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Monday, June 12, 2006

Chair

Mr. David Tilson

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● (1815)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): This is the Legislative Committee on Bill C-2, meeting 23.

Our order of the day is Bill C-2, an act providing for conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

We are into clause-by-clause. When we broke before, Mr. Martin had the floor. I will give the floor back to Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chairman.

I appreciate the opportunity to conclude my remarks regarding motion NDP-4, found on page 53. As you know, we are seeking to change the Elections Act so that donations by minors would be curtailed or curbed.

The Chair: Order, please. Mr. Martin is trying to explain things to the committee.

Mr. Martin.

Mr. Pat Martin: Thank you.

Without going any further, I sensed there wasn't a broad agreement with the amendment as I had argued for it in the last session of this committee. With a new session, I will concede I was moved by the arguments of Ms. Jennings when she raised the concern that it may be that a minor may in fact donate so much under my contemplated model that the adult would be unable to donate to their own political party. It's something I hadn't contemplated, but I can see. I suppose it's an extreme example.

What I would like to put forward as a subamendment to my own amendment is to add the words “under the age 14” after the word “minor”. It would now read:

> Any contribution made to a candidate by a minor under the age of 14 is to be considered to be made by the parent of the minor designated for that purpose by the parents of the minor.

In other words, the parents would decide which parent or guardian would have that amount deducted from their donation limit. The only change I'm suggesting is adding the words “under the age of 14” after the first “minor”.

The Chair: Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): I simply wish to understand Mr. Martin's explanation.

I have four daughters, one of whom is five and another nine years old. Can both of them contribute? If I had yet another daughter, could she contribute as well?

I believe the member is jumping ahead a little too quickly here.

[*English*]

Mr. Pat Martin: To answer Mr. Sauvageau's question, if a minor child under the age of 14 made a contribution, that contribution would be considered to have been made by the parent because the parent, we believe, still has direction and control over a child of that age.

In other words, we assume that a person that young is not really acting of their own free will. You're still under the direction of your parent.

The Chair: Ms. Jennings.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I'm astounded. I do not believe that ordinary Canadians believe that a minor under the age of 14 should be providing political donations, period. I do believe that most Canadians would want to see an age limit to have the legal capacity to donate. I understand that my colleagues around the table, the majority of them, did not believe that the age limit that I had proposed of 18 was reasonable and fair. But I definitely think that.... We don't want to see children, definitely under the age of 14, donating. That's circumventing the law as far as I'm concerned.

The day after the legislation with this amendment and subamendment that Mr. Martin is proposing came into force, a child could be born and that parent would be able to donate under the child's name. Already under our Electoral Financing Act, no person is permitted to donate money in someone else's name. It's already an illegal act, and I don't see why we would want to make it legal. I don't believe children under the age of 16, at least, should be making political donations to any party.

With the explanations we've been given as to what is a contribution, the dollar amount that's considered an actual contribution, that does not preclude our young people under the age of 16 from participating in political parties, from becoming members of political parties, etc.

Perhaps my suggestion of age 18 was seen as unreasonable, but I really don't believe that children under the age of 14 should be making a donation.

● (1820)

Mr. Pat Martin: Tell that to Joe Volpe.

Hon. Marlene Jennings: Mr. Martin, what I find interesting is that you've gotten a lot of press, a lot of media coverage of your outrage about what happened with Mr. Volpe's campaign, and you yourself are proposing an amendment that would actually make it legal.

Some voices: Oh, oh!

The Chair: Ms. Jennings has the floor.

Ms. Jennings.

Hon. Marlene Jennings: It would make it legal for a child to donate. The only difference is that the tax donation would not be in the name of the child, it would be in the name of the parent.

The point is that children should not be donating. That's the point, and I think that's what most Canadians get from this. I think the outrage that you displayed is where you've captured the hearts and minds. And I don't think that most Canadians would agree that it's okay for a child to donate as long as that donation is ticked off in the parent's name. No, I simply cannot support this.

If members of this committee are worried that should this amendment and subamendment be defeated then there is absolutely no age limit, I'm sure we could get consent to revisit my amendment and possibly amend it so that there is an age limit—possibly 16—that would make members more comfortable. I'm sure most Canadians would agree that was reasonable.

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Yes, I'm just trying to follow the thread. The golden thread here seems to be that there was much ado about stealing and taking lunch money from kids and knocking off kids in school programs for money. Now it's okay, I guess, if the parents do that. We have the parents going to get the lunch money of the kids—that's okay.

It seems to me quite a *volte-face*, quite a turnaround, quite a display of how what looks good at question period in front of the cameras is actually not what the mainstream governing party believes any more. They probably had lots of donations to their last campaign that were made by people under 18.

It confounds me why, again, the NDP, as well, which has been front and centre on this issue, would accept anything less than the person of legal age—and I submit that in most provinces that is 18—making a contribution to a campaign or a political party.

I wonder what debate we're having that's serious. If there's a serious debate about taking money from children, about not taking their school money and their milk money and all that hyperbole, if that's serious, then Ms. Jennings' amendment was the one to back, not this one. So I can't support it.

The Chair: We're voting on Mr. Martin's subamendment .

Yes, Mr. Martin.

Mr. Pat Martin: Just before you vote, may I—

The Chair: I want to caution members. We're starting to bait each other again, and I don't want that to happen. Everybody has been doing it, and I'm going to start telling members they can't do that.

Mr. Martin.

● (1825)

Mr. Pat Martin: Notwithstanding the barbs from two of the Liberals, I'm going to try to rise above that, Mr. Chairman, and simply point out that if we vote this amendment down, and this subamendment, we as a group should commit ourselves to press for better enforcement of the Canada Elections Act, which already makes it a crime to knowingly use a third party's bank account to exceed the donation limits.

That's to answer Mr. Murphy's question. What we're really trying to address is that nobody should be able to donate more than the donation limit by using their children or their aunt or their uncle or their dog or their chipmunk or their squirrel. It's just not allowed. So I think this is a reasonable compromise.

When we did look at Ms. Jennings' proposal to simply ban contributions by anyone under the age of 18, you have to take into consideration that there are youth who are active in our political parties and there are even children—my own children—who may want to donate $10 to their dad's election campaign. I don't think they should be able to do that if they're under the age of 14, but if they're 14, 15, or 16 and they have a paper route, and they want to get involved now instead of waiting until they're 18 years old.... We let them drive a car at age 16; I think we should let them participate over the age of 14.

All of the labour laws in the country contemplate kids of that age being legally of age to work. Why can't they be of a legal age to use some of their paper route money or lunch money that they earned at the corner store for whatever purpose they want? What if it's my nephew and my niece and they want to make that donation?

I would urge you to support this reasonable amendment that any contribution made to a candidate by a minor under the age of 14 is considered to be made by the parent and deducted from their total donation limit.

The Chair: We have a subamendment, “under the age of 14”.

(Subamendment negatived)

(Amendment negatived)

The Chair: We now vote on clause 46. I again remind you this applies to clause 47.

(Clauses 46 and 47 agreed to)

(Clause 59 agreed to)

The Chair: New clause 59.1 is NDP-4.1.

Mr. Martin, that is your amendment.

Oh, sorry, we have a new player here.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): It's the night shift.

The Chair: I should look up and see who's sitting here. I apologize.

Mr. Paul Dewar: Yes, Chair, this is just to make sure that any investigations by Elections Canada are reported, so that we indeed have a transparent process and procedure.

The Chair: You have moved it, or are you moving it?

Mr. Paul Dewar: I'm moving it, sorry. I will speak to it after.

So, yes, so moved.

The Chair: Okay.

I'm going to move rule it inadmissible. NDP-4.1 proposes an amendment to the Canada Elections Act relating to reporting provisions. *House of Commons Procedure and Practice* states at page 654 that "an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is being specifically amended by a clause of the bill."

Since paragraph 534(1)(b) of the Canada Elections Act is not being amended by Bill C-2, it's inadmissible to propose such an amendment. Therefore, NDP-4.1 is inadmissible.

(On clause 65)

● (1830)

The Chair: I'd like to make a brief statement. Clause 65 amends the Lobbyists Registration Act. There are a series of other clauses related to this particular clause. We've done this several times before, so I propose that we deal with all amendments that pertain to the subject matter of clause 65 before I put the question on clause 65. Therefore, we will first deal with the amendments to clauses 67, 68, 69, 72, 75, 77, 78, 83, 88, and 89.

Once that is done, I will put the question on clause 65, and its results will be applied to all the consequential clauses, namely, clauses 66 to 98.

Therefore, I will stand clause 65 to call for the first amendment, BQ-10, which relates to clause 67.

(Clause 65 allowed to stand)

(On clause 67)

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I wish to introduce our BQ-10 amendment, on page 54. I simply wish to explain that the present text states that lobbyists cannot communicate, and we wish to add a definition for the word "communicate" which would read as follows:"communicate" includes to communicate by electronic means.

More and more, people are communicating not only by cell phone, but also by BlackBerry, and we would like electronic communication means to be included.

Do the experts have anything to say in this regard?

Ms. Michèle Hurteau (Senior Counsel, Department of Justice): Absolutely, Mr. Sauvageau.

[*English*]

The Chair: What's your name?

Ms. Michèle Hurteau I'm Michèle Hurteau, counsel, legal services.

The Chair: Faces are starting to change here at a rapid pace and I'm having trouble.

Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice): It's just because we've moved on to a new part of the bill.

The Chair: That's fine. Don't misunderstand me. I just want to know who we're talking to.

[*Translation*]

Ms. Michèle Hurteau: Mr. Sauvageau, if you look at subsection 5(1) and at paragraph 7(1)a) of the current act, you will see that the term "communicate" is used. Indeed this is how the current act reads:

> 5.(1) An individual shall file with the registrar, in the prescribed form and manner, a return setting out the information referred to in subsection (2) if the individual, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to:
>
> (a) communicate with a public office holder in respect of

The term "communicate" is used in a very broad and comprehensive fashion. If we decided to define the various means of communication...

Mr. Benoît Sauvageau: No, all we are saying is "includes to communicate by...". The word "includes" covers all of that.

Ms. Michèle Hurteau: It covers all of that, and this can also be accomplished by way of regulations. As you so rightly have said, there are means of communication that we are not yet too familiar with, for example the voice over Internet protocol. This type of system would be covered by the regulations.

● (1835)

Mr. Benoît Sauvageau: It has been suggested to me that I ask for a clarification. As we speak here today, electronic means of communication are not covered under Bill C-2.

Ms. Michèle Hurteau: They are covered. The word "communicate" as it is used here has a very broad meaning.

Mr. Benoît Sauvageau: Perfect. They are covered. Would it be redundant or pleonastic to say the following?"communicate" includes to communicate by electronic means.

Ms. Michèle Hurteau: If that were added, there would be a risk of excluding some other means of communication that we would not want to see excluded.

Mr. Benoît Sauvageau: I do not know if you have convinced my friends, but you have convinced me. Thank you. There is therefore no need for this amendment.

[*English*]

The Chair: Are you going to withdraw that? Fine.

Then we'll move on to the next amendment, which is similar. It's Monsieur Sauvageau's, on page 55.

[*Translation*]

Mr. Benoît Sauvageau: Is it the same question here, and would you respond in the same way? The amendment reads as follows:"-written" includes in any electronic form.

Could Bill C-2, in its present form, lend itself to interpretation?

Ms. Michèle Hurteau: Forgive me, but I do not understand your question.

Mr. Benoît Sauvageau: In the minds of our specialists, it was not clear that electronic means of communication were covered and that written communication included communication in any electronic form. Are these things clearly established in Bill C-2, in case of some challenge down the road, or could this be interpreted differently by someone? If electronic written communication and electronic means of communication are not clearly set out in Bill C-2, could that lead to challenges?

Ms. Michèle Hurteau: The courts can always surprise us. The word "communicate" is used in the broadest sense possible. It includes electronically written communication, e-mails, etc.

Mr. Benoît Sauvageau: You are telling us that if we were to add this specification, that might limit...

Ms. Michèle Hurteau: Indeed. My answer here would be the same as that I gave to the first question. There would be a risk of a more restrictive interpretation of the word "communication". People might say that the written form includes electronic communication, but what electronic form?

Mr. Benoît Sauvageau: Very well. We will also be withdrawing amendment BQ-11. Would you like me to introduce amendment L-4? We will move ahead very quickly.

[*English*]

The Chair: You're doing a fine job, Monsieur Sauvageau.

We'll now move to Liberal amendment L-4, on page 56.

Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Chair, for intervening before Mr. Sauvageau could withdraw my amendment.

Some hon. members: Oh, oh!

Hon. Stephen Owen: This amendment deals with the situation to make sure we achieve the objective that has been sought by the government to ensure—as I think the Prime Minister has said—there isn't a revolving door between political office and lobbying offices. This is really to ensure that a revolving door doesn't mean a one-way street. It will treat people in influence appropriately to reach the government's objective in a more balanced way.

In drafting this we have not said that former MPs and their senior staff should be excluded, because, particularly after hearing Mr. Walsh, that could be seen to be impeding upon the autonomy of members of Parliament and the House of Commons. That's why it's limited here to people who are MPs, perhaps, but who are in an official capacity with an opposition party. They should be covered by the same limitation—whether it be five years, three years, or whatever—as former staff and former ministers.

The Chair: Monsieur Sauvageau.

● (1840)

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, this amendment of Mr. Owen brings a smile to my face. I will read it and you will tell me if I am wrong. The idea is to add the following paragraph:d)

> the leader, deputy leader, house leader or whip of a party and any senior staff employed in his or her office, including any unpaid senior advisors.

This would mean that staff working in the office of the Bloc québécois or NDP whips would be covered, but that a Conservative MP would not be.

Let me give you an example. Let us say that the Conservative MP for Simcoe-North tables a bill and that he is the owner of a hotel. The bill that he brings forward is asking the federal government to carry out a feasibility study in order to increase tourism in the region where he owns a hotel. His family has owned this hotel for five generations, since 1884. I simply wonder why this MP would not be covered.

I would be prepared to vote in favour of this amendment, but on condition that everyone on Parliament Hill be included. I fail to understand why a receptionist—I have great respect for these people—in the office of the whip for the Bloc or the leader of the Bloc québécois should be covered by this legislation, whereas an MP's staff would not be.

Even senior staff are covered. There are people here who are senior staff members and who are working with us on our study of Bill C-2. If they wish to get into lobbying down the road, I believe that nothing should prevent them from doing so because they are not privy to any government secrets. Therefore, if the staff of the whip's office or the leader's office is included, it seems to me that we should also include all members of the governing party. I believe my example is a good illustration of what a member of the party in power is able to do.

Thank you very much.

[*English*]

The Chair: Mr. Dewar

Mr. Paul Dewar: I have a question to the mover, through you, Chair, on the definition of senior staff.

Hon. Stephen Owen: I'll answer Mr. Sauvageau's question as well.

Mr. Sauvageau, to begin with, Mr. Walsh's concerns struck a cord with us that we should be very careful in this legislation to not touch on the authority, the autonomy, or the independence of the House of Commons or members of Parliament. First of all, it does not cover all members because of being sensitive to that concern.

On senior staff, we're obviously not talking about people who are receptionists or in a purely administrative capacity but about someone who has a decision-making role in the office and who could therefore be seen to have gained information and developed a particular interest. Remember, we're talking about political roles for political staff.

I think this is a reasonable compromise to make sure that we don't offend the autonomy of MPs but we create a balanced and level playing field to get at the very objective that I think the government is properly trying to get at. It is to ensure that people with political influence do not go into the lobbying business for some period of time.

[*Translation*]

The Chair: Mr. Petit.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Since Mr. Owen is saying that several of these amendments are the work of the law clerk, then perhaps one of the law clerk's representatives might explain this one to us. Mr. Owen has given us a very good explanation, but it seems that it is the law clerk who has created this situation. I would therefore like to know the precise rationale for this amendment and in which areas parliamentarians' rights are problematic. These people serve as legal counsel.

● (1845)

[*English*]

The Chair: We'll see if they have a comment.

Madam Hurteau, you don't have to comment, but we're asking you to.

Mr. Joe Wild: Mr. Chairman, the question is really with respect to advice that Mr. Walsh provided.

The Chair: Okay. I have been corrected, and I apologize for that.

We have someone over here; he's a new player.

Could you give your name to the committee?

Mr. Steve Chaplin (Legal Counsel, Legal Services, House of Commons): My name is Steve Chaplin. I'm one of the parliamentary counsel in Mr. Walsh's office.

When looking at this particular proposal, I guess the question one has to look at is which of these people are parliamentary officers and which of them are governmental or have a governmental role. I think that's probably the question one has to ask.

When you look at where the budgets come from, for example, certain people come under the Parliament of Canada Act and others come under government funding. For these individuals, but not the leader as such, under the various offices, the money does not directly come from the Financial Administration Act for the government but through the route of the Board of Internal Economy. Whether or not it slips into privilege and privileged areas will depend on whether or not one considers the fact of funding as one of the routes for those offices.

For example, the functions of whips are limited to functions in the House. There's a question with respect to House leaders. Obviously, their roles are mostly House functions and partly functions outside the House. When you get to leaders and deputy leaders, of course, you have roles that are more beyond the House. The question is on the degree to which their functions and their advice have to do with House affairs and House business, as opposed to government and government issues.

For that reason, the other point I would make is that the question of whether or not these are public office holders or parliamentary office holders is really perhaps where the dividing line might rest.

The Chair: Monsieur Petit, Mr. Chaplin has commented. Do you have any other questions?

Mr. Daniel Petit: It's okay. Merci.

The Chair: Mr. Owen, on Mr. Chaplin's comments.

Hon. Stephen Owen: I find that very helpful. I think the obvious dividing line may be with the whip. I can certainly see that as being a parliamentary function. But the House leader and deputy leader I see more in terms of party office, even though they do have duties in the House.

What we're trying to achieve here is to address the position of the person as being something different from a member of Parliament, in addition to a member of Parliament. But I do take the point that the whip is pretty exclusively within parliamentary roles.

If I could suggest a friendly amendment to myself, I would remove the reference to whip.

The Chair: You're moving that, sir?

Hon. Stephen Owen: Yes.

The Chair: While we have Mr. Chaplin at the table, are there any other questions of him?

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: We are opposed to this when it pertains to people who do not administer public monies and who have no decision-making power over public servants. To date, there are enough of them who are covered. We find it hard to understand why people who do not administer public funds and who have no decision-making power over public servants should be covered by this.

Mr. Steve Chaplin: The committee must decide where to draw the line between public servants and those who exercise parliamentary functions.

Mr. Benoît Sauvageau: Indeed. That is the line I am trying to draw.

[*English*]

The Chair: Thank you, Mr. Chaplin.

Ms. Hurteau, I apologize if I scared you. I didn't mean to do that. We have lawyers all over the place here.

All those in favour of Mr. Owen's subamendment to remove reference to the word “whip”.

(Subamendment negatived)

(Amendment negatived)

● (1850)

The Chair: Okay. We now move to government amendment G-25, on page 57.

Mr. Poilievre.

Hon. Marlene Jennings: I have a point of order, Chair.

The Chair: On a point of order, Ms. Jennings.

Hon. Marlene Jennings: When I came into my Hill office this morning, there was a copy of a letter that was addressed to you from a Ms. Roscoe, I believe, asking if she could come before this committee to speak about some government amendments that had just been tabled. I hadn't seen them. I now see it. I believe this may be one of them.

It is not unheard of for a committee to suspend its clause-by-clause in order to bring in a witness to hear from that witness on amendments that are being proposed throughout the course of the process. I would like to seriously ask this committee to consider the possibility of acceding to Ms. Roscoe's request. There may be other individuals, but it would be very time-sensitive, very limited time. I do not believe it would put the work of this committee back. It would possibly make things run smoothly, at least in terms of those amendments.

So I would actually propose that her request made to the committee, through you, Chair, be—

The Chair: Is this a motion you're making?

Hon. Marlene Jennings: Yes.

The Chair: Ms. Jennings, we require 24 hours' notice of that motion unless I have unanimous consent from the committee. Do we?

It appears we don't have unanimous consent, Ms. Jennings.

Hon. Marlene Jennings: It's unfortunate.

The Chair: Okay. Now, is there anyone else?

Mr. Owen.

Hon. Stephen Owen: To talk on the motion, or—

The Chair: Well, it hasn't been moved yet.

Mr. Poilievre, we're on amendment G-25, page 57, if you could move that, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): The purpose of this amendment is to close a perceived loophole that existed in the original draft of the Accountability Act. We are proposing that those who participate in transition periods leading up to the swearing in of a prime minister and his or her ministry be subject to the act. That would mean that the five-year lobbying ban would apply to those who have partaken in the transition process of one government to another.

Actually, I would argue, Mr. Chair, that an individual who has partaken in a transition process would have even more influence than most staff in ministers' offices, because often transition teams are tasked with actually doing the staffing. So they will have been involved in selecting people for offices that they will then lobby. They'll have the ability to lobby people they've hired. As such, they are probably more in need of coverage under this act than are basic staff members in a minister's or a prime minister's office.

Now, this Prime Minister made it clear that during the election he would be banning lobbying for five years by any individual who was involved in offering unpaid work. That means the advisers we hear so much about who get a dollar a year or who volunteer will be covered by the provisions of the Accountability Act. That's because oftentimes it's those people who are not paid by the public purse but who work in the government who have as much if not more influence than employees themselves. And it is not the government's intention to create openings for that to occur.

Finally, as we've seen many times before, when someone works in a prime minister's or a minister's office and doesn't get paid for it, oftentimes the perceived influence they've gained from having had such access to power is remuneration itself.

Through this amendment we are proposing that individuals who have been involved in decision-making, particularly in personnel, not be allowed to use that accumulated power to then lobby the offices that they helped construct.

In conclusion, it is our view that people who partake in transition teams should not be doing it for the purpose of then using the accumulated influence for lobbying purposes. They should be doing it for the good of their country; they should be doing it for public service.

With that, I'd like to invite the technical experts to make any observations they might have.

● (1855)

The Chair: Ms. Meredith.

Ms. Daphne Meredith (Assistant Secretary, Corporate Priorities and Planning, Treasury Board of Canada Secretariat): I think what's before you is our attempt to capture that in an amendment, but I'll turn to the lawyers, if need be, to explain how the provision would work.

Mr. Joe Wild: The provision's fairly straightforward. What it does is it provides an authority for the Prime Minister to identify persons who have had the task of providing support and advice during the time after an election, the so-called transition period leading up to the swearing in of the Prime Minister. In essence, it allows the Prime Minister to identify those people who have been acting in that capacity as being within the definition of "senior public office holders", to whom the five-year ban on lobbying will apply.

The Chair: Okay.

Mr. Owen.

Hon. Stephen Owen: Through you to our legal team, Mr. Chair, my interpretation on reading this is that it would have retroactive effect for someone who was on the transition team after January 23.

If that is the case, I feel some real unease, colleagues, particularly if it applies to a volunteer position that is for a certain period of time, as opposed to someone who was paid or was working in a regular capacity and may have been covered by the Lobbyist Registration Act of an earlier time. The retroactive impact of this on someone who volunteers unknowingly—certainly—and in good faith is that they'd be restricted from gainful employment.

As a matter of going forward, I don't have any difficulty with it, but the retroactive impact, if that's what it has—that's the way I read it—troubles me.

Mr. Joe Wild: With respect to the question of retroactive application—and I suspect, Mr. Chairman, that the committee may chuckle when I say this—it's not that it's retroactive in its application, it's retrospective, and there's a key difference from a legal perspective. At least one person chuckled, so I was right about that.

There's a key difference between retrospective and retroactive. It certainly means that it will apply to people who are no longer on a transition team, but it's not retroactive, in that a retroactive application would mean that the activities they've been carrying out since they left the transition team to whatever point in time this law comes into force would be suddenly illegal, and that is not what this does.

At the time the provision comes into force, it would be any future activity of that individual who violated the ban that would trigger the offence provision under the Lobbyists Registration Act. It would not be anything that they have done between the time of the transition to the point of coming into force—and I want to make that point clear. That is the distinction from a legal perspective between what's meant by a retroactive application and a retrospective application.

The Chair: Mr. Owen.

Hon. Stephen Owen: I understand the difference, but it doesn't deal with my unease.

The Chair: Madame Guay.

● (1900)

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): I would like to ask legal counsel a question, because this is not clear for us. We are in agreement with the substance, but let us take the case of a person who has been a lobbyist all of his or her life and who is working in Mr. Harper's office. Would this provision apply to that person?

That is the question we must ask ourselves. For us, that is what retroactivity is.

[*English*]

Mr. Joe Wild: I want to make sure I understand the question that you've asked. Are you asking that if you're currently a lobbyist and then you go on a transition team and then you come off the transition team, you would now be prohibited under this provision from lobbying? That is correct if you are designated by the Prime Minister, yes.

[*Translation*]

Ms. Monique Guay: As a registered lobbyist?

[*English*]

Mr. Joe Wild: If you are a registered lobbyist who leaves that to then go sit on a transition team, you would be banned for five years from lobbying if the Prime Minister designates you. Yes.

The Chair: Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings: I have carefully noted your explanation with regard to the difference between retrospective and retroactive.

I have a lead on the committee. With regard to government's amendment G-32, the English version of which is on page 69, I would like to quote an excerpt from Ms. Elisabeth Roscoe's letter to the Chairman of the committee.

She states the following in the third paragraph of her letter: “Briefly...“

[*English*]

The Chair: Ms. Jennings, whether this is right or whether this is wrong, I'm bound to go by the rules of this committee. You asked for a notice of motion, for which there was no unanimous consent.

I would rather you stay away from that letter. I think it's inappropriate because of the rule of the committee: there was not unanimous consent that allows you to get into debating this issue.

Hon. Marlene Jennings: I'm not debating that at all. Chair, may I ask—

The Chair: And the individual—

Hon. Marlene Jennings: May I ask the chair if the chair would table the letter that he received from Mrs. Roscoe?

The Chair: I directed the clerk to give it to all members of the committee.

Hon. Marlene Jennings: So it's been tabled?

The Chair: Yes.

[*Translation*]

Hon. Marlene Jennings: The third paragraph reads as follows:

> Briefly, and for the record, I served the transition committee as a volunteer. I took a two and one half week unpaid leave of absence from my job at Carleton University to serve on the committee. At no time before, during or after my service was I informed that my two and one half weeks of volunteerism would be deemed the equivalent of a life-long career in the public service, let alone resulting in me being retroactively covered by the Accountability Act's provisions prohibiting public office holders from engaging in lobbying activities for 5 years thereafter.

And she continues in the fourth paragraph:

> Had that fact been made know to me at the time, I would have respectfully declined the invitation to volunteer. The fact that the government has introduced this amendment after the Bill was initially tabled simply underscores the point that none of the transition committee members had been forewarned that the consequences of their volunteerism could have such a far-reaching and negative impact on their careers.

You are saying that the G-25 amendment will have no retroactive effect, that it is simply retrospective. However, Ms. Elizabeth Roscoe, who works at Carleton University, is of the belief that this retrospective application has a retroactive effect on her. She states that at the time, if she had been able to predict this effect, she would never have accepted to work as a volunteer. These past decisions could have a negative impact on her career. But at the time, this was not at all the case. In summary, we could retrace this person's past and tell her that because of what she chose to do at one point in time, she will be prohibited in the future from undertaking this type of activity.

I would therefore like you to explain to me in what way this retrospective legal impact has no retroactive effect on Ms. Roscoe. After the January 23, 2006 general election, she was free to launch her career. She had worked for two and one half weeks, and that possibility still existed. But that will no longer be the case if this amendment, as well as amendment G-32, are passed.

Imagine Ms. Roscoe's reaction if I send her the transcript of the meeting telling her: “But no, Ms. Roscoe, there is no retroactive effect, this is simply retrospective.“

● (1905)

[*English*]

Mr. Joe Wild: Mr. Chairman, I'm certainly not going to be commenting on specific facts or otherwise of a specific case; however, in law there is a distinction between retroactive application and retrospective application.

Retroactive application occurs when, after the fact, you change the rule for some past period that has already gone by. In the example before us, it would be to say that for any member who served on the current Prime Minister's transition team, anything they did between the date they commenced serving on that transition team and the date when this law comes into force, if it involved lobbying, would be illegal, because it would breach the ban on lobbying and would thus be an offence under the act.

Retrospective application is different. It's not retroactive. What happens in a retrospective application is that you are identifying people—in the past, yes—and are saying that a new law now applies to that group of people; however, its application only commences on the date on which the law comes into force. So any activity that was undertaken between the time they went onto a transition team until the time the law comes into force is perfectly okay, if it involved lobbying, as no lobbying ban applies to that time period.

However, after the law comes into force and into the future, if they engage in lobbying activity that violates the ban, that would create an offence. That's the distinction between retroactive and retrospective.

The Chair: Mr. Dewar.

Mr. Paul Dewar: Mr. Chair, when we look at this amendment, we look at the concerns we had about the fact that we had people who were able to, on one day, work for government, and then turn around the next day and be able to receive benefit from that work. We had some concerns about the fact that those who one day are lobbying government, turn around and then get contracts from government. That's something we still have concerns about.

The fact is that we aren't going and taking someone out of their job. It's not penalizing. For the people who were in ministers' offices, who were parachuted into various parts of the public service, if we had retroactively enacted the legislation in front of us on that clause, that would be a retroactive kind of measure—which some of us wouldn't mind, but this is not what we're talking about. With that in mind, we're not affecting someone's employ presently, but the opportunities in the future, absolutely, as with everyone else from here on in.

So in terms of the measure of this, it's something that I think is pretty obvious. You shouldn't be able to, in essence, sell your influence. I think that is congruent with what Canadians want to see, that someone doesn't get to the head of the line because of who they knew in the PMO. I think that's consistent here.

● (1910)

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair. I have a couple of comments.

First, I find it curious, the members of the opposition who, when Ms. Roscoe's situation first surfaced in the media, were adamant, saying this is terrible. I mean, how can you allow this person who worked on the transition team to become a lobbyist? I don't want to put words in Ms. Jennings' mouth, but it now seems they're reversing their position and defending Ms. Roscoe.

The Prime Minister made it quite clear at the outset that he did not want to have any lobbyists working on his transition team. The spirit of the act is such that he wanted to make sure that lobbyists, or at least people who worked for the government in some position of influence, would be prevented from lobbying the government for five years.

Quite frankly, some people—witnesses and some members of this committee—have argued that five years is overboard; it's too long; it's almost draconian. Well, the Prime Minister wanted to make it absolutely crystal clear to Canadians that he would not tolerate anyone who had a position of influence within the government then being able to lobby the government, for five years. That's how tough he wanted this to be, to give the Canadian public confidence that there would not be any undue influence and lobbyists would not be able to take advantage of a prestigious position within government for their own personal gain.

When it was discovered that Ms. Roscoe, who was on the transition team, and as my colleague Mr. Poilievre said, was in a considerable position of influence, was then going to be in a position where she could be lobbying the government, the Prime Minister decided to bring forward this amendment to stop that from happening, to close a loophole. That's all this is, and that is the spirit of this act.

Again, I find it curious that now the opposition seems to be defending the right of Ms. Roscoe.

It's nothing against Ms. Roscoe personally. The fact is that she was in a distinct position, a position of great influence, I would argue, and we believe it is not in the best interest of Canadians, certainly from the perception that Canadians would have of this act, if we allowed Ms. Roscoe—or anyone else, for that matter—to hold a position in transition and then be able to lobby the government following that, within a five-year period. That is something that I think is unconscionable, given what we are attempting to create with this act.

So that is all the Prime Minister and the government have stated with this amendment, to close a loophole and not allow anyone, whether it was known before the fact or after the fact.... If someone was on a transition team on behalf of the government, they cannot lobby that government for five years, just like everyone else.

The Chair: Mr. Owen.

Hon. Stephen Owen: Thank you.

I take that comment very seriously, but I wonder in passing why someone who was perhaps in a position of great influence before the election, as the policy chief to the leader of the opposition, could now be a lobbyist. What about filling that loophole? They could be a lobbyist for the telecommunications, energy, and transportation industry. Does that not offend the sensibility that you're suggesting as well?

I'd like to get an explanation of the impact of amendment G-32 on page 69, subsection 88.1(2) of that, as it relates to this amendment.

Mr. Joe Wild: Mr. Chairman, amendment G-22 basically sets out a set of clauses that would take the transition team that existed on January 24 and apply the five-year ban to it, in that the Prime Minister would have the authority to designate members of that transition team as being under the ban. The ban itself only, of course, comes into effect on the coming into force of the actual legislation, so the ban does not apply to any activities that were undertaken between the time of the creation of that transition team and the coming into force of this act or the time when those individuals are actually designated by the Prime Minister as being subject to the ban. It would only apply to the future activities of those individuals.

● (1915)

Hon. Stephen Owen: I understand what you're saying, and relating it to your previous comments I'm just not sure that's what the amendment's proposed subsection 88.1(2) says. Maybe you can confirm that for me.

Mr. Joe Wild: If you look particularly at that page's proposed subsection (2), it's exactly as...I guess I'm not doing a good job, but it's exactly as I'm trying to explain it, Mr. Chairman. The subsection that subjects the members of this team to the various bans does not apply to any of the activities that team carried out prior to the coming into force of this act.

Hon. Stephen Owen: But it's subsection (1) of the new proposed section that would create the ban for five years, and its subsection (2) says that subsection (1) does not apply.

Mr. Joe Wild: I'm sorry, what it's saying is that a subsection doesn't apply "in respect of any activities...that were carried out before the day in which this Act is assented to". It's ensuring that the application is retrospective and not retroactive.

Hon. Stephen Owen: Perhaps the difficulty is—and we'll deal with it when we get there—that it should perhaps say, then, to achieve your meaning, "any lobbying activities" rather than any activities with respect to transition. Is that what you're trying to achieve?

Mr. Joe Wild: The reference to activities, of course, has to be read within the context of the act itself. When you read the act itself, it's very clear what types of activities we are talking about and the types of activities that are referred to in paragraphs (a), (b), and (c) of proposed subsection 88.1(1).

Hon. Stephen Owen: That's fine. That's not as crystal clear in my mind, but I'm happy to hear that you feel it is. We're talking about "functions" in proposed subsection 88.1(1) and "activities" in proposed subsection (2), and it's not clear that they're distinct—to me, at any rate.

That's fine.

The Chair: We have five speakers, starting with Mr. Murphy.

Mr. Brian Murphy: I have a problem with how you could drive a truck, really, through the proposed amendment. I understand what the proposed section means. A minister of the crown, if you look at what's in clause 67.... These are defined positions under subclause 67 (2): "a minister of the Crown"; an "individual who, in a department as defined in section 2 of the *Financial Administration Act*...". These are identified people—even, in the proposed Lobbyists Registration Act item 2(1)(b)(i) of subclause 67(2), a person who "occupies the senior executive position".... These are people who have titles —"associate deputy minister...".

When we get down to the amendment's proposed subsection 88.1 (5) I think it puts a terrible burden on the Prime Minister: any person "identified by the Prime Minister as having had the task of providing support and advice to him"—that could be his mother, his wife, and so on—"during the...period leading up to the swearing in...". Would that mean two days before, three days before?

It shows, when we peel the layers away, that there was good intention here, and I understand what Mr. Lukiwski said. But when you peel it away, this was done with such haste that somebody integral to the whole vision for the government didn't know that if she agreed to the task, she'd be out of a possible job afterwards. She clearly makes that precision. It shows, I think, in embryo that this has been a hastily devised act in many ways.

But going back to the legislation, is there a way of tightening it up? Do transition teams actually get named? It's not my understanding that they get formally named by prime ministers in any *Royal Gazette* way.

The *Royal Gazette*? There's a....

Well, I'll ask the experts—or Mr. Poilievre; they're interchangeable, I guess. What method could you propose for identifying who gives the Prime Minister support and advice? Don't you think that's a little loose?

Mr. Joe Wild: That's an interesting question, Mr. Chairman. Again, I can explain exactly what the section is and how it operates and what its intended effect is.

The intention is to provide the Prime Minister with the authority to designate members of the transition team. The reason it's written that way is that the Prime Minister is in the best position to judge that. It is the Prime Minister who creates the transition team. The Prime Minister determines who on that transition team performs or provides the support or advice that would require them to be subjected to the consequences of being deemed to be subject to the various bans that are set out in the Lobbying Act.

● (1920)

Mr. Brian Murphy: Very briefly, Mr. Chairman, it doesn't say "transition team", it says "people giving him advice during the transition period up to the swearing in", and there might be a number of other people who have rushed off to be registered lobbyists, who gave advice and support to the Prime Minister.

Mr. Joe Wild: Again, the notion of the section, Mr. Chairman, is that it is the Prime Minister who is in the best position to judge. I mean, "transition team" is a term that we throw around. It has no legal meaning per se. So for that reason, it's an attempt to identify the actual activities that one is engaging in that would perhaps assist the Prime Minister in determining who should be designated.

Just to close the loop on this, as with any other authority, of course, the Prime Minister is accountable to Parliament for the exercise of this, as the Prime Minister is with respect to the exercise of any of his other powers, duties, or functions.

The Chair: Are you finished, sir?

Ms. Jennings, go ahead, please.

Hon. Marlene Jennings: Thank you for that clarification, Mr. Wild. I'm not sure how much it cleared up in my mind.

If I understand your explanations on retroactive legal effect, only someone who the Prime Minister designates as having provided him with support and advice during the transitional period—that's from the date of the election, when one particular party is declared the winner, and the leader of that party then becomes the Prime Minister in waiting, until the swearing-in ceremony takes place—will be considered public office holders. Therefore, the five-year ban on lobbying the government will then apply. People who were working for that political party, on salary in some cases, volunteer in other cases, up to and throughout the actual election.... For instance, we could take the example of this last election. It began at the end of November 2005 and took us all the way to January 23, 2006. So you could have a multitude of individuals who were working. Let's use the example of the Conservative Party, which was then the official opposition, working directly in the office—

The Chair: A point of order, Mr. Poilievre.

Mr. Pierre Poilievre: Yes. Every time we've raised examples related to the Liberal Party, you've ruled that out of order.

Hon. Marlene Jennings: No, he hasn't.

Mr. Pierre Poilievre: We're asking for a consistent application of the rules and that this not be used as an occasion for partisan attacks by Ms. Jennings.

The Chair: Ms. Jennings, you know I did warn the committee. We were starting more and more throughout the day to bait each other, and, with respect, you're starting to bait the Conservatives. I'd rather you didn't do that.

Hon. Marlene Jennings: Chair, you are perfectly right, and I will cease debating with members of that political party. And to calm Mr. Poilievre's fears that I may be attacking the Conservative Party, which I would not do, I'd like to give you a hypothetical situation.

In the country called Xanadu, there is a governing party that has been in place for a number of years called Winnie the Pooh, and there is an official opposition called Snoopy. And that official opposition, along with the cooperation of two other opposition parties—and I won't bother to give them names—defeats the government on a confidence vote and the government then goes to an election.

The official opposition party, Snoopy, has had senior advisers in the offices of the leader of the official opposition, the House leader of the official opposition, the whip of the House of the official opposition, and the deputy leader of the official opposition, and it also has had volunteers.

We go into an election in this country, Xanadu, a general federal election, because it's also a confederation like Canada, and it has ten provinces and three territories—and I won't give you the names of all of them because I don't want to belabour this. And on the 23rd, the Xanaduians, in their wisdom, decide to give the boot to the Winnie-the-Pooh Party and elect a minority government called Snoopy.

The leader of what used to be the official opposition party, but is now the governing party, albeit a minority, has pledged to bring in a cleanup of government, accountability, and so on. And ultimately, a few months down the road, it brings in a piece of legislation that claims to do this.

That legislation, if I read it correctly, does not deal with any individual who held a senior position in the political party, which used to be the official opposition called Snoopy but now forms the government. It does not, in fact, deal with those individuals at all.

This amendment, if applied to this country, Xanadu, only deals with people who were members of the transitional team, that is, between January 23, 2006, presuming it was the same election date, and whenever that new government's bill—and we'll call it Bill C-11, does that make you happy?—comes into force. But someone who was working in the office of the official opposition leader—who has now become the Prime Minister—until the 23rd and who left on the 23rd would not be covered by this.

Am I correct? I hope I'm not correct. I hope I'm wrong. I hope that you will be able to say that it will cover....

● (1925)

The Chair: Mr. Wild.

Mr. Joe Wild: Thank you.

What was the question?

Hon. Marlene Jennings: I think it was pretty clear.

Mr. Joe Wild: Mr. Chairman, people would be covered if they fell within the definition of a senior public office holder. So if the person was a minister of the crown, a minister of state, was employed in an office of either a minister of the crown or a minister of state, was defined in the Financial Administration Act as occupying a senior executive position within a department—and those are all listed—was designated by a regulation, or served in an advisory capacity to the Prime Minister during a transition period before the Prime Minister was sworn in as Prime Minister, that person would be captured.

If they didn't fall within that cadre, they would not be captured.

Hon. Marlene Jennings: So the example that I gave, a senior policy adviser to the leader of the official opposition who left his or her position on January 23, would not be captured. Is that correct?

Mr. Joe Wild: If that person did not serve in any of the other capacities I've mentioned, yes, that would be correct.

Hon. Marlene Jennings: Yes, the person is not covered in the categories that are mentioned in Bill C-2. That individual would not be captured by even the government amendment G-25, if it were adopted.

Mr. Joe Wild: Again, as long as they don't serve in any of the capacities, that's right.

Hon. Marlene Jennings: So an individual who worked in a senior position of the former official opposition party up until January 23, 2006, but did not serve in the transition team, which was created as of January 24, 2006, would not be captured under Bill C-2 with the existing categories, nor with G-25.

● (1930)

Mr. Joe Wild: It goes back to the notion of the activity. If the person was providing support and advice to the Prime Minister during the transition period, however one wants to define the transition period, leading up to the swearing in of that Prime Minister, then the Prime Minister has an authority to designate them.

If the person—

Hon. Marlene Jennings: May I interrupt for just one moment?

The Chair: No, I'm not going to let you do that. I'm going to let him finish his comment.

Hon. Marlene Jennings: When he finishes, I would like a clarification.

The Chair: Well, you just settle down, Ms. Jennings, until our witness finishes his statement, please.

Mr. Joe Wild: If the person is not carrying out those kinds of activities during a transition period, which one would normally interpret as being the period after the election result and before the swearing in of the Prime Minister, then no, they would not be captured under that particular provision.

Hon. Marlene Jennings: I don't need a clarification; Mr. Wild just gave it.

Thank you.

The Chair: Mr. Rob Moore.

Mr. Rob Moore (Fundy Royal, CPC): I'll pass. I've long since forgotten what I was going to say.

The Chair: Mr. Dewar.

Mr. Paul Dewar: I'd just like a clarification. If someone were working in a so-called war room, then, for instance, they would not be covered by this because that would be something that would happen during an election, and therefore it wouldn't be covered by this. Is that correct?

Mr. Joe Wild: As long as the people involved in the “war room” do not participate or get involved in the activity of providing support and advice to the Prime Minister during the transition period, yes, that would be correct.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

I'll try to be slightly more brief than Ms. Jennings. It shouldn't be a problem.

Partisanship aside—and quite frankly there's an awful lot of partisanship going on right now—let me give you two quick examples of why this amendment came into place, to try to put my honourable colleague's mind at ease.

If you recall—and I'm sure they do, because members opposite were howling in question period when it was found out that Ms. Roscoe.... And for the record, this is not a personal attack on Ms. Roscoe. This is merely to show that we don't care whether it's a Conservative, a Liberal, a Bloc, or an NDP member, if there are loopholes to be closed we're going to close them regardless of who that person might be. If you recall, when Ms. Roscoe received an untendered, sole-sourced contract after serving on the transition team, members of the opposition—rightfully so, I suggest—raised bloody hell in question period. Once Minister Baird found out—he was not aware of this—he cancelled the contract.

Subsequent to being a member of the transition team, Ms. Roscoe became a member of a lobbyist association, the Canadian Association of Broadcasters. I'll give you a quote on why the government felt it was so important to close this loophole, because we're talking about influence. I'm going to quote from the press release issued from the Canadian Association of Broadcasters, who hired Ms Roscoe to work for them and lobby the government. In part it says:

> Elizabeth served as a volunteer member of the five person transition team created specifically under the leadership of former senior bureaucrat and industry CEO, Derek Burney, to advise Prime Minister Harper through the transition period and prepare the Conservative government to assume power following the federal election.

This was the press release from the association touting Ms. Roscoe as a valuable member of their team. Their firm, in their opinion, was far more valuable because she apparently had access to the Prime Minister, and she had influence within the PMO.

This is unacceptable. Let's get rid of the partisanship. It doesn't matter whether Ms. Roscoe was a volunteer or not or a Conservative supporter or not; this is the type of activity we want to ensure does not happen. That's why this amendment was brought in.

Enough of the hyperbole, enough of this partisanship. This is brought in to close a loophole, make the accountability stronger, and prevent someone like Ms. Roscoe or anyone else, now or in the future, from being perceived as someone who has influence within government circles. We just cannot allow that to happen if we want to give the Canadian public confidence in this act.

Frankly, I believe that closing this loophole was a very strong statement by the government and the Prime Minister. I encourage my colleagues to set their political rhetoric and partisanship aside and vote in favour of this amendment.

Thank you.

● (1935)

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I will keep this very simple and very brief. We support the principle defended by Mr. Lukiwski, but we are opposed to the retroactive or retrospective element. We do not want to see people who have been hired, who have done the work and who have left to be now subjected to conditions they were not aware of at the time.

The general principle is a good one, but the same cannot be said for its retroactive or retrospective application.

[*English*]

The Chair: Mr. Owen.

Hon. Stephen Owen: Thank you, Chair.

I hear Mr. Lukiwski clearly, but I would be more impressed if the government members hadn't just voted down my amendment that would have closed the loophole and this hitch in parallels to say that a former deputy leader or interim leader of the party in opposition, when it was opposition, who's now working to give strategic advice to a law firm in order....

It's interesting too, given the parallel you're describing, that if you go to the website of that law firm it celebrates the joining of the firm of this former deputy leader and interim leader of the opposition party, when he was in opposition—and I'm paraphrasing, but this is exactly the impact of it—and the value he will be to their clients because of his extensive network of connections with government. So that's the type of loophole my amendment would have truly closed.

I accept what you say about this case, but it would have more force if it were combined with closing the other loopholes that are much more serious than this. I also simply repeat my discomfort with someone who volunteered for two and a half weeks and is then at threat of losing their livelihood through this type of retroactive application. I'll use the normal meaning of the word "retroactive" in that.

There's something fundamentally unfair about that in a very large way. It's a small period of time and has a major consequence. So I remain uneasy about the unfairness of that.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

On your latter point first, I understand and empathize with Ms. Roscoe in this particular case, but once you start making exceptions I'm sure that members of this committee would be the first ones to jump all over the government, saying "You can't make exceptions. You either close the loop or you don't." Unfortunately for Ms. Roscoe, although I do not believe she's going to be losing her livelihood over this, if she was caught in that abyss that's the price one has to pay to ensure that the Accountability Act is as tight and as all-encompassing as we can possibly make it. That's really all I can say about that.

I do want to point out a clarification, because I was in error. It was not Ms. Roscoe whose contract was severed by the government, it was another individual. I want to withdraw my remarks, and I do not want Ms. Roscoe or anyone else to think I was making a statement that was incorrect. I apologize for that statement. It was not Ms. Roscoe who received a sole-source contract that was cancelled, it was another individual.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar: Thank you.

I have one question to my friends on the other side. When we look at this amendment, what it addresses, and possibly who it addresses, I'm looking at recent reports on other people who are involved in the campaign, and just wondering if the same effect would apply to Mr. Powers and Mr. Norquay.

● (1940)

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Some on the other side have been saying we need to have an amendment here to ban campaign workers from lobbying. The problem with that is, where does it stop and where does it end? The Conservative Party probably had about 70,000 or 80,000 people who worked on its campaign in the last election. Just multiply the number of riding volunteers times the 308 constituencies. It's an enormous number of people, so who do you start with and who do you end with?

People who participate in elections have not necessarily had their hands on the levers of power in government. These amendments, from beginning to end, have always been designed to deal with people who have worked in the government. We've been perfectly consistent from beginning to end, our campaign platform is being fulfilled completely, and we're proud to stand by both this act and this amendment.

(Amendment agreed to) [See *Minutes of Proceedings*]

(On clause 68)

The Chair: We will go next to the amendments on clause 68, starting on page 58.

Before that we're going to take a break.

● _____ (Pause) _____

●

● (1945)

The Chair: Order.

We have some amendments to clause 68, starting with BQ-12 on page 58.

Incidentally, Mr. Dewar, this is the same as NDP-4.1 on page 58.1

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I am happy to hear that Mr. Dewar will support my amendment.

This will be applicable to the whole bill. By deleting lines 20 to 24 on page 66, this will eliminate the concept of a secret ballot.

● (1950)

[*English*]

The Chair: Okay.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: The next one is G-25.1 on page 58.2.

Mr. Poilievre.

Mr. Pierre Poilievre: Consider it moved.

Are there any comments from the expert panel? No.

(Amendment agreed to) [See *Minutes of Proceedings*]

(On clause 69)

The Chair: The first one on page 59 is G-26.

Mr. Poilievre.

Mr. Pierre Poilievre: I move this amendment.

This amendment in clause 69 of Bill C-2 replaces lines 11 through 24 with the following text. Everyone has it before them. I invite any brief comments from the technical panel.

Ms. Michèle Hurteau: We're trying to make sure the consulting lobbyist records the prescribed type of communication—for example, a call—rather than the type of meeting organized or arranged.

The Chair: Thank you, Madam Hurteau.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: We'll go to Liberal amendment L-5 on page 60.

Mr. Owen.

Hon. Stephen Owen: So moved.

We think this will bring some symmetry into the record and allow the registrar, for instance, to be able to compare what was recorded by both the lobbyist and the senior public office holder. That will provide some verification.

It is not an undue burden on any senior public office holder. They should know with whom they're meeting and what they're talking about. If the lobbyist should record it, I think the senior office holder should as well. That will provide a very neat way for the registrar of lobbyists to be able to confirm that people have properly reported on either side.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: The reason this was not included in the original bill is that the bill calls on the lobbyist to keep the records, and the public office holder is responsible for confirming whether those records are accurate and complete. We think that's a perfectly reasonable approach to take, since the lobbyist approaches the public office holder to lobby; given it is their job to lobby and given it is their interests they're advancing, it should be their responsibility to record their meetings. We add the additional responsibility for the public office holder to take note of whether or not the lobbyist has accurately and completely registered the times and dates of meetings they may have held together.

Once again, lobbyists initiate advocacy on public office holders—ministers, parliamentary secretaries, and others. It's their interests that are being discussed in these meetings, and therefore we believe it is their responsibility to keep records of those meetings, not be the responsibility of the persons being lobbied; their responsibility becomes verification.

I would argue that the worthy objectives of this amendment are already covered in the original act because the public office holder must verify accuracy and completeness. At the same time, the existing act allows for the practical reality that it's the lobbyists who are pushing an agenda; it's therefore they who should be responsible for keeping records of meetings, dates, and times.

I'd ask for any insight from our expert panel.

● (1955)

Mr. Joe Wild: I think it's important to note that the senior public office holder's side of the relationship is governed under clause 73 of Bill C-2 on page 73 of the bill, which sets out section 9.1 of the Lobbyists Registration Act. That section provides an authority for the commissioner to send the reports that the lobbyist has prepared to the senior public office holder, who is then under a duty to confirm to the commissioner the accuracy and completeness of the report, or else to correct and complete it. In this way the senior public office holder is implicitly put under an obligation to keep track of certain forms of communication in order to perform this actual verification.

The Chair: Mr. Owen is next.

Hon. Stephen Owen: I have a further comment.

In terms of keeping the circle whole, I accept all that, and those are good provisions, but the trouble is for the registrar of lobbyists. If the lobbyist does not properly record, that simply may not be known. Therefore, there wouldn't be anything for the senior public office holder to confirm, because it wouldn't be registered. It's a way of making sure there's a check on the lobbyist's responsibility.

Mr. Joe Wild: Mr. Chairman, I would point out that the provision on the certification is not just for accuracy; it's also for completeness. If there is an omission, the senior public office holder would be expected to point that out to the commissioner when doing the verification on the report.

Hon. Stephen Owen: Mr. Chair, there's nothing to verify if the lobbyist doesn't actually report. That was my point in closing the circle.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: There is something to verify, because if a public office holder met with a lobbyist, he or she knows they've met with the lobbyist and can verify if that meeting was reported merely by going to the lobbyist registrar's website, where it would be posted. If it is not posted, then the public office holder would have the responsibility to contact the registrar to ensure that it was posted and that the registration of that meeting was carried out.

The job of the public office holder is not only to verify the accuracy of what the lobbyist reports, but also to point out any omissions. If I met with an association of Canadian fishers and they did not post it on the website, I would be responsible to correct the record and ensure that it did get posted.

Hon. Stephen Owen: How would you know?

Mr. Pierre Poilievre: I'd know by going to the website; it's a public registry.

Hon. Stephen Owen: So you'd be doing something overt as a senior public office holder?

Mr. Pierre Poilievre: That's right. That's the obligation of the public office holder in the existing act.

Hon. Stephen Owen: I was going to cite Coleridge, "In Xanadu did Kubla Khan a stately pleasure dome decree", but I won't.

The Chair: Mr. Wild, did you have something to add, sir?

Mr. Joe Wild: The only thing I would add is if a lobbyist filed a nil report, in essence, the commissioner could still ask a senior public office holder to verify that. I agree that you get to a certain point where, who is the commissioner going to ask? The only people they can ask are those people with whom the lobbyist has actually registered because they have to register who they're going to be contacting, on what issues they're going to be contacting. So it's in that sense that a nil report could be verified, if you will. I wouldn't go so far as to suggest there was some kind of onus on the public office holder. That doesn't go quite that far.

● (2000)

The Chair: Ms. Jennings.

Hon. Marlene Jennings: Thank you.

If I understand correctly, as it now stands under Bill C-2 , there is no obligation on a public office holder to verify that an individual who has had a communication or a meeting with him or her has actually registered as a lobbyist and filed the appropriate report that would be required should Bill C-2 be adopted and proclaimed. Is that correct?

Ms. Michèle Hurteau: Yes.

Hon. Marlene Jennings: And there also is no requirement that the public office holder actually verify to see that communication with them has been filed?

Mr. Joe Wild: If the commissioner sends a report to the senior public office holder for verification, the act then does create an onus on the senior public office holder to verify that report for its accuracy and completeness. But it requires the commissioner to take the step of sending the report.

Hon. Marlene Jennings: And it requires that a report has actually been filed with the commissioner under the Lobbyists Registration Act within 15 days of the month of blah, blah, blah, blah, blah; I won't quote it. So for someone who is either not registered, and therefore doesn't file a report, or is registered but neglects to file a report in which they disclose the meeting with the senior public office holder, the commissioner has no way of knowing that meeting took place or that communication took place because the public office holder has no obligation to file any kind of report regarding communications that he or she may have had with an individual who is not registered but is lobbying and therefore didn't file a report, or is registered appropriately, legally, in compliance with the law, but is not in compliance because that individual lobbyist has not filed the report as prescribed under Bill C-2. Is that correct?

I see Madame Hurteau is nodding her head affirmatively.

Mr. Joe Wild: In the second case, it's still possible the commissioner could go to a senior public office holder and say, "Can you verify that there has been no contact with you by this lobbyist who is registered to lobby for these purposes and identify you as the person they would be lobbying?" That is possible. So I don't think one can be completely categoric on the second category you're talking about.

On the first category, as Madame Hurteau was nodding, if you're not registered, you're quite correct, there is no trigger in the legislation on a senior public office holder, in that regard, to ascertain or verify that someone is registered.

Hon. Marlene Jennings: Okay. Then would Mr. Owen's amendment, if adopted, capture scenario one, the hypothetical situation I've just given, in which an individual is conducting lobbyist activities but has not registered under the Lobbyists Registration Act, as prescribed under the act right now—and even as prescribed under Bill C-2, once it comes into force—and therefore is not in compliance with the act? Would Mr. Owen's amendment, if adopted, capture that type of scenario?

● (2005)

Mr. Joe Wild: The reason we're taking a few minutes, Mr. Chairman, is because it's somewhat unclear to us exactly how the first part of this would necessarily be captured by the amendment as proposed, given obviously that we didn't draft the language. So we're not necessarily in the same headspace as this amendment.

Currently it is the commissioner who has the obligation, if you will, to look after the registry. It is up to the commissioner to verify the accuracy of the registry and to investigate and ensure that those people who are engaging in lobbying activities are properly registered. If they are not, it is up to the commissioner to investigate and perhaps refer matters to the proper place for enforcement.

I guess the difficulty with the amendment is trying to see how it's putting an onus on a senior public office holder to verify that the person with whom he or she is communicating is actually a lobbyist. I don't really see that in the language there. I certainly see a requirement for the senior public office holder to name the individual with whom he or she is meeting, to name the date of the communication or meeting, and to include any particulars with respect to the subject matter. Then it's left open for the commissioner to prescribe what other information would be required.

Hon. Marlene Jennings: It's clear that in Mr. Owen's amendment he doesn't specify a registered lobbyist. What he does do is say that the senior public office holder would be required to file with the commissioner—who has the mandate and authority to enforce the legislation and the registration list in that—the name of the individual who communicated, the date of the communication or meetings, and the particulars, identifying the subject matter of the communication, etc.

When I read this—and I quite possibly could be wrong, because I'm not an expert in this area—I would tend to think that if amendment L-5 were adopted, it would be easier for the commissioner to capture potential situations where an individual is violating the law, because they're not registered and therefore are not filing reports and are conducting lobbyist activities because one would presume that the senior public office holder would be in compliance with the law.

So if L-5 were adopted, you would have reports filed and that would then provide the commissioner with a possibility of capturing individuals who should be registered, because they are conducting lobbying activities as prescribed under the law, but are not registered and therefore not filing reports.

If L-5 is not adopted, there is virtually no way for the commissioner to detect an unregistered lobbyist who is conducting lobbyist activities unless there is some kind of investigative report or investigation that takes place, or a senior public office holder says one day, "Maybe I should check if so-and-so is on the list".

That is all very well and good, but it could mean that there are illegal activities that go on for a period of time before they're captured, whereas this would at least give a time limit.

Am I correct or am I wrong?

Mr. Joe Wild: I think Ms. Meredith is going to actually talk about some of the policy aspects of this.

There is just one thing I want to point out, and it's part of the reason for the struggle and for understanding exactly what the amendment is intending to do.

The French talks about

● (2010)

[*Translation*]

"une entrevue a eu lieu avec un lobbyiste-conseil", and in subparagraph a) it reads "nom du lobbyiste-conseil".

[*English*]

In English that concept isn't there, and I'm not sure.... So again, we're struggling a bit here to understand exactly which version of the amendment captures whatever it is that Mr. Owen is trying to capture, Mr. Chairman.

Hon. Marlene Jennings: May I suggest that Mr. Owen's amendment—he can correct me if I'm wrong—contains an oversight, like one of the government amendments that on the English side talked about the Governor in Council and on the French side talked about the commissioner.

Mr. Joe Wild: Sure, I'm not trying to cast aspersions here; I'm just trying to understand whether we're dealing with *lobbyiste-conseil* or whether we're dealing with the English.

Ms. Michèle Hurteau: And there are different types of lobbyists.

[*Translation*]

There are consultant lobbyists and there are in-house lobbyists, which do not seem to be captured by the French version of the amendment. This raises a problem in our view.

Furthermore, to answer your questions, Madam Jennings, there is the burden of proving whether a public office holder is dealing with the lobbyist or not. The burden rests on the public office holder while the whole purpose of the bill is to capture lobbyists and their dealings. This is the difficulty we have trying to understand the basis of this provision.

[*English*]

The Chair: Have you finished?

We have a list, but we have to hear from Mr. Poilievre first.

Mr. Pierre Poilievre: To very quickly summarize, I'm not clear on the amendment.

The Chair: Order.

Mr. Pierre Poilievre: On amendment L-5, who must the public officer holder record meetings of?

Mr. Joe Wild: That's the difficulty we're having. It's unclear, and we're not sure of the choice, whether it's the English version or the French.

Mr. Pierre Poilievre: If I meet someone in my constituency who is passionate about sports, am I now registering a meeting because I have a recreational lobbyist here? Is there a definition of what constitutes a lobbyist?

Ms. Michèle Hurteau: Well, you have to look at subsection 5(1) under the act, which deals with

[*Translation*]

"les lobbyistes-conseils". I have the French version in front of me.

[*English*]

Mr. Pierre Poilievre: But they're registered lobbyists, correct?

Ms. Michèle Hurteau: Yes, they're consultant lobbyists; in-house lobbyists are in section 7.

Mr. Pierre Poilievre: They would be registered—is that right?

Ms. Michèle Hurteau: Yes, they would be registered.

Mr. Pierre Poilievre: This amendment doesn't deal with unregistered lobbyists because it only applies to registered lobbyists. The public office holder would only be required to record meetings with registered lobbyists. It would not put any positive obligation on the public officer holder to determine who should or who should not be registered. Is that correct?

Ms. Michèle Hurteau: Yes.

Mr. Pierre Poilievre: Okay.

The Chair: We have a list, but we'll let you jump in. Go ahead.

Hon. Stephen Owen: Thank you, Chair.

On the amendment, I take your point that the translation may not be complete. I would only advise that since I put in the amendment, we should go to the English version as the more authoritative. If there's a mistranslation, we could then fix it.

I don't have any difficulty with Mr. Poilievre's observation that the unregistered lobbyist may not be caught, but he or she may well be caught if the senior public office holder has someone introducing people or lobbying him. He has a duty to record it, and it's then recorded by the senior office holder. There doesn't seem to be any corresponding record by the lobbyist, registered or unregistered, that would illuminate the problem.

That's really all we're trying to get at here. Let's make sure this is as effective as possible. I think we all accepted that it was not an onerous task for a lobbyist to post a record, and it's certainly not onerous for a minister or senior office holder who has staff, agendas, and meetings with people. It's only to complete the circle and make sure there isn't anything slipping through. That's the only reason for the amendment.

● (2015)

The Chair: Madam Guay.

[*Translation*]

Ms. Monique Guay: Mr. Chairman, we are not lawyers but it seems to us this would be a complement to this section. Would this not strengthen section 69 in order to catch as many non-reporting lobbyists as possible?

Besides, if there is a divergence between the French version and the English version, I believe those errors can be corrected later. Those two notions are complementary and not contradictory. It is simply a matter of providing greater certainty, in order to confirm and provide more detail and to ensure that lobbyists do indeed report. We do not think that this goes against anything being said in section 69, it rather supplements what is already in there.

[*English*]

Ms. Daphne Meredith: Mr. Chair, perhaps I could speak to the intent of the clause as it's currently drafted.

We had in mind working off the existing registration system that, as my colleagues have pointed out, relates to lobbyist registration and to ensuring that the registry is verified. The onus will be on the commissioner to ensure that the registry is valid. We thought it practical for him to be able to verify it with senior public office holders. If the senior public office holder is to be asked by the commissioner to validate information, it follows that such a person would need to keep some records of their own as to communication they've had with lobbyists.

However, the solution we've found does not create in effect two registries, one by the senior public office holders and one by the lobbyists. So we thought this would be a somewhat elegant way of achieving the objective of having a valid registry, one that's validated by senior public office holders, albeit on a selective basis, through the commissioner.

To the point that the commissioner could be unable to validate information, for example where a lobbyist did not register, it would be best to ask the lobbyist registrar if that is the case. Our understanding is that he can manipulate the information he has on the registry so he can sort it by senior public office holder and he can give a report to any senior public office holder and ask, "Do you agree that these are the lobbying contacts that you've had over the period?" So I think there would be an effective means, given how he can use this registry, to validate it.

The Chair: Thank you.

Ms. Jennings.

Hon. Marlene Jennings: A matter of clarification for me: I look through pages 68 and 69 of Bill C-2 and I look at subclause 69.(1), which talks about subsection 5(1.1), blah blah blah, replaced by the following: it's paragraph (1.1) and it's at line 24. It starts "An individual shall file the return..." so on and so forth.

On the French side it says:

[*Translation*]

"Le lobbyiste-conseil fournit la déclaration...".

[*English*]

When we move down further through the various paragraphs, bringing us to page 69, line 3, it says, "The individual shall file a return...", and on the French side at line 7, it says,

[*Translation*]

"... le lobbyiste-conseil...".

[*English*]

Is there somewhere in the legislation that defines that when you use the term "the individual" it has the same meaning and definition as in the French side "*le lobbyiste-conseil*"? I only want to make sure.

● (2020)

[*Translation*]

Ms. Michèle Hurteau: The provisions in 5(1.1) and the following subsections must be read within the context of section 5 where it says in English, under the title "CONSULTANT LOBBYISTS":

[*English*]

"5(1) An individual shall file with the registrar...".

[*Translation*]

Throughout the English version of section 5, we use...

[*English*]

I'll switch to English because we are discussing the English text.

We do speak about an individual, so we've kept it consistent. If you look at subsection 5(1) of the current act, "An individual shall file with the registrar..." and it continues on, that is the reason why we in the English text continue to use "an individual".

[*Translation*]

You are right to say that in subsection 5(1) of the French text, it says: "lobbyiste-conseil". This term even appears in brackets because it says "... toute personne (ci-après lobbyiste-conseil...)". Therefore, the French is consistent in using the term "lobbyiste-conseil".

Section 5 must be read in full.

Does this answer your question?

Hon. Marlene Jennings: Yes, and I would like to have one last clarification. Maybe the members on the government side could provide it.

In the election platform of the Conservative Party in 2006, one of the commitments was to require ministers and senior public servants to divulge the names of lobbyists with whom they had dealings. So I would presume that the Conservatives will support amendment L-5 introduced by my colleague Mr. Owen.

[*English*]

The Chair: Okay, we're going to vote on L-5.

(Amendment negatived) [See *Minutes of Proceedings*]

The Chair: We're going to go to page 61, which is G-27.

Mr. Poilievre.

Mr. Pierre Poilievre: So moved.

I ask for any insights, however brief, from our panel of experts.

Ms. Michèle Hurteau: This is really a technical amendment to be consistent with the amendment in proposed paragraph 5(3)(a). It's to take out the references to "or with whom the meeting was arranged". Any reference to "meeting" is taken out, to be consistent with the previous amendment.

The Chair: All those in favour?

(Amendment agreed to) [See *Minutes of Proceedings*]

(On clause 72)

The Chair: We now move to the amendment under clause 72 on page 62.

That's a government amendment. Mr. Poilievre.

Mr. Pierre Poilievre: Moved.

I invite comment from our panel.

Ms. Daphne Meredith: The intention of this provision was to allow the commissioner to put a time limit on the period during which he'd receive information. Otherwise, he could ask for information, and the party asked could take forever to provide it. So it's to enhance his capacity to investigate.

Mr. Pierre Poilievre: So it puts timeframes where before there were no timeframes whatsoever. Okay.

(Amendment agreed to) [See *Minutes of Proceedings*]

(On clause 75)

The Chair: We now go to the amendment under clause 75, which is a Liberal amendment on page 63.

Mr. Owen, L-6.

Hon. Stephen Owen: I'll move this, Chair.

By way of commentary, I'll simply say that we were quite impressed by a number of the witnesses who came before us, expressing concern that the five-year prohibition would dissuade anyone from coming into one of these positions. That five years puts right out of the realm of possibility that someone coming in from a university, a corporation, a union, or someone who could add some value to political discourse in this country would want an experience in government. Those sectoral moves can be quite valuable, in terms of the skills that people bring from one sector to another, and the five years might put a chill on people being willing to serve in public roles such as this.

So this is an attempt to reach the government's objective, but in a more realistic timeframe.

● (2025)

The Chair: Mr. Murphy.

Mr. Brian Murphy: To put it into the perspective of the private sector, non-compete clauses and such are never five years. It would be struck down.

Secondly, three years in the rhythm of government is quite a bit. I think that people who might have had influence would probably lose a lot of that currency in a three-year period. It seems reasonable.

The witnesses we hurried through were almost unanimous on that, and I think it's a good amendment.

(Amendment negatived)

(On clause 77)

The Chair: We move to clause 77, which is the Bloc Québécois amendment, BQ-13, on page 64.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: In the bill, the language proposed for this subsection is as follows: 10.4 (1) The Commissioner shall conduct an investigation if he or she has reason to believe that an investigation is necessary [...]

We would like to amend this to read: The Commissioner shall conduct an investigation if he or she is requested to do so by a member of this Senate or House of Commons or has reason to believe [...]

We would like to enable a parliamentarian to call upon the Commissioner. When the Commissioner has reason to believe that an investigation is required, he or she would conduct one. However, we would add the possibility for a parliamentarian to request one.

[*English*]

The Chair: Mr. Poilevre.

Mr. Pierre Poilievre: I would like to get some commentary on this from our panel.

[*Translation*]

Ms. Michèle Hurteau: One of the difficulties with this provision, and you are perfectly right, is that presently the Commissioner conducts an investigation "if he or she has reasons to believe". So this is already a test of some sort.

If he receives a complaint, he must have "reasons to believe" that an investigation is necessary. This test would not apply when a parliamentarian requests an investigation. Therefore, once the Commissioner receives such a complaint, he would not investigate because of any "reason to believe", but because a parliamentarian brings in a request to investigate. Do you understand? It looks like a double standard. It is a matter of fairness as to the Commissioner's approach.

Mr. Benoît Sauvageau: However, the amendment says:

> The Commissioner shall conduct an investigation if he or she is requested to do so by a member of the Senate or House of Commons [...]

I understand what you say, but the Commissioner can also conduct an investigation "if he or she has reasons to believe".

Ms. Michèle Hurteau: That is true. However, it does not mean that when the Commissioner receives a complaint from a parliamentarian, he investigates because "he has reasons to believe".

If I understand your amendment correctly, the Commissioner receives a request from a parliamentarian who has a complaint and wants an investigation. Therefore, the Commissioner must conduct an investigation without necessarily having "reasons to believe".

Ms. Monique Guay: Excuse me. I would like to clarify...

[*English*]

Mr. Pierre Poilievre: I'll just finish up my point now.

Point of order?

The Chair: Yes, Mr. Poilievre.

Mr. Pierre Poilievre: I never actually finished my point. I asked a question, and all of a sudden Mr. Sauvageau jumped in. I still want to stick with this.

The Chair: I know. You're absolutely right, Mr. Poilievre. You may finish.

Mr. Pierre Poilievre: All right.

So what you're saying is that under the current wording, the commissioner has the right to investigate if he or she has "reason to believe", but under the wording that is proposed in this amendment, that right turns into an obligation.

Ms. Michèle Hurteau: There are two standards we're dealing with.

● (2030)

Mr. Pierre Poilievre: Mr. Wild.

Mr. Joe Wild: To put it really as succinctly as possible, the commissioner can investigate if he has "reason to believe", and thus he has discretion. The "reason to believe" can be based on information coming from any sources. But under this amendment, where the commissioner is requested by the member of the House or Senate, the commissioner has no choice.

Ms. Michèle Hurteau: That's right.

Mr. Pierre Poilievre: With this amendment.

Mr. Joe Wild: Yes. With this amendment, the commissioner would have no choice but to carry out the investigation.

Ms. Michèle Hurteau: So he doesn't have a "reason to believe" in that case.

Mr. Pierre Poilievre: Okay.

The words "reason to believe" are in his amendment, though.

Mr. Joe Wild: But it's set up as an "or". There are two distinct heads of commencing an investigation that are set up in the amendment.

The Chair: Okay.

[*Translation*]

Ms. Monique Guay: I do not agree with you. If you read the rest of the section, you will see that the Commissioner has every right he needs to decide whether to investigate or not, even if a parliamentarian so requests. The Commissioner may accept or refuse to investigate. Even if a parliamentarian were to request an investigation, there are many provisions in this bill that would allow the Commissioner to refuse to investigate under any one of a number of provisions in this bill. He or she could refuse.

We are not giving any special rights to parliamentarians, but should they become aware of a failure to comply, we want them to be able to request the Commissioner to investigate. The Commissioner maintains all his rights. Indeed, we say that if he "has reasons to believe" an investigation is appropriate, he will have all the means required to conduct one. It is as simple as that.

I totally disagree with you. We are not taking any rights away from the Commissioner. He maintains all his rights. He could easily decide that the request from a member of Parliament is not valid for any one of the reasons listed here, or for any other reason he may have. He maintains all the powers of his position. He is the Commissioner. So, whoever brings a complaint, if he decides it is not valid, he can refuse to investigate. The parliamentarian has no more rights than the Commissioner. This is not at all what this amendment is about. This amendment is about allowing a parliamentarian, if he deems it appropriate, to bring a complaint before the Commissioner. At this time, the Commissioner makes the decision he considers appropriate.

[*English*]

The Chair: I don't know whether I want there to be a debate between you, but do you have some brief comments?

Mr. Joe Wild: I guess I'll be as brief as I can.

The issue, from our perspective, is one of a technical legal interpretation. We see the amendment as setting up the potential for a bit of an ambiguity in the way the act is working, in that it's a bit of a disconnect—again, from a technical legal perspective—to see something that obligates a commissioner to investigate if he or she is requested to do so by a member, while in another clause it says he or she can refuse.

Simply from a technical perspective, if one is trying to capture the policy principle that the commissioner can receive information from a member of the Senate or House of Commons and take that information into account in determining whether or not to investigate a particular matter, our perspective would be that subsection 10.4(1) as it is currently drafted already enables that. It doesn't do so in an explicit way, but it's certainly implicit in the wording that is there.

The Chair: Madam Guay, have you finished?

[*Translation*]

Ms. Monique Guay: No, Mr. Chairman, because this is not specified. We want to really specify that a member of Parliament can request an investigation. It is extremely important for us to have this included in the bill.

On page 76, in subparagraph d), it says that the Commissioner may decide:

> d) there is any other valid reason for not dealing with the matter.

Therefore, the Commissioner's hands are entirely free. We do not impose any obligation on him; we simply ask him to receive complaints from parliamentarians, and it will be up to him to decide whether they are valid or not.

So I do not see why we could not include this amendment.

[*English*]

Mr. Joe Wild: I'm not sure there's much more, Mr. Chairman, that I could say other than what I've already said, which is that from our perspective it does create the potential of an ambiguity in the legal interpretation of the operation of the two subsections, and that there is nothing in subsection 10.4(1) as it's currently worded that precludes a member or senator from bringing information to the attention of the commissioner.

● (2035)

The Chair: Okay.

Monsieur Petit, go ahead, please.

[*Translation*]

Mr. Daniel Petit: Mr. Wild, the amendment to subsection 10.4(1) in the French version would read: “Le commissaire fait enquête lorsqu'il reçoit une demande [...]”. This means that he would be compelled to investigate without any possibility of refusing. The present language in the bill gives him that discretion.

The French text would simply cancel all the other provisions because he would no longer have a choice. Even if the movers say he has a choice, the words “shall conduct an investigation if he or she is requested to do so” mean that he would no longer have any discretion under subsection 10.4(1), whereas he has that discretion at the present time. Therefore, this would reduce the powers of the Commissioner.

Ms. Michèle Hurteau: Maybe it would reduce his discretion...

Mr. Daniel Petit: Without comment, please.

[*English*]

The Chair: Okay.

Could we have Ms. Jennings, and then Mr. Poilievre?

Hon. Marlene Jennings: Thank you.

I believe I understand what Monsieur Sauvageau was trying to get at. I also understand very clearly the point you've raised, that the way in which Mr. Sauvageau's amendment is worded, the commissioner would have a legal obligation to conduct an investigation once he or she receives a request from a parliamentarian, an MP or a senator, but doesn't have to have reason to believe that an investigation is necessary to ensure compliance with the code or the act, and has the legal obligation to conduct such an investigation when any other information may come from another source. So it's like two different weights, if I could call it that.

So if the last line of Mr. Sauvageau's amendment were changed to read “Commons and/or has reason to believe”, would that take care of the concern that you have? I believe if that were the wording, the commissioner would be legally obliged if a request were made by a parliamentarian and the commissioner had reason to believe that an investigation was necessary to ensure compliance, and the commissioner would also be legally obliged to conduct an investigation as well if he or she had reason to believe an investigation was necessary.

So regardless of where the information or request came from, there would be a requirement for the commissioner to conduct an investigation only if the criterion or condition was met that the commissioner had reason to believe that investigation. So that change would satisfy the nebulousness that you were seeing in Mr. Sauvageau's amendment. Is that correct? Maybe not.

Mr. Joe Wild: Mr. Chairman, the “and/or” is a bit of an unusual method from a technical drafting perspective. In order to capture the basis of the language, I could certainly suggest that if we rewrote it, sticking with the language as we have it now in the amendments, we'd be talking about:

> The commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons....

We would then continue. If that captures the principle, it would be a method of doing it.

The Chair: I want to know if Ms. Jennings is moving a subamendment.

Hon. Marlene Jennings: I move a subamendment with the wording that has just been suggested by Mr. Wild.

The Chair: You mean including information received from the House of Commons—is that it?

I'm trying to find out what's going on here.

Mr. Wild, could you repeat what you said?

Mr. Joe Wild: I'll read it in subamendment language, if you will, and that may assist.

We would be amending the amendment proposed by Mr. Sauvageau by replacing it with the language that follows. I'll read it in English and then in French. In English:

> investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons,

And in French it would read:

● (2040)

[*Translation*]

> [...] lorsqu'il a des raisons de croire, notamment sur le fondement de renseignements qui lui ont été transmis par un parlementaire, qu'une enquête est [...]

[*English*]

The Chair: That's your subamendment, Ms. Jennings.

Mr. Poilievre is next, on the subamendment.

Mr. Pierre Poilievre: I support the subamendment.

(Subamendment agreed to)

The Chair: All those in favour of the amendment as amended?

(Amendment as amended agreed to) [See *Minutes of Proceedings*]

The Chair: We now move to government amendment G-28.1, which is on page 64.1.

Mr. Poilievre, will you move the amendment?

Mr. Pierre Poilievre: So moved.

I invite commentary from the panel.

Ms. Michèle Hurteau: Actually, this is a rather technical amendment. In section10.4 of the Lobbyists Registration Act it's to replace, in proposed paragraph 10.4(1.1)(c), the word “disclosure” with the word “matter”, so it would read,

> (c) dealing with the matter would serve no useful purpose.

The reason for this is that in proposed paragraphs 10.4(1.1)(a) and 10.4(1.1)(b) we deal with the word “matter”. We use the word “matter”; “disclosure” would bring in a new concept that might be a bit difficult to understand.

Mr. Brian Murphy: The French version is in English; I don't think it's good French to use English.

Mr. Joe Wild: It's because the amendment is only to the English version. There is no amendment to the French version.

(Amendment agreed to)

The Chair: We're going to move to the amendments on clause 78. That's on page 64.2, Liberal amendment L-6.1.

Ms. Jennings, would you speak to it?

Hon. Marlene Jennings: May I have a moment to go back and read it? We've done so many other amendments that I have forgotten what was proposed.

The Chair: I might add, Ms. Jennings and Mr. Dewar, that this amendment is the same as NDP-4.2.

Hon. Marlene Jennings: What you mean is that the NDP-4.2 is the same as the LIberal L-6.1.

The Chair: Okay. I aim to please here.

Hon. Marlene Jennings: Yes, okay. If my memory serves me correctly, this again comes back to the brief that Mr. Walsh had submitted to this committee.

The point he had made was that whereas proposed subsection 10.5 (1) ends in talking about the commissioner preparing a report of the investigation, including the findings, conclusions, and the reasons for the commissioner's conclusions, and then submitting it to Parliament, in fact to follow the traditional process, etc., you can't just submit it to Parliament; you submit it to the Speaker of the Senate and the Speaker of the House, who then have a process tabling it, etc. So this is actually drafted in order to implement the correction that Mr. Walsh had suggested.

Perhaps Mr. Steve Chaplin might have something to add, or he might not.

The Chair: Are you asking if he can come to the table?

● (2045)

Hon. Marlene Jennings: No, I just asked him if he had something to add.

The Chair: It doesn't appear so.

Hon. Marlene Jennings: He doesn't appear to, so I guess my explanation was clear, in his mind, at least.

So move to the question.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: We now move to a Liberal amendment, page 64.4, which is L-6.2, and that is the same as Mr. Dewar's, NDP-4.3.

Who's taking that? Ms. Jennings.

Hon. Marlene Jennings: Yes, I move L-.2. This is similar to the previous amendment, and for the same reasons, given the wisdom and legal opinion of Maître Walsh. He proposed that these amendments be made in order to ensure that the proper procedure, etc., is followed when reports are filed.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: We now move to a New Democratic motion, which is on page 65, NDP-5.

Mr. Dewar, would you make a motion, please?

Mr. Paul Dewar: Yes, I move NDP-5.

The Chair: Any comments?

Mr. Paul Dewar: Just quickly, Chair, this isn't controversial. This goes back to the idea of process. What we wanted to capture here is just to specify that any special reports are to be transmitted to the House through the Speaker. So it's just a procedural process, a convention, if you will, of the House, on how reports should be filed.

Thank you.

The Chair: Madame Guay.

[*Translation*]

Ms. Monique Guay: Mr. Chairman, the next amendment from the government is very similar to that of the New Democratic Party. Could our legal advisors tell us what is the difference between those two, to enable us to make a choice? If we vote for the NDP amendment, the one from the government would automatically disappear, unless I am mistaken.

Ms. Michèle Hurteau: Are you talking about amendments NPD-5 and G-29?

Ms. Monique Guay: Yes. They are very similar.

Ms. Michèle Hurteau: You are right.

The provision...

[*English*]

The Chair: Sounds like we agree, so we're going to vote on....

[*Translation*]

Mme Monique Guay: Are you going to provide an explanation?

[*English*]

The Chair: I'm sorry, Madame Guay, did you want an explanation?

[*Translation*]

Ms. Monique Guay: Yes, this is precisely what I just asked. I would like an explanation of the amendment from the New Democratic Party in order to get a clear understanding, because it seems very similar to that of the government.

[*English*]

The Chair: Yes, I think it's similar, but not exact.

[*Translation*]

Ms. Michèle Hurteau: The amendment moved by the New Democratic Party is more restrictive than that of the government.

Indeed, the new section 11.2 proposed by the New Democratic Party only mentions the special reports of the Commissioner under section 11.1. The Commissioner tables several reports, an investigation report, a special report and an annual report. Not all of these reports are included in the first suggestion.

The government amendment has a wider scope since it would capture all three reports of the Commissioner, the investigation report, the annual report and the special report.

[*English*]

The Chair: Mr. Dewar.

Mr. Paul Dewar: The intent is captured. Thank you for the explanation and the question. So I'll withdraw my amendment.

The Chair: Ms. Guay, I think I cut you off. I'm sorry. No?

All right. We will proceed to the government amendment, which is G-29, on page 66.

Mr. Poilievre.

Mr. Pierre Poilievre: It is moved.

The question.

(Amendment agreed to) [See *Minutes of Proceedings*]

● (2050)

The Chair: We now move to the amendments on clause 83. That's a government amendment, G-30, on page 67.

Mr. Poilievre.

Mr. Pierre Poilievre: I move it.

The expert panel....

The Chair: Mr. Wild.

Mr. Joe Wild: This is simply a technical amendment to capture the two additional sections that were added through amendment tonight.

The Chair: Well, we're going to jump ahead. I may have jumped the gun.

Clause 83 and subclause 88.(2) are consequential, so we're going to proceed with clause 88, government amendment G-31, and that's on page 68. I'm sorry, committee.

Mr. Poilievre, perhaps you could turn to page 68, G-31.

Mr. Pierre Poilievre: Yes, so moved.

I believe this is an effort to correspond the French with the English. I'm getting nods of agreement.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: So now we go to the amendments of clause 89.

Mr. Dewar, you're up next.

That's a New Democratic amendment. It's on page 72.1. It's NDP-5.1. That's a line conflict with NDP-6.

Mr. Paul Dewar: So we're on NDP-5.1, correct?

The Chair: We are, sir.

Mr. Paul Dewar: It is so moved.

The Chair: Did you have some comments to make, sir?

Mr. Paul Dewar: It's just basically some new disclosure subsections for the Commissioner of Lobbying. I thought it was important to be thorough in this area.

The Chair: Okay.

Ms. Jennings.

Hon. Marlene Jennings: I have a question of procedure. I don't understand why we've moved to clause 89 and we're not dealing with the new clauses 88.1 and 88.2 in the government amendment, G-32. I'd just like an explanation.

The Chair: Go ahead.

Ms. Susan Baldwin (Procedural Clerk): It was our advice to the chair that proposed clauses 88.1 and 88.2 could be voted on separately by the committee. They weren't necessarily completely tied up with the ones we're doing now. We're just going to skip over them, and then we'll do all the votes the chair read that applied beforehand. Then we'll come immediately after that back to proposed clauses 88.1 and 88.2, which now also include the amendment G-30.

Hon. Marlene Jennings: Okay. I must have missed something. I must have missed the chair's explanation of which clauses we would be doing and why, while we stood down. In the past, we've said we're going to deal for instance with clause 39, which also applies to clause 40, 56, and 58, and then we would come back.

● (2055)

Ms. Susan Baldwin: The chair's statement said that we would be dealing with the amendments to the clauses that are consequential to clause 65, and those would be 67, 68, 69, 72, 75, 77, 78, 83, 88, and 89. After that, because not all the clauses that are consequential to 65 have an amendment with them—

Hon. Marlene Jennings: My apologies. I just found this sheet of paper. I didn't miss it. The chair did in fact give all of it out, and I had noted it, but in the course of the dinner....

The Chair: Isn't this fun?

Thank you, Ms. Jennings. We're back to Mr. Dewar, on NDP-5.1, which is on page 72.1.

Mr. Paul Dewar: As I mentioned Mr. Chair, what we have here, if you look at it as written, is that:

> The Commissioner of Lobbying shall refuse to disclose any record requested under this Act that contains information that was obtained or created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by or under the authority of the Commissioner.

What we're proposing here in our amendment is that clause 89 be amended by replacing lines 4 to 10 on page 82 with the following:

> However, the Commissioner may not refuse to disclose any record that was created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by the Commissioner or under the Commissioner's authority once the investigation is complete and all related proceedings, if any, are final.

What we're trying to do here is ensure ultimate transparency so that when everything is said and done, the records are available for people to see. I think we've heard time and time again from people—witnesses and others—that it's important to be able to have full disclosure when we can, and that's what this is attempting to do, Chair.

Thank you.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: This is the first of a long series of amendments to the Access to Information Act. Mr. Dewar will correct me if I am wrong.

We agree on the need to reform the Access to Information Act. However, the Conservative members did not want to include this reform in Bill C-2 and the members of the New Democratic Party—not you personally—wanted to speed up passage of this Bill. Therefore, we do not agree to do indirectly what we were not allowed to do directly, in other words agree to amend the Access to Information Act in an underhanded fashion.

There were two possibilities to amend the Access to Information Act, as the Conservative Party committed to do in its platform. This reform could have been included immediately in Bill C-2, but they refused, contrary to their promise during the last electoral campaign. I am not talking about you, Mr. Chairman, but about the Conservative Party. Therefore, we are going to reject any proposed amendment to the Access to Information Act because these amendments should have been submitted to the Standing Committee on Access to Information, Privacy and Ethics.

Since the members of your party refused to do so at the appropriate time, we are not going to start doing it piecemeal here. This is why we are going to oppose amendment NPD-5.1. But rest assured, Mr. Dewar, that we have nothing against you personally.

[*English*]

The Chair: Okay. Is there any other discussion?

We'll have Mr. Poilievre and then Mr. Dewar.

Mr. Pierre Poilievre: We propose a subamendment in the second part of the amendment. It would read as follows:

> However, the Commissioner shall not refuse under subsection 1 to disclose any record that contains information that was not created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by the Commissioner or under the Commissioner's authority once the investigation and all related proceedings, if any, are final.

● (2100)

The Chair: We'll have to get a copy of that.

Mr. Dewar, then Mr. Sauvageau.

Point of order, go ahead.

[*Translation*]

Mr. Benoît Sauvageau: Point of order, Mr. Chairman. It is 9 o'clock.

[*English*]

The Chair: Well, we're having so much fun.

I want you to all go home and get a good night's sleep, because we're starting here at 8 o'clock tomorrow morning, in the room next door, Room 237-C.

This meeting is adjourned.

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