
13 there is something in those rules that people can't
14 follow or aren't comfortable with, then, you know, I
15 think that is a major issue and it encourages then a
16 discussion.

17 49923 In the Civil Service Code, which
18 governs civil service behaviour, we are very clear that
19 if you are concerned about something you have been
20 asked to do and you don't like it, you can appeal, you
21 can raise concerns. If those concerns are unfounded,
22 then you are told to get on and deliver whatever you
23 were told to get on and deliver, and if you don't like
24 it, then, you know, the Code says you can resign.

25 49924 So I think you are -- you know, it is

1 great to have transparency and be clear about what
2 people expect from you.

3 49925 In the area of political advisors,
4 special advisors in the U.K. there wasn't a Code of
5 Conduct for them pre-1997. There was a Code introduced
6 in 1997 and it is amazing the transparency about what
7 their duties are which has actually prompted a number
8 of questions and has also influenced changes to that
9 Code of Conduct in more recent years, and the same with
10 the Ministerial Code and the Civil Service Code.

11 49926 COMMISSIONER OLIPHANT: Excuse me,
12 just so that I understand the term, what is a "special
13 advisor"? In Canada, we have the Prime Minister's
14 Office and we have people who work there referred to
15 "exempt staff."

16 49927 MS GRAY: Right.

17 49928 COMMISSIONER OLIPHANT: What are
18 special advisors?

19 49929 MS GRAY: Special advisors are
20 temporary civil servants but they operate in an area
21 where politics and the work of government overlap. So
22 they are -- I mean, they probably would be more
23 appropriate called "political advisors" but they are
24 civil servants and they are appointed. They are paid
25 for by the taxpayer. They are appointed for the

1 duration of the appointment of their appointing
2 minister. There are something like about 75 of them in
3 government.

4 49930 I don't know whether that is --

5 49931 COMMISSIONER OLIPHANT: Yes. I think
6 you are referring to people by a name, "special
7 advisors," for whom we have a different name here in
8 Canada --

9 49932 MS GRAY: Okay.

10 49933 COMMISSIONER OLIPHANT: -- but
11 perform the same type of service, except I don't
12 believe that people in Canada are civil servants. They
13 are exempt staff. They are paid for out of the public
14 purse but they are exempt staff.

15 49934 MS GRAY: Okay.

16 49935 COMMISSIONER OLIPHANT: Ms Dawson is
17 nodding in assent to this suggestion I have just made.
18 I was going to say we might get that clarified later
19 but --

20 49936 MS GRAY: And do they have a Code of
21 Conduct, a transparent Code about what they are meant
22 to do? Okay, we will follow up.

23 49937 COMMISSIONER OLIPHANT: I don't think
24 I want to answer any questions.

25 --- Laughter / Rires

1 49938 MR. WOLSON: As your counsel, that is
2 the advice I would give you, sir.

3 49939 COMMISSIONER OLIPHANT: I have got
4 enough lawyers around me, I know enough not to answer
5 questions. I will ask the questions.
6 --- Laughter / Rires

7 49940 COMMISSIONER OLIPHANT: Ms Dawson, I
8 am sure, would be able to give you advice on that.

9 49941 MS GRAY: Okay.

10 49942 MR. WOLSON: Ms Gray, do you believe
11 that ethical rules enhance ethics or is it an issue of
12 culture that is the more important ingredient to
13 ethical behaviour, and if so, how was an ethical
14 culture created?

15 49943 MS GRAY: Once again, I think you
16 have to have rules. I think you have to be clear about
17 the rules that people are expected to abide by but they
18 should be rules which, I think, encourage standards of
19 behaviour. So it is more about behaviour rather than
20 straight -- you know, sort of like straight rule-based.
21 But you do need -- people do need to have clarity
22 about what they can and cannot do. So I think it is a
23 combination.

24 49944 MR. WOLSON: Do you have any views on
25 how ethical rules should be structured to create

1 accountability on the one hand but on the other not
2 imposing limitations that would have the effect of
3 detering qualified individuals from seeking public
4 office?

5 49945 MS GRAY: I think this is really
6 difficult and I always think in this area about we
7 expect an awful lot of public servants coming into
8 public office, and that is ministers and civil servants
9 and others.

10 49946 In one part of this, we actually ask
11 them a lot -- we ask a lot of them about their private
12 lives, and not just about them but about their family,
13 and sometimes I often think that actually their spousal
14 partner hasn't come into public life and yet we expect
15 them to give up a lot as well. So I think it is --
16 there are some issues that are really difficult.

17 49947 But on the other hand, I think you
18 need -- you get accountability by having transparency
19 and being clear about standards and I think that people
20 do come into public life because they want to come into
21 public life and they actually have -- they respect the
22 very high standards. So while it might deter some
23 people, I think it won't deter the vast majority and
24 they are the people who want to come in.

25 49948 It is not our experience that having,

1 you know, very high standards in public life actually
2 deters people from coming in. That is just not our --
3 we do have to make sure that what we do is
4 proportionate. We have to make sure that we set rules
5 and guidance that encourage people to come in.

6 49949 I think if you were going to go down
7 a route that was very strict and that actually breached
8 privacy, you know, it may deter people from coming in.
9 So it is finding that balance, being able to know that
10 what you are doing is absolutely right in the highest
11 standards, while at the same time not being so, I
12 suppose, unaware of other pressures that would make it
13 very difficult then to come in.

14 49950 MR. WOLSON: In the years that you've
15 been involved with government, have public expectations
16 concerning the ethics of political leaders changed in
17 the U.K.?

18 49951 MS GRAY: I think they've changed
19 everywhere. I think that people expect so much of
20 their political leaders. Only recently, this wasn't to
21 do with a political leader but it was to do with
22 something where we were talking about an issue and
23 somebody said, you know, but it was okay six or seven
24 years ago because we had somebody who came into office,
25 who had that interest and that was all fine.

1 49952 That feels like we are in a very
2 different climate today and I think you have to respond
3 to the climate you are in. You have to respond to
4 public expectations and they are changing and they are
5 increasing, and the more that gets done, the more that
6 people want and that is just a fact of life.

7 49953 But I think the political leaders
8 certainly in the U.K. are very aware of this, you know,
9 responding to public concerns and seeking to tighten
10 where necessary.

11 49954 MR. WOLSON: And just one concluding
12 question.

13 49955 The role of education regarding
14 ethical issues with regard to high office holders,
15 civil servants, what do you see the role being?

16 49956 MS GRAY: I mean this is another
17 issue that we have sort of found quite difficult. We
18 have a number of people coming into public life in the
19 civil service and other employers at very senior levels
20 and they -- you know, for some of us, you are sort of
21 brought up on the culture of your values. For others,
22 they -- you know, it may be more difficult.

23 49957 What we tend to do is we tend to sit
24 down -- because I mean, leadership of the organization
25 is also critical, we would tend to sit down with

1 individuals one-to-one and go through the values, go
2 through expectations and their responsibility as
3 leaders.

4 49958 It is a question that is asked in
5 interviews, not just for civil servants but for public
6 appointments more generally, because it is so important
7 to get leadership skills, the right leadership skills,
8 right? So it is an issue that we take seriously.

9 49959 And then throughout an individual's
10 employment we are talking to them, we are running
11 sessions on this. We are trying all the time to sort
12 of understand what is going on.

13 49960 We have a staff survey. All
14 departments have a staff survey, an annual staff
15 survey, and we are just introducing for the first time
16 a question about values, about understanding of values,
17 about how often departments publicize the values, about
18 the training they provide to staff.

19 49961 So we are trying to get a better feel
20 for what is going on out there and obviously amend our
21 processes to tailor them in response to those
22 questions.

23 49962 MR. WOLSON: Mr. Commissioner, those
24 are the questions that I proposed to ask.

25 49963 We have about 10 minutes left. If

1 there are questions that you have or my co-counsel
2 Mr.Forcese or the parties, by all means we won't stand
3 on ceremony, whoever would like to ask questions.

4 49964 COMMISSIONER OLIPHANT: Just a
5 follow-up to one of the questions Mr. Wolson asked of
6 you, Ms Gray, and that was the public expectations and
7 the change in public expectations.

8 49965 I think I heard you indicate that the
9 climate is different today, and we all recognize that,
10 and that we must pay attention to and respect and
11 perhaps respond to the climate of the day in terms of
12 ethical issues.

13 49966 But what about the fact that a person
14 undertakes a senior role and in responding to the
15 climate of the day the rules change while the game is
16 in process? I might have undertaken a role in
17 government, a senior role, when a certain set of rules
18 were in place and all of a sudden they change, for
19 example, whereby my spouse and children have to
20 publicly declare their interests.

21 49967 Is there a role for grandparenting, I
22 guess, to cover people that are in office when rules
23 change?

24 49968 MS GRAY: I mean it is very, very
25 difficult. It is not something that if we decide to

1 implement a rule change, then we implement the rule
2 change to apply to whether people are coming in or are
3 currently in post in terms of it is to do with the
4 values.

5 49969 It is really difficult and I think
6 you have to make sure then that the changes you are
7 making are the right changes, that they are for the
8 benefit of the public service. But I think that, you
9 know, you can't -- if you decide that something needs
10 to be done, it feels difficult to exclude a large
11 sector just because they are already in post if there
12 is justification, which is why it has to be -- you
13 know, whatever you decide to do has to be defensible,
14 justified in the public interest.

15 49970 But if you are going to do it, then I
16 think you have got to do it and there can't be some
17 people who are exempt from that.

18 49971 An example we had recently was civil
19 servants aren't precluded from having shareholdings.
20 The key thing is that you must avoid a conflict of
21 interest and it is very much a subjective -- that can
22 actually be a subjective judgment because, you know, to
23 one person a conflict of interest is something and it
24 means another to somebody else.

25 49972 What we tend to do is we will

1 obviously try to explain that decision to an individual
2 as to why we think it was okay when you first started
3 here three years ago for you to have a shareholding but
4 actually we don't think you can have it because of the
5 area you are working in today. And it tends to -- you
6 know, people tend to understand but I do think you have
7 got to try and take people with you.

8 49973 But we certainly wouldn't
9 contemplate -- I mean obviously, financially, you know,
10 in terms of employment, like pensions and that, we do
11 operate sometimes a two-tier system, where if you were
12 brought in, you can keep something. But in terms of
13 values and standards, if we make a change, we make it
14 for all.

15 49974 MR. WOLSON: Mr. Forcese...?

16 49975 MR. FORCESE: Just one question on
17 education.

18 49976 Is training on the Ministerial Code
19 mandatory for newly inducted ministers and is that
20 training also extended to their staff, special advisors
21 as to the obligations that are imposed on their boss?

22 49977 MS GRAY: It is not mandatory. We
23 invite new ministers and we invite new special advisors
24 to events. What we have to do is make the event
25 something they want to attend.

1 49978 So we tend to make it, you know,
2 first thing in the morning when we know we might get
3 them. The trouble is that if you make it later in the
4 day they caught up with meetings or parliamentary
5 business. You think about the key issues that you want
6 to discuss with them. So you don't make it an all-day
7 event. You make it a morning event.

8 49979 You think about the key issues that
9 you want to cover in their induction event. It has to
10 come very quickly into them being a new minister, so
11 within the first couple of weeks, and the same with
12 special advisors.

13 49980 You get a good speaker, somebody they
14 will be interested to hear about, perhaps somebody
15 influential, somebody who, you know, if they are not
16 there, they may be aware it will get reported back.

17 49981 Take-up is good but it is certainly
18 not mandatory. I think mandatory feels quite
19 difficult.

20 49982 MR. WOLSON: Are there any other
21 questions?

22 49983 If not, then I want to thank Ms Gray.
23 She has come a great distance to be with us this
24 morning and very, very informative. We thank you so
25 much and we thank your staff for communicating with

1 Mr.Forcese and we are grateful to you. So thank you.

2 49984 MS GRAY: Thank you.

3 49985 MR. WOLSON: You are certainly

4 welcome to stay the morning and we thank you again.

5 49986 COMMISSIONER OLIPHANT: Yes, thank

6 you very, very much, Ms Gray. Your participation has

7 added a lot of value to the work that this Commission

8 has done and I really appreciate your being here.

9 Thank you.

10 49987 You wanted to break for five minutes

11 before the next session, Mr. Wolson?

12 49988 MR. WOLSON: Just to set up for the

13 next session.

14 49989 COMMISSIONER OLIPHANT: Sure.

15 49990 MR. WOLSON: Five minutes would be

16 great.

17 49991 COMMISSIONER OLIPHANT: We will break

18 for five minutes then.

19 49992 MR. WOLSON: Thank you.

20 --- Upon recessing at 11:40 a.m. / Suspension à 11 h 40

21 --- Upon resuming at 11:47 a.m. / Reprise à 11 h 47

22 49993 MS BROOKS: Mr. Commissioner, we have

23 with us today Mary Dawson, who is the Conflict of

24 Interest and Ethics Commissioner of Canada, a post she

25 has held for two years.

1 49994 I would like to thank Ms Dawson very
2 sincerely for coming back. She was here earlier in
3 your Part 2 proceedings, and today we have questions
4 for her that explore in more detail the education
5 component of what the Conflict of Interest and Ethics
6 Commissioner does, and, as well, to build upon some of
7 the questions and answers that were given at the last
8 appearance by Ms Dawson.

9 49995 Ms Dawson does have some opening
10 remarks. Before we get to them, I would like to just
11 bring to the Commissioner's attention a response that
12 we received from the Prime Minister's Office. It was
13 in response to an inquiry that we sent asking about
14 education, and Mr. Ray Novak, who is the Principal
15 Secretary for the Office of the Prime Minister, simply
16 advised in his communication with the Commission that
17 the briefing of ministers, ministerial staff, and
18 ministerial advisors regarding their obligations under
19 the Conflict of Interest Act is provided by the Office
20 of the Ethics Commissioner.

21 49996 So, in hearing from Ms Dawson, we are
22 covering off all of that population of public office
23 holders.

24 49997 COMMISSIONER OLIPHANT: Did you wish,
25 Ms Brooks, to tender the letter from the Prime

1 Minister's Office as an exhibit, or just by way of
2 reference?

3 49998 MS BROOKS: I have read the contents
4 of the letter into the record. We haven't had exhibits
5 in this part of the inquiry; I think I will just leave
6 it at that, Commissioner. Thank you.

7 49999 COMMISSIONER OLIPHANT: All right.
8 Thank you.

9 50000 MS BROOKS: Ms Dawson...
10 PRESENTATION BY MS DAWSON /
11 PRÉSENTATION PAR MME DAWSON

12 50001 MS DAWSON: Thank you, once again,
13 Mr. Commissioner, Commission counsel, Commission
14 experts, and members of the panel, for this opportunity
15 to inform you about the activities of the Office of the
16 Conflict of Interest and Ethics Commissioner.

17 50002 As requested, I will focus my remarks
18 today on the outreach and education activities
19 undertaken by my office to inform public office holders
20 about their obligations under the Act, and members of
21 the House of Commons, under the Conflict of Interest
22 Code for members.

23 50003 I have already provided information
24 on June 17th to this Commission about my mandate, so I
25 will not repeat those details again today.

1 50004 My office has undertaken a variety of
2 activities to ensure that public office holders and MPs
3 understand their reporting requirements and obligations
4 under these two regimes.

5 50005 We consider outreach and education to
6 be of great importance for my office, and will continue
7 our efforts in the future.

8 50006 I would like to make one observation
9 at the outset of my remarks. I notice that many of the
10 questions given to us in advance asked for information
11 related to "ethics education". Despite my title, there
12 is no mention of ethics in the Conflict of Interest Act
13 or in the members' Code. The only place that ethics is
14 mentioned in relation to my mandate is in the
15 Parliament of Canada Act.

16 50007 In addition to my responsibilities
17 under the Conflict of Interest Act and the Code, there
18 is a mandate in the Parliament of Canada Act to provide
19 confidential policy advice and support to the Prime
20 Minister in respect of ethical issues in general, as
21 well as conflict of interest issues.

22 50008 While there are ethical aspects
23 inherent within the conflict of interest rules of the
24 Act and the Code, our communication efforts have mostly
25 been on what those conflict of interest rules mean in

1 terms of compliance.

2 50009 Having set this context, I will now
3 outline the outreach and education activities conducted
4 by my office. Then I will explain why such activities
5 have proven more challenging in relation to some
6 provisions of the Act, more particularly the
7 post-employment rules.

8 50010 There are several activities that our
9 office undertakes as a matter of course to ensure that
10 public office holders and MPs are aware of their
11 conflict of interest obligations. One of our main
12 activities is to provide advice to all public office
13 holders and MPs on their disclosure requirements and
14 measures that they must take to comply with the various
15 rules of the applicable conflict of interest regimes.

16 50011 We do this regularly, on appointment
17 or on election, and then annually after that.

18 50012 We also respond to phone calls or
19 e-mails seeking advice on specific issues.

20 50013 In addition, for public office
21 holders, my office provides detailed information on
22 post-employment obligations, both at the time they
23 assume public office and as soon as we are informed of
24 their departures.

25 50014 There are no post-employment rules

1 for members of Parliament, aside from ministers, of
2 course, who are under the other Act.

3 50015 After the last election we sent
4 letters to ministers' offices offering to discuss any
5 issues they or their staff may have on the conflict of
6 interest rules. In the last year we made five
7 presentations to ministerial staff to explain their
8 requirements and obligations under the Act, including
9 the post-employment rules.

10 50016 We have made a standing offer to all
11 ministers' offices to give these presentations.

12 50017 Following the last election, I made a
13 presentation to new members of Parliament, focusing on
14 their obligations under the Code.

15 50018 We have also recently made
16 presentations on the members' Code to each of the four
17 political party caucuses represented in the House of
18 Commons. These presentations have proven quite
19 effective in informing ministerial staff and members of
20 Parliament of their responsibilities under the Act and
21 Code, and we hope to make more in the future.

22 50019 We have also published guidelines and
23 information notices on our website related to various
24 areas of the Conflict of Interest Act of general
25 application -- for example, on gifts, post-employment,

1 lobbying and political activities.

2 50020 These guidelines and information
3 notices are shared with public office holders in the
4 course of our ongoing communications as well.

5 50021 If you recall -- of course you
6 recall, I am sure -- there is a cooling off period --
7 two years for ministers and ministers of state, and one
8 year for other public office holders -- during which
9 time they are prohibited from working for or
10 contracting with an entity with which they had
11 significant official dealings in their last year of
12 office, and from making representations to their former
13 organization.

14 50022 A number of reporting public office
15 holders have approached my office in the past year,
16 prior to leaving office, to seek advice on how the
17 cooling off period might restrict their post-employment
18 activities. Such discussions are very useful in
19 ensuring compliance with the Act, and I actively
20 encourage ministers and senior ministerial staff to
21 stay in touch with my office regarding any positions
22 they might consider during their cooling off period.

23 50023 I have also contacted a number of
24 former reporting public office holders to discuss
25 information published in media reports or received from

1 third parties regarding their post-employment
2 activities. This has provided an opportunity to review
3 with them their post-employment obligations.

4 50024 The main challenge with outreach
5 activities, specifically with regard to public office
6 holders, is the high turnover rate among ministerial
7 staff. Providing timely and relevant education and
8 advice on the post-employment provisions is also a
9 challenge.

10 50025 In most cases we do not find out that
11 a reporting public office holder has left government
12 until they are already gone, in which case we can only
13 send out our post-employment letter once they have
14 left.

15 50026 Few maintain any contact with my
16 office once they have left, and, with one exception,
17 they are not required to do so.

18 50027 There is only one post-employment
19 reporting requirement during the cooling off period,
20 and that relates to limited activities referred to in
21 the Lobbying Act.

22 50028 My office does receive phone calls,
23 e-mails and letters from some former public office
24 holders with questions on the application of the Act to
25 their current situations. In these cases we are able

1 to offer specific advice and to assist these
2 individuals in understanding their general
3 post-employment obligations.

4 50029 In conclusion, the focus of my third
5 year as Conflict of Interest and Ethics Commissioner,
6 which is just coming up, will be on continuing to carry
7 out our core advisory and compliance work, while
8 enhancing our communications and outreach efforts.

9 50030 We have just recently hired a
10 communications manager for the office, and I hope that
11 this will help us to deliver an even more comprehensive
12 outreach and education program.

13 50031 Also, we are awaiting the final
14 products of a local communications firm from whom we
15 sought advice on communication strategies and
16 activities.

17 50032 I thank you for this opportunity, and
18 I welcome any follow-up questions.

19 50033 COMMISSIONER OLIPHANT: Thank you.

20 50034 MS BROOKS: Commissioner, we have a
21 number of questions that we would like to follow up
22 with Ms Dawson. She was provided with the questions in
23 advance, to give her an opportunity to provide us with
24 her thoughtful answers on them.

25 50035 I would like to start with a number

1 of general questions about education and the education
2 component carried out by your office, Ms Dawson.

3 50036 I wanted to know if you could give us
4 some details about the role and activities of your
5 office in relation to -- I won't refer to it as ethics
6 training, because, as I understand it, except for the
7 advice you give to the Prime Minister under the
8 Parliament of Canada Act, under the Conflict of
9 Interest Act there is no such reference to ethics.

10 50037 But with respect to training and
11 about their obligations within the Executive Branch of
12 Government, what specific education activities does
13 your office undertake?

14 50038 MS DAWSON: My mandate to administer
15 the Conflict of Interest Act doesn't specifically refer
16 at all to education and training activities, but I do
17 feel that they are important.

18 50039 Our main educational activity is our
19 various information exchanges in writing that I
20 mentioned in my opening remarks, and our many e-mails
21 or phone conversations with current public office
22 holders, as well as with some prospective public office
23 holders.

24 50040 We have an Advisory and Compliance
25 Unit, which has probably 50 percent of our staff, and

1 they have regular exchanges, either by mail or
2 telephone, with all of the people who are subject to
3 the Act.

4 50041 I have brought with me, for your
5 information, some copies of generic correspondence that
6 are sent out to public office holders. I have them in
7 these two binders. We have standard letters that we
8 adjust, depending on the group that we are sending to,
9 at a number of different times in their careers.

10 50042 As a more formal outreach activity, I
11 have written, as I said in my opening remarks, to
12 ministers following the most recent election, and
13 copied their respective chiefs of staff, to inform them
14 of their responsibilities as employers, and to offer
15 the opportunity to discuss any questions on issues
16 under the Act with either themselves or their chiefs of
17 staff.

18 50043 In the last year we made a total of
19 five presentations to ministers' staff, as well as a
20 presentation to all chiefs of staff last summer.

21 50044 And, of course, we provide
22 presentations to the other groups, who we don't seem to
23 mention too often here, but the general Governor in
24 Council appointees to boards and agencies have about
25 the same number of presentations each year. We

1 organize those through their own offices.

2 50045 MS BROOKS: You have made the point
3 that members of Parliament are not subject to the
4 Conflict of Interest Act. What roles and activities
5 does your office carry out with respect to their
6 education and training of their obligations under the
7 members' Code?

8 50046 MS DAWSON: The interesting thing
9 about that is that the Conflict of Interest Code for
10 members actually does state that I shall undertake
11 educational activities, and that word "shall" was
12 exchanged for the word "may" in June of 2007.

13 50047 As with the Act, the main educational
14 activity is our informational exchanges by phone or
15 letter.

16 50048 Similar letters to those provided to
17 public office holders are sent to members of Parliament
18 following an election, informing them of their
19 immediate and ongoing obligations.

20 50049 As I mentioned, there are no
21 post-employment rules for members of Parliament, as
22 such.

23 50050 Over the last year, again, we carried
24 out a number of formal educational activities, and
25 these were attended by a good number of members and

1 their staff.

2 50051 I did a presentation following the
3 election in November of 2008, and a copy of that
4 presentation is on my website.

5 50052 Separate presentations to members'
6 staff were organized through the four caucuses in the
7 spring of this year, and, again, they had a good number
8 of participants.

9 50053 Again, a copy of that presentation is
10 provided in the package that I am leaving with you.

11 50054 MS BROOKS: Are you aware of any
12 other form of training that is provided by any other
13 government entity or department with respect to
14 ethics -- and I will include ethics in this question --
15 and, as well, with respect to post-employment
16 obligations?

17 50055 MS DAWSON: I understand that the
18 Privy Council Office informs their Governor in Council
19 appointees of their obligations under the Conflict of
20 Interest Act at the time of their appointment.

21 50056 Now, I think that's a paragraph that
22 is in their appointment letter.

23 50057 The Privy Council Office also
24 publishes a document called "Accountable Government: A
25 Guide for Ministers and Ministers of State", and that

1 includes a reference to our Act, as well -- and they
2 have actually consulted with us on the paragraph and
3 the part that is in that guide -- and it outlines the
4 general ethical standards and specific guidelines on
5 partisan political activities.

6 50058 Certain departments and agencies and
7 administrative tribunals have their own internal codes
8 of conduct, as well as the general one that I
9 administer, and I am sometimes consulted on these.

10 50059 And I understand that there is
11 training provided by those individual bodies on their
12 own codes of conduct.

13 50060 I don't know of any other formal
14 educational activity on ethical matters, aside from
15 those provided by my office. But, of course, I haven't
16 mentioned the Public Service Values and Ethics Code,
17 and that has its own regime, and I am sure there are
18 quite a number of educational activities that they
19 carry out.

20 50061 MS BROOKS: And who, specifically,
21 would the Public Service code apply to, and if there is
22 some overlap between that code applying to members of
23 Parliament and other public office holders who are
24 caught by the Conflict of Interest Act, could you
25 explain that?

1 50062 MS DAWSON: I think, pretty well, the
2 only overlap would be with deputy ministers and
3 associate deputy ministers. It's basically the core
4 Public Service that that would apply to.

5 50063 MS BROOKS: Okay. Getting into more
6 specific questions, I am wondering if you could tell us
7 whether there is any mandatory education or training
8 for persons newly subject to the Conflict of Interest
9 Act.

10 50064 MS DAWSON: No, there isn't. As I
11 mentioned, we do inform everybody.

12 50065 Incidentally, those letters that we
13 send out when they are appointed are not in any way
14 mandated by the Act, it's something we just feel that
15 we ought to do, and it's the way that we trigger
16 getting their disclosures in in a timely way.

17 50066 MS BROOKS: Are you able to say
18 whether or not you think it would be a good thing to
19 have a mandatory education component as part of an
20 obligation of an office holder subject to the Conflict
21 of Interest Act?

22 50067 MS DAWSON: I think it's better if
23 people come voluntarily.

24 50068 I have lived an experience, for
25 example, where there was mandatory training for

1 something which I won't mention, and people would come
2 and read their books while they were sitting there and
3 getting checked off for being there.

4 50069 Now, I wouldn't expect that would
5 happen in this training that frequently, because it is
6 relevant to people.

7 50070 I heard the previous person that you
8 were interviewing speak about this, as well, and I tend
9 to agree that mandatory training -- it's too bad if
10 it's necessary.

11 50071 But the problem with not having
12 mandatory training is that it's the converted that come
13 for the training. So I am a bit agnostic on the
14 subject, and I wouldn't -- I wouldn't fight it.

15 --- Laughter / Rires

16 50072 MS BROOKS: I would like to, then,
17 ask you that question in relation to those who are
18 subject to the MP Code. Is there any mandatory
19 training that they must attend under the regime?

20 50073 MS DAWSON: No, there isn't any
21 mandatory training from their point of view, but, as I
22 mentioned, the MP Code says that I have to undertake
23 educational activities.

24 50074 MS BROOKS: Again, the question I
25 would pose would be the same one, and perhaps the

1 answer is the same. What do you think about imposing
2 mandatory training on these office holders?

3 50075 MS DAWSON: The answer is the same.
4 I think it should be made, again, as interesting as you
5 can make it, and do something to draw them in, rather
6 than make it mandatory.

7 50076 But I think that if there is a
8 significant problem in not getting enough people coming
9 out and listening, it's possible to think about
10 mandatory training.

11 50077 The way we handle it, really, is to
12 make sure that we get frequent letters out to the
13 people who are covered by the Code and the Act, so that
14 at least they do have the information.

15 50078 MS BROOKS: Is there any means under
16 the current Act or Code to impose a mandatory regime
17 without legislative enactment?

18 50079 MS DAWSON: I don't think so, no.

19 50080 MS BROOKS: All right. Now, you have
20 spoken about your role, and it sounds like quite an
21 active one in the activities that you have undertaken.
22 Do you think there is a role for other stakeholders,
23 such as consultants or universities, who might provide
24 education and training of this kind?

25 50081 MS DAWSON: I think there is nothing

1 wrong with other bodies giving ethical training. I
2 think that would be a good thing.

3 50082 But I think that since it's an Act
4 that I am administering, the training on complying with
5 the Act should probably be done at least in concert
6 with my office.

7 50083 MS BROOKS: How are people who are
8 subject to the Conflict of Interest Act made aware of
9 the training?

10 50084 You have talked about your letters to
11 them. Is there also a line of communication that you
12 have established through any other persons who would
13 pass this message on to exempt staff, for instance, or
14 do you use the ministers themselves for that kind of
15 conduit?

16 50085 Perhaps you could expand on that.

17 50086 MS DAWSON: Generally, with respect
18 to the ministers' offices, it is critical, I think,
19 that we get hold of the chief of staff, who is really
20 the office manager of a minister's office.

21 50087 We send the minister a letter, but we
22 always make sure that it's copied to the chief of
23 staff.

24 50088 With respect to the boards and
25 agencies, again, it is the administration that we would

1 be working with to set up those meetings.

2 50089 Other than that, there are some
3 groups that don't get caught easily, such as deputy
4 ministers, I guess, but I think I have made it known
5 that, should they wish a training session, we could
6 provide it.

7 50090 I am not saying that deputy ministers
8 are a particular problem area, but the easiest way to
9 organize it is to contact a person who has some sort of
10 administrative connection with the people.

11 50091 MS BROOKS: Do you issue any periodic
12 newsletters that would make this kind of information
13 public to these office holders?

14 50092 MS DAWSON: We have sent out,
15 occasionally, e-mails letting people know about new
16 guidelines and things like that. We haven't used them
17 yet for training opportunities, as such.

18 50093 We have advertised -- I have just
19 forgotten where we have advertised, but we have made it
20 known, certainly, for example, through the caucuses.

21 50094 And each group has to be approached
22 in a different way. There is no standard way of
23 approaching them. But we haven't, to date, done much
24 in the way of advertising in a broad way.

25 50095 MS BROOKS: Looking at it from the

1 other perspective, that is, those who are subject to
2 the Code or the Conflict of Interest Act, do they ever
3 approach your office to initiate a training session?

4 50096 MS DAWSON: Yes, particularly the
5 boards and agencies. Many of them have -- and a couple
6 of them in particular, the largest ones, have regular
7 orientation sessions, and we are included amongst their
8 orientation materials.

9 50097 We go down and do presentations to
10 them, for example.

11 50098 MS BROOKS: And these presentations
12 tend to be a presentation that takes place at one
13 sitting, or is there a series of presentations that
14 would form part of a training or education package?

15 50099 MS DAWSON: They tend to be one
16 sitting.

17 50100 MS BROOKS: I am going to ask my
18 fellow counsel if they have any questions before I move
19 on to follow-up from some questions that were raised at
20 the June hearings.

21 50101 Are there any questions, Mr.
22 Commissioner or counsel?

23 50102 COMMISSIONER OLIPHANT: I have one
24 question, if I might, Ms Dawson. On two occasions, one
25 during your presentation at the outset of your

1 appearance this morning, and another in response to a
2 question asked of you by Ms Brooks, you spoke about
3 sending letters out to ministers after the last
4 election.

5 50103 What, if anything, did you do about
6 former ministers after the last election?

7 50104 MS DAWSON: They would have gotten
8 their post-employment letters. We have a standard
9 post-employment letter that goes out.

10 50105 So as soon as we saw that they had
11 lost their election, they got a post-employment letter.

12 50106 COMMISSIONER OLIPHANT: And what, if
13 anything -- and I don't want to get into specific
14 details -- was the response from former ministers
15 having received post-employment letters from your
16 office?

17 50107 MS DAWSON: I don't think we heard a
18 peep from any of them.

19 50108 Basically, that letter doesn't
20 require -- there is no requirement in our Act for any
21 follow-up from our post-employment letters, because no
22 disclosure is necessary in the post-employment world.

23 50109 In fact, I shouldn't say that we had
24 no follow-up. In fact, I lied. We did get three or
25 four calls, I think, from ministers who were no longer

1 ministers, discussing what they could do in
2 post-employment.

3 50110 Did we not?

4 50111 COMMISSIONER OLIPHANT: I'm sorry,
5 you were getting some advice from one of your staff.

6 50112 MS DAWSON: Yes, I would just like to
7 check that.

8 --- Pause

9 50113 MS DAWSON: My colleague reminds me
10 that probably most of them that we spoke to, we spoke
11 to as a result of us following up on media reports, but
12 I do recall speaking to a few of them.

13 50114 COMMISSIONER OLIPHANT: Let me ask
14 you a question perhaps of a more general nature. We
15 spent the first part of this morning listening to Ms
16 Gray speak about the system in the U.K., where there is
17 an advisory committee on appointments, and a process is
18 in place that, to me, seems quite a bit more rigorous
19 than that which we have in Canada, especially as it
20 pertains to former ministers and the employment being
21 taken by former ministers.

22 50115 Ms Gray also expressed the view that
23 the nature of this work -- I hope that I am properly
24 citing you, Ms Gray -- was really something that would
25 be difficult for one person to handle.

1 50116 I am wondering what your reaction is
2 to the suggestion of the implementation here of a
3 committee either the same as or similar to the
4 committee that Ms Gray spoke of this morning.

5 50117 MS DAWSON: When you speak of it
6 being too much for one person to handle, in fact, my
7 office has a staff. There would be a total of 10 to 15
8 officers who could be available to sit down with those
9 individuals.

10 50118 I think the thrust of your question
11 may have been not so much was there enough staff to
12 cover the need to sit down with them, but -- because,
13 in fact, whoever we send out a post-employment letter
14 to, very frequently they come back and do call our
15 staff to have a discussion about certain aspects.

16 50119 Your question, I guess, related more
17 to a group who could think about the issue.

18 50120 I think there is probably some value
19 to having a group of people who are sort of like peers
20 discussing possibilities, but the problem is that, when
21 you have an Act, and you have defined rules, and you
22 have a centre that interprets that Act, I would worry
23 about -- I could only see it as being in parallel to,
24 not in --

25 50121 Well, if it was instead of, it would

1 be an entirely different system. What we are doing is
2 looking at a construct in one system and asking whether
3 it could be applied to a completely different system.

4 50122 So, if we imagined that this system,
5 which we have now, remained, I think that a commission
6 or an advisory body like that would do no harm if they
7 were purely a sounding board, but I don't think they
8 could ever be trying to advise on the same interpretive
9 matters that my office was trying to advise on, or
10 there would be confusion.

11 50123 COMMISSIONER OLIPHANT: I mean no
12 disrespect, I wasn't necessarily thinking of parallel
13 systems.

14 50124 MS DAWSON: Okay. Instead of, okay.

15 50125 COMMISSIONER OLIPHANT: Yes.

16 50126 MS DAWSON: Yes, I think that lots of
17 countries have lots of different systems, and it may
18 well be an "instead of" alternative for the system we
19 have here.

20 50127 What I think, though, is missing in
21 this system, which has nothing to do with that
22 discussion, is any requirement for any kind of
23 reporting once somebody has left office, and I don't
24 think the system in England has that either, or in the
25 U.K.

1 leave office.

2 50136 The only way I would have a
3 connection -- except for that one tiny exception, which
4 is if they are lobbying in a certain way.

5 50137 The other odd thing about
6 post-employment is that usually we don't hear -- as I
7 mentioned, we don't hear about it until after they have
8 left. Therefore, we take some care when they are hired
9 to talk to them about their post-employment
10 obligations, because they will have, often, made their
11 plans before they get our letter, because we simply
12 don't know that they have retired. It takes a while
13 for the machinery of government to get us the
14 information on who has retired.

15 50138 So there is a problem there, too.

16 50139 MR. WOLSON: Right. Do you see a
17 downside to the implementation of such a committee
18 process?

19 50140 MS DAWSON: Well, you know, it's
20 pretty hard to go back once you have had an Act and
21 eliminate an Act.

22 50141 Maybe not. Maybe it isn't, I don't
23 know. But an Act is a blunter instrument, in a way,
24 than an advisory committee, and the rules on conflict
25 of interest have gradually been strengthening, so I am

1 not sure how feasible it would be to eliminate an Act
2 at this point.

3 50142 Aside from that, I think it's an
4 alternative approach. You just have to be careful to
5 understand that each system is different, and each
6 system, I think, has its advantages and disadvantages.

7 50143 An Act is clear, clearer than the
8 discretion given to a commission.

9 50144 And the rules are clearer. The rules
10 are precise.

11 50145 It's a choice.

12 50146 MS BROOKS: May I ask, Ms Gray, if
13 you have a comment on that?

14 50147 MS GRAY: I think what is quite
15 interesting is the fact that not many people do -- I
16 mean, you get some queries, but it's quite interesting
17 that we -- in the U.K., we write out several times to
18 them about --

19 50148 When they join office they are told
20 about what happens when they leave. When they leave
21 they get a letter from the cabinet secretary, and they
22 also get a letter from the advisory committee.

23 50149 And, actually, they really are very
24 much in their minds about this whole process, and they
25 all want to know the sort of jobs they can take up, the

1 sort of jobs they can't, what would be the advisory
2 committee's view if they put an application in for X.

3 50150 So I would say that it's actually
4 quite interesting, you know, the different debate that
5 we seem to have in both countries. I think that we are
6 not very -- you know, it is an advisory system. It's
7 not in legislation, yet the response seems to be
8 stronger.

9 50151 Perhaps it's clearer to your former
10 ministers about what they can and cannot do, but I am
11 just intrigued that -- you know, I suppose for me, we
12 get a big response when we issue the letter.

13 50152 MS DAWSON: We get a lot more
14 response from the people who aren't ministers, and I am
15 not clear, exactly, on who else you are covering in
16 this area.

17 50153 MS GRAY: I am just talking now about
18 former ministers. We obviously cover all others, as
19 well.

20 50154 MS DAWSON: For example, a deputy
21 minister who leaves, I think that almost all of them
22 have called me before they leave to discuss these
23 matters.

24 50155 The post-employment rules apply to a
25 lot more people than ministers in our area. They apply

1 to all Governor in Council appointees, all of the
2 people that are under our Act, including part-time
3 students that are working in ministers' offices and
4 that sort of thing.

5 50156 So there is a whole range of
6 different kinds of people that we have to deal with.

7 50157 But with respect to ministers, I
8 would say -- we have only had one example of ministers
9 leaving office since I have been in the post, and since
10 we have had our rules, so it's a little early to say
11 how frequently they are going to be calling us about
12 post-employment.

13 50158 And, as I said, when there was a
14 turnover last fall, we did have some discussions with
15 the ministers that lost their jobs.

16 50159 MS BROOKS: I have a question from
17 Mr. Forcese, and then from Mr. Roitenberg.

18 50160 MR. FORCESE: Thanks very much.
19 Just, again, a follow-up on this discussion about the
20 U.K. model.

21 50161 The U.K. model has two attributes, it
22 has the peer review system, as we have been calling it,
23 and also, then, the two-way flow of information. The
24 letters go out to the former ministers, and then there
25 is an expectation that the former ministers will

1 apprise the advisory committee on their job prospects
2 and seek approval.

3 50162 Your system, it sounds like, has a
4 one-way flow of information, for the most part.

5 50163 MS DAWSON: Yes.

6 50164 MR. FORCESE: Setting aside the peer
7 review aspect, would there not be room for, simply, an
8 analogue to the ministerial code that they use in the
9 U.K. which says, "The Prime Minister expects that all
10 ministers, in observing the existing post-employment
11 rules in the Conflict of Interest Act, will disclose to
12 you during the cooling off period their employment
13 prospects and seek reviews on the compliance of those
14 jobs with the post-employment rules"?

15 50165 MS DAWSON: That would be wonderful.
16 That could either be just a simple request from the
17 Prime Minister, or it could be in the Act as a
18 requirement.

19 50166 I think that was one possibility that
20 I probably discussed last time I was here.

21 50167 MS BROOKS: Mr. Roitenberg...

22 50168 MR. ROITENBERG: Thank you.

23 50169 Commissioner Dawson, you are charged
24 with implementing a regime and monitoring a regime, so
25 I hope you don't take things that are critical of the

1 regime to be critical of your administration of it.

2 50170 MS DAWSON: No, no.

3 50171 MR. ROITENBERG: I am curious as to
4 why you have voiced the concern that it would require
5 the stepping back from a statute that is already in
6 place, why we would need to scrub the legislation to be
7 able to look at the implementation of something along
8 the lines of what Ms Gray has spoken to us of this
9 morning.

10 50172 MS DAWSON: I don't think you would.

11 What I was suggesting was, you couldn't have that body
12 of advisors giving, I don't think, firm advice on the
13 interpretation of the Act. I don't think you can have
14 two bodies giving definitive advice on the Act.

15 50173 That's the only aspect that concerned
16 me.

17 50174 MR. ROITENBERG: All right. I just
18 wanted to have that clarified, because, as it stands
19 now, what we have is a situation where you send the
20 post-employment letter, hoping -- maybe not for a
21 response, but hoping that that letter will twig the
22 recipient to their obligations under the
23 post-employment constraints.

24 50175 But that individual would have to be
25 aware of them, and hopefully the letter will raise that

1 concern.

2 50176 But you are doing it where we have,
3 as you have told us this morning, this -- not a void of
4 education in that regard, but the lack of any mandatory
5 education. So the hope that that person has some
6 assistance in interpreting what their obligations
7 are --

8 50177 MS DAWSON: Right.

9 50178 MR. ROITENBERG: -- as opposed to
10 demanding of them their coming forward and seeking some
11 guidance, which is what the advisory committee seems to
12 foist upon them in the U.K. model.

13 50179 You see that.

14 50180 MS DAWSON: Yes. When we were
15 talking about mandatory education before, though, we
16 were talking about -- I thought we were talking about
17 general presentations that people had to come and
18 listen to.

19 50181 But, yes, there is that other aspect
20 of "mandatoriness", as well, asking that they come
21 forward, but that is what I referred to as, basically,
22 a disclosure requirement -- or that would surround a
23 disclosure requirement.

24 50182 I mean, the way that we are able to
25 talk to people, not with respect to the

1 post-employment, but with respect to their during their
2 employment obligations is that they have to disclose a
3 whole bunch of information to us, and that gives us a
4 vehicle to sit down and talk to them about what they
5 are doing generally. That is the best way to introduce
6 the discussion, because you are looking at something
7 tangible, and if you see something that looks a little
8 bit like it may be a problem from a conflict of
9 interest point of view, then you can discuss it.

10 50183 And, certainly, my office is very
11 proactive in following up on that. In fact, we don't
12 sign off on the disclosures and put out our public
13 disclosure until that process is gone through.

14 50184 It is just the post-employment area
15 that doesn't have those same trappings around it.
16 There is no disclosure requirement at all with respect
17 to post-employment.

18 50185 MS BROOKS: When someone who is
19 subject to the Act comes to you for advice, do you
20 publish the opinion?

21 50186 And my question is encompassing those
22 deputy ministers who might come to you before they
23 leave office, before they leave their post. It would
24 also apply to any other public office holders who,
25 having received your post-employment letter, then come

1 to you to seek some advice.

2 50187 How is that advice given, is it in
3 the form of a written opinion?

4 50188 MS DAWSON: It can be.

5 50189 The Act expressly requires that
6 advice given by us be confidential. So if we were to
7 give a letter on some matter to a deputy minister, or
8 to anybody -- to a minister, to any Governor in Council
9 appointee -- it would be them that would have to
10 release the letter, if it was to be released, not us.

11 50190 I'm sorry, I have lost the thrust of
12 your question.

13 50191 MS BROOKS: I am wondering, if you
14 give written opinions -- and you have said that you
15 can -- what would determine whether a written opinion
16 would be given then?

17 50192 MS DAWSON: People can request a
18 written opinion, and usually when they do request a
19 written opinion, we request that they give us something
20 in writing expressly stating what it is they want the
21 written opinion about. Otherwise, it gets not too easy
22 to manage.

23 50193 And in the process of considering
24 their disclosures, and giving them their final sign-off
25 on their disclosure, that is a letter.

1 50194 And we have something called an
2 intermediate letter, as well. After their disclosures
3 have come in, we frequently send a letter back, telling
4 them measures they should be taking, or asking further
5 questions or for further detail.

6 50195 All of those letters are in the
7 materials that I am going to be giving you.

8 50196 MS BROOKS: Okay. With respect to
9 the post-employment period, where a written opinion is
10 given -- let's take that hypothetical, where a written
11 opinion has been requested and you have given one -- do
12 you see any difficulty with a system, such as that that
13 is present in the United Kingdom, where, if the public
14 office holder accepts the position contrary to the
15 advice you have given, that would be made public?

16 50197 I understand that the Act does not
17 allow that at this point, but do you see anything wrong
18 in principle with a system that does that?

19 50198 Do you see anything laudatory about a
20 system that would require that?

21 50199 MS DAWSON: I certainly wouldn't want
22 to see a system that required all advice given to
23 people being made public, because that would -- it's
24 sort of like cabinet confidentiality, you have to have
25 decent discussions with people, and you have to have

1 them trusting you to come for advice.

2 50200 I think the case you are giving is
3 when, I guess, it's established that they have done
4 something that they should not have done, and that
5 would be very rare, I would assume.

6 50201 MS BROOKS: I think the situation I
7 am referring to would be one where they have come to
8 you for advice, you have given the advice, and the
9 advice is that they ought not to take the position in
10 the post-employment time, and they go forward and take
11 that position, contrary to the advice you have given.

12 50202 MS DAWSON: I suppose, if there were
13 a provision in the Act that said, in that situation,
14 that the advice could be disclosed, I wouldn't see a
15 big problem.

16 50203 I wouldn't see that happening very
17 often, very infrequently.

18 50204 But, I guess, if it was in the law,
19 it wouldn't be a problem.

20 --- RF interference

21 50205 MS BROOKS: But if it's in the law,
22 do you see that that is a positive thing for conflict
23 of interest and ethics obligations, and the public
24 interest?

25 50206 MS DAWSON: Probably. It's a heavy

1 stick, in a way; although, if they have expressly
2 disobeyed what you have suggested, then it's almost
3 like doing an investigation and releasing the
4 investigation report, in a sense.

5 50207 So that doesn't offend me,
6 particularly.

7 50208 MS BROOKS: Commissioner, do you have
8 a question?

9 50209 COMMISSIONER OLIPHANT: No, just a
10 point to make.

11 50210 The interference with the public
12 system, I think, is coming from somebody either turning
13 on or turning off a BlackBerry or using it, and I would
14 ask that it stop, please, so that we don't have that
15 interference. It is not fair to Ms Dawson or anybody
16 else who is speaking.

17 50211 Thank you.

18 50212 MS BROOKS: May I ask if there are
19 any questions from the Commissioner, counsel, my
20 co-counsel, or Mr. Forcese, before we move on to
21 request questions from the parties?

22 50213 MR. FORCESE: Just an expansion over
23 Ms Brooks' last question.

24 50214 In the U.K. system, of course, what
25 is published in the end is in circumstances where the

1 committee says that you can take this job. That
2 information is ultimately published, if the job is
3 taken up.

4 50215 Would you have any difficulty with
5 that sort of circumstance?

6 50216 It's not just circumstances where the
7 advice is violated, but also in circumstances where you
8 gave permission, because that, of course, would be
9 attractive to the public office holder.

10 50217 MS DAWSON: I think that the public
11 office holder would probably release it, in that case.
12 That's what they want these letters for sometimes.

13 50218 The problem is just the
14 confidentiality of the individual looking for advice.
15 I would say that, in very specific circumstances, it
16 could be justified to release the advice.

17 50219 But I haven't thought about it
18 deeply, I have to tell you.

19 50220 MR. FORCESE: Just to circle back to
20 education -- and this is my last question -- just
21 ballpark, roughly, what proportion of public office
22 holders -- currently sitting public office holders
23 would have attended one of your education sessions.

24 50221 Do you have some sense?

25 50222 MS DAWSON: You know, I have numbers,

1 but I couldn't tell you the proportion.

2 50223 I would say, probably, half of the
3 MPs.

4 50224 I don't know, I'm just taking a
5 guess.

6 50225 Ministers, rarely, although some
7 have.

8 50226 Governor in Council appointees to
9 boards and agencies -- some agencies are very good at
10 organizing these sessions, and others you don't hear so
11 much about. Usually it's the big ones. We have some
12 boards that are 200 people and things like that.

13 50227 The smaller ones, it's harder for
14 them to focus on things like this.

15 50228 I would say, given that the ones we
16 do the presentations for are the big ones, that it's
17 probably over 50 percent, but there are probably a
18 number of different agencies that aren't too well
19 covered.

20 50229 MR. FORCESE: And if ministers aren't
21 attending, are their staff at least being --

22 50230 MS DAWSON: Yes. Sorry, I should
23 really have said that.

24 50231 We particularly focus on getting the
25 minister's staff educated on this stuff, so that they

1 will look after their minister, and we do a lot of
2 that.

3 50232 I should have said that.

4 50233 MS BROOKS: If there are no other
5 questions, I will move to the parties.

6 50234 Mr. Landry, does the Attorney General
7 have any questions?

8 50235 MR. LANDRY: We have no questions, Ms
9 Brooks.

10 50236 MS BROOKS: Mr. Auger, do you have
11 any questions?

12 50237 MR. AUGER: No, thank you.

13 50238 MS BROOKS: Mr. Conacher, do you have
14 any questions?

15 50239 MR. CONACHER: Yes, I do. Thank you
16 very much.

17 50240 I will start with the post-employment
18 area that was being discussed. There is a public
19 opinion that you have to provide under section 38 if
20 there is an exemption requested by a ministerial staff
21 person from their cooling off period.

22 50241 MS DAWSON: Right.

23 50242 MR. CONACHER: I guess my question
24 is, first of all, do you have any problems with making
25 that decision public?

1 50243 MS DAWSON: No.

2 50244 MR. CONACHER: In a way, that is sort
3 of a precedent or a model for what could be done with
4 just general --

5 50245 MS DAWSON: Yes. That's applied
6 very, very seldom, that particular --

7 50246 MR. CONACHER: That was my next
8 question, have you granted any exemptions?

9 50247 MS DAWSON: I think there has been
10 one or two.

11 50248 Two.

12 50249 MR. CONACHER: To the cooling off
13 period?

14 50250 MS DAWSON: Yes.

15 50251 MR. CONACHER: Taking into account
16 the conditions that are there --

17 50252 MS DAWSON: The conditions, yes.
18 They are quite strict.

19 50253 MR. CONACHER: -- in section 38.

20 50254 Okay. I am also sort of putting that
21 on the record, that in the Act already there is this
22 requirement for a ministerial staff person to check
23 with you. It is, really, the only post-employment
24 requirement, if they want to have an exemption --

25 50255 MS DAWSON: That's right. Yes,

1 anybody can come and ask for an exemption.

2 50256 MR. CONACHER: And you would be
3 making the same kind of decision as the advisory
4 committee, then, in terms of -- I imagine that it would
5 be for a specific job, and you would say, "That kind of
6 job is no problem."

7 50257 Even though the cooling off period
8 might cover it, it's okay because you were a
9 temporary -- well, the conditions are set out in the
10 section.

11 50258 MS DAWSON: Yes. It's a case where
12 it's evident that there would be very little likelihood
13 of a conflict.

14 50259 MR. CONACHER: Yes.

15 50260 Just to clarify, it sounded like you
16 were saying that you are sort of being put,
17 inadvertently, yourself, into a situation of violating
18 section 32, because section 32 requires you to advise a
19 public office holder of their obligations under the
20 post-employment part, Part III, before their last day
21 of office.

22 50261 MS DAWSON: Yes.

23 50262 MR. CONACHER: But most of them are
24 not contacting you --

25 50263 MS DAWSON: That's right.

1 50264 MR. CONACHER: -- before that.

2 50265 MS DAWSON: That's right.

3 50266 MR. CONACHER: So, obviously, that's
4 an inadvertent --

5 50267 MS DAWSON: It's an obligation that I
6 can't comply with to the letter of the law.
7 50268 We do it as quickly as we can.

8 50269 MR. CONACHER: Okay. Under
9 subsection (2) of section 24, the reporting officers,
10 at least, must disclose to you offers of employment.
11 50270 That's under 24(1), and then, if they
12 accept that offer --

13 50271 MS DAWSON: That's right, and we hear
14 from them.

15 50272 MR. CONACHER: I am just trying to
16 get a sense of how often that has happened. You don't
17 often hear of ministers leaving and taking a job right
18 away, and it's only reporting public office holders, so
19 it doesn't cover all ministerial staff.

20 50273 Is that something that is happening
21 frequently?

22 50274 In that case, you are obviously given
23 a chance to say "You can't" or "You can".

24 50275 MS DAWSON: Yes. The formal
25 reporting of it is --

1 50276 That's on the public record, I think.
2 It goes on the public record?
3 --- Pause
4 50277 MS DAWSON: No, the firm offers don't
5 go on the public record.
6 50278 It doesn't happen all that -- the
7 actual firm offer doesn't happen that often, but we get
8 a lot of calls before the firm offer, asking us whether
9 they can dip their toes into a certain area, I would
10 say, more frequently than an actual firm offer.
11 50279 But we do, from time to time, get the
12 firm offer call.
13 50280 MR. CONACHER: And then you would go
14 through the review, obviously, of --
15 50281 MS DAWSON: Yes.
16 50282 MR. CONACHER: -- the cooling off
17 period, the obligations --
18 50283 MS DAWSON: That's right, yes.
19 50284 MR. CONACHER: So, again, there is
20 sort of a model in there for what could happen
21 throughout the cooling off period --
22 50285 MS DAWSON: Right.
23 50286 MR. CONACHER: -- that they would
24 have to report these offers to you within seven days,
25 as per section 24.

1 50287 MS DAWSON: Yes.

2 50288 You know, there is one thing that I
3 should maybe mention. The cooling off period applies
4 to some of the sections, but, you know, there are
5 obligations -- a post-employment obligation under 33
6 which goes on for life. I mean, there is just no
7 termination of that obligation.

8 50289 The reporting would have to stop
9 sometime, I would think.

10 50290 I don't know; anyway, I would just
11 throw that out. Section 33 is an ongoing obligation.

12 50291 MS BROOKS: Mr. Conacher, I am sorry
13 to interrupt, but I have a question that builds on
14 something you have just asked, so it might be
15 convenient for me to ask it now.

16 50292 It is concerning section 24(2), where
17 the reporting office holder has this duty to disclose
18 the acceptance of an outside offer of employment.

19 50293 What, then, is your obligation as
20 Conflict of Interest and Ethics Commissioner? Do you
21 have to carry out some kind of analysis on whether
22 there is a breach of any of his or her obligations
23 under the Act?

24 50294 MS DAWSON: Oh, yes. That is the
25 whole purpose of those provisions being in here. As

1 soon as they have notified us, of course, particularly
2 of the firm offer -- but anybody who has any sense
3 would come and talk to us before the firm offer came
4 in, actually, and that's what they do. They
5 technically come in and report their firm offer.

6 50295 But always, when anybody approaches
7 us with any of this kind of information, we use it to
8 have a dialogue with them.

9 50296 MS BROOKS: And what would your -- I
10 don't want to call it an investigation because that
11 might be a too formalistic kind of word, but what kind
12 of inquiries or process would you undertake having had
13 disclosure of this outside offer?

14 50297 MS DAWSON: It would be an advisory
15 kind of role to the person that was going to take this
16 offer.

17 50298 If, indeed, we were convinced that
18 they shouldn't accept the offer and they went ahead and
19 did, then our vehicle would be twofold, I guess. We
20 could institute an investigation quickly, and it
21 wouldn't take much to get the facts, so it would be a
22 quick investigation, and we could publish a report.

23 50299 Or, I think there is a provision in
24 here that allows us to tell people within the
25 government not to deal with that person.

1 50300 Those are the two sanctions that we
2 would have.

3 50301 MS BROOKS: I'm sorry, Mr. Conacher,
4 please continue.

5 50302 MR. CONACHER: No problem. Directly
6 relevant.

7 50303 Staying on the same issue of
8 post-employment enforcement overall, it is not only
9 section 33, but also section 34 that is forever.

10 50304 MS DAWSON: Right. Yes, you're
11 right.

12 50305 MR. CONACHER: Have you conducted any
13 audits, for example, of departments receiving
14 communications that ask them, "Have you received any
15 communication from any former public office holder," to
16 determine whether they are possibly in some position
17 where they may be providing advice to a person using
18 information that they...

19 50306 I am just wondering how you are
20 enforcing these requirements.

21 50307 Section 37, as well. Again, there is
22 a requirement that they have to notify you when they
23 are communicating with departments under the criteria
24 under section 37.

25 50308 MS DAWSON: Right.

1 50309 MR. CONACHER: Are you doing any
2 random audits yourself to determine whether there are
3 violations, based on either complaints you receive or
4 just information that you may read in the media, or
5 just doing random audits?

6 50310 MS DAWSON: No, I don't think I have
7 a mandate to do random audits. The Auditor General has
8 a mandate to do random audits, for different reasons,
9 but I think that my mandate is advice, education and
10 investigation.

11 50311 And in order for me to do an
12 investigation, I have to have reasonable grounds, or
13 the person requesting it has to have reasonable
14 grounds.

15 50312 I can use the tools I have in the Act
16 to ask questions and --

17 50313 I don't want to leave the impression
18 in any way that I have difficulty getting people to
19 comply with the Act. We have yet to impose a penalty
20 for failure to give us the disclosures, although we
21 have our scheme in place and we have a mechanism to go
22 through it.

23 50314 The fact of the matter is that we do
24 get our disclosures, and we do have conversations with
25 people.

1 50315 But so far as doing a full-fledged
2 investigation like I would do for an examination or
3 inquiry under the Code or the Act, I don't feel that I
4 have that power, unless I have reason to believe there
5 is a problem.

6 50316 MR. CONACHER: And that applies under
7 the MPs' Code, as well?

8 50317 MS DAWSON: Yes.

9 50318 MR. CONACHER: The same thing. Okay.

10 50319 MS BROOKS: Mr. Conacher, we have
11 about five more minutes in this session, if you could
12 bear that in mind as you complete your questioning.
13 Thank you.

14 50320 MR. CONACHER: Sure.

15 50321 Given that we have this case from the
16 Federal Court, Stevens vs. Canada, that established
17 that a public office holder cannot be found guilty of
18 violating a rule that has not been defined, do you have
19 some sort of schedule or plan in mind in terms of
20 issuing further guidelines, like your guideline on
21 gifts, for the key provisions in the Act and the Code,
22 things like what is improper advantage and those kinds
23 of things, so that advance notice -- public notice is
24 given to everyone as to what the lines are?

25 50322 MS DAWSON: I use my guidelines, as

1 you mentioned, and I did that with the gifts to make it
2 clear as to what I felt a gift was and what the rules
3 were.

4 50323 And I have used interpretive notices,
5 as well, for more specific things, when I see that
6 there is an area of confusion on something that is kind
7 of technical.

8 50324 Certainly, but, you know, there
9 aren't an awful lot of areas that lend themselves like
10 gifts did to a guideline. I feel that some of these
11 expressions that are used in the Code are so determined
12 by the actual specific circumstances that they don't
13 lend themselves to an a priori definition.

14 50325 The Act has been in existence for two
15 years, as well, and you need a body of experience
16 before you start putting out your guidelines, I think.

17 50326 Now, with respect to the Code, I have
18 a particular problem. As I think I have mentioned
19 before, I am not allowed to issue any guidelines until
20 they have been approved in Parliament. So that's why
21 there are no guidelines up there on the Code yet.

22 50327 But I use my annual reports to
23 describe decisions I have taken in a general way, and
24 my approaches. I make good use, I think, of my annual
25 reports to explain directions that I am taking, and I

1 find that, so far, with my guideline on gifts, and my
2 annual reports, and my interpretive notices, they have
3 filled the need to date, but those are all avenues.

4 50328 MR. CONACHER: Do you have any plan,
5 as the Senate Ethics Officer has, to actually issue
6 summaries of opinions you have given that don't mention
7 the person that requested the opinion?

8 50329 MS DAWSON: I haven't got a specific
9 plan as of now. I see that it is a tool that one might
10 use, but I haven't had a circumstance that has led me
11 to want to use that tool to date. I prefer to do a
12 general discussion, either in my annual report or in a
13 guideline, because, again, these decisions under the
14 Code and the Act are extremely fact and circumstance
15 relevant. Each case is a little bit different, and
16 it's dangerous to put out rules prematurely.

17 50330 MS BROOKS: Mr. Conacher, one more
18 question.

19 50331 MR. CONACHER: Sure.

20 50332 When you are doing the education that
21 you are doing, you are essentially letting people know:
22 Here is a general sense of what these words mean and
23 where the lines are. Please come to me and seek
24 advice, because each situation is fact-specific and --

25 50333 MS DAWSON: Yes.

1 50334 What is great about the presentations
2 is the questions you get at the presentations, and that
3 is very informative to us, to understand what may be
4 confusing to people.

5 50335 So it's in answering the questions
6 that we probably do the most good in the presentations.

7 50336 MR. CONACHER: But, again, in the
8 post-employment world, people are gone and --

9 50337 MS DAWSON: It's a vacuum.

10 50338 MR. CONACHER: -- you don't know
11 whether they are complying, and you don't know how they
12 are interpreting the standard letter that you are
13 sending to their specific situation.

14 50339 MS DAWSON: No, we have no
15 connection, aside from seeing the circumstances for an
16 actual investigation.

17 50340 MR. CONACHER: Right, or those few
18 other exceptions that we talked about.

19 50341 MS DAWSON: Right, those few other
20 little cases, yes.

21 50342 MR. CONACHER: Thank you very much.

22 50343 MS BROOKS: Thank you, Mr. Conacher.

23 50344 I would like to confirm, Mr.
24 Commissioner, that you don't have any further
25 questions, or counsel.

1 50345 Mr. Forcese...

2 50346 MR. FORCESE: In your binder we have
3 a copy of your standard letter -- post-employment?

4 50347 MS DAWSON: You have lots of standard
5 letters, you have some of my guidelines, you have lots
6 of material.

7 50348 MR. FORCESE: Great. Thank you.

8 50349 MS DAWSON: Some of the stuff on my
9 internet, too, is in here.

10 50350 MS BROOKS: Mr. Commissioner, that
11 concludes our morning hearing, and I would invite you
12 to adjourn this hearing at this time.

13 50351 COMMISSIONER OLIPHANT: I will do so,
14 but not without thanking Ms Dawson for her presentation
15 this morning, and her staff members for coming with her
16 to provide assistance, where required.

17 50352 That brings to an end this morning's
18 hearing, and unless we can find something else to talk
19 about in the future, that brings to an end the Policy
20 Review portion of this inquiry.

21 50353 I thank everyone for coming, and I
22 hope that you enjoy the balance of the summer, and that
23 the balance of the summer is more summer-like than it
24 has been so far in Ottawa.

25 50354 Thank you. Good morning.

1 --- Whereupon the hearing concluded at 12:51 p.m. /
2 L'audience se termine à 12 h 51

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