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Chair

The Honourable Denis Paradis

Standing Committee on Official Languages

Thursday, October 5, 2017

• (1530)

[*Translation*]

The Chair (Hon. Denis Paradis (Brome—Missisquoi, Lib.)):
Good afternoon everyone.

First, I would like to advise the members of the committee that I must leave in about 10 minutes. Mr. Clarke will then chair the committee.

As well, because Mr. Clarke and Mr. Choquette have a commitment with CPAC, we will be ending the session at 4:45 p. m. today.

Pursuant to Standing Order 108(3), we are continuing our study of the implementation of the Official Languages Act at Air Canada.

Today, we have the pleasure of welcoming two representatives from the Office of the Conflict of Interest and Ethics Commissioner: Ms. Lyne Robinson-Dalbé, director, advisory and compliance, and Ms. Peggy Koulaib, chief of procedures.

We also have with us Mr. Bruce Bergen, senior counsel at the Officer of the Commissioner of Lobbying of Canada.

Welcome everyone.

We will begin by listening to your presentations. Then, as usual, we will move into questions and comments from members.

Please proceed, Ms. Robinson-Dalbé.

Ms. Lyne Robinson-Dalbé (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): Mr. Chair and honourable members of the committee, I am pleased to appear before you today on behalf of Mary Dawson, the Conflict of Interest and Ethics Commissioner, who regrets that she is unable to be here herself. I am joined by my colleague Peggy Koulaib, chief of procedures.

You invited the office of the commissioner to discuss the administrative monetary penalties under the Conflict of Interest Act, in order to aid the committee's examination of proposals made by the former Commissioner of Official Languages, Graham Fraser, in his special report to Parliament regarding Air Canada.

[*English*]

Procedural fairness is important in an effective administration of any administrative monetary penalty regime. The administrative monetary penalty regime established under the Conflict of Interest Act was implemented by Commissioner Dawson in November 2008,

more than a year after the act took effect. She took the time necessary to develop appropriate processes to support the new regime, and to review penalty schemes used by other bodies in order to ensure procedural fairness.

The commissioner may impose administrative monetary penalties of up to \$500 on reporting public office holders for failure to report certain matters within established deadlines. Violations include, among others, not filing a confidential report within 60 days after appointment, not publicly declaring certain assets within 120 days after appointment, not disclosing a material change to the confidential report within 30 days after the change occurs, and not publicly declaring a gift with a value of \$200 or more within 30 days after receiving it.

The provisions of the act covered by the administrative monetary penalty scheme are set out in section 52 of our act.

[*Translation*]

When the commissioner becomes aware of a possible violation, she reviews the circumstances surrounding it. If the commissioner believes on reasonable grounds that a reporting public office holder has committed a violation, she may issue a notice of violation to the public office holder, along with a proposed penalty of up to \$500. The notice is not made public.

The act gives the commissioner a degree of discretion to determine the amount of a penalty, taking certain considerations into account: the fact that penalties are intended to encourage compliance rather than to punish; the reporting public office holder's history of prior violations during the previous five years; and any other relevant matters.

The commissioner has interpreted such relevant matters to include particular circumstances, for example, a delay in our office being notified of a reporting public office holder's appointment by his or her employer in the case of missed reporting deadlines during the initial compliance process. She also considers whether our office has been informed of a possible violation by the reporting public office holder involved, or whether the information was brought to our attention by a third party.

I'll give one final example. The commissioner is more likely to impose a penalty for a failure to report a material change that involved an activity prohibited by the act, such as purchasing controlled assets, than for a failure to report a material change that did not involve a breach of the act's substantive provisions.

•(1535)

[English]

After the notice of violation is issued, the reporting public office holder has 30 days in which to pay the penalty or to make written representations to the commissioner. After receiving representations, the commissioner determines whether the reporting public officer did or did not commit the violation, and whether there were mitigating circumstances. As a result, she may impose the proposed penalty, reduce it, or eliminate it altogether. If the reporting public office holder does not make any representations, he or she is deemed to have committed the violation and must pay the penalty. Imposed penalties are disclosed in the public registry maintained by our office on our website.

As I have noted, the overall objective of the administrative monetary penalty regime, established under the Conflict of Interest Act, is to encourage compliance with the act rather than to punish non-compliance. This is reflected in the relatively low \$500 cap on penalties, in the discretion that the commissioner has in deciding the amount of the penalty, and in the incentive to comply that comes from making penalties public.

[Translation]

As the commissioner has noted in a number of contexts regarding her administration of the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, transparency is an important focus of conflict of interest regimes, which seek to enhance or maintain public confidence and trust in our public officials. Under the act, transparency is supported by the public disclosure of certain personal information, as well as by the disclosure of administrative monetary penalties, and the public release of the commissioner's examination reports.

Mr. Chair, this concludes my formal presentation. We will now be pleased to answer any questions the committee may have.

The Chair: Thank you very much, Ms. Robinson-Dalpe.

We will now give the floor to Mr. Bruce Bergen.

Mr. Bruce Bergen (Senior Counsel, Office of the Commissioner of Lobbying): Good afternoon Mr. Chair and members of the committee.

On behalf of the Commissioner of Lobbying, Karen Shepherd, I am pleased to be here with you today to discuss the sanctions in the Lobbying Act and the Lobbyists' Code of Conduct.

[English]

The Lobbying Act came into force in July 2008 to increase the transparency of lobbying activities, and help raise the confidence level of Canadians in the integrity of government decision-making. The mandate of the commissioner has three key components: establish and maintain a registry of lobbyists; reach out to lobbyists, their clients, and public office holders to raise awareness about the act; and ensure compliance.

My remarks today will focus primarily on the different compliance mechanisms under the Lobbying Act and the lobbyist code of conduct.

Contraventions of the Lobbying Act are primarily linked to registration obligations. These include failing to register as a lobbyist, failing to do so within the time limit within the act, failing to provide the required information in a registration, failing to comply with a request for information, and failing to clarify or correct information in the registry of lobbyists. Knowingly making false or misleading statements in a registration or any other document is also a contravention of the act. In addition, lobbying while prohibited from doing so by the five-year prohibition in the act is also an offence. Finally, consultant lobbyists are also prohibited from being paid based on a contingency fee.

[Translation]

The Lobbyists' Code of Conduct was introduced in 1997. The code regulates the behaviour of lobbyists.

Under the Lobbying Act, the commissioner has the authority to amend the code. Following public consultations, the commissioner amended the code in 2015. The new version of the code came into force on December 1, 2015.

The act requires the commissioner to table a report on investigation in both houses of Parliament when an investigation into a breach of the code is concluded. In fact, she has done so eight times over the past five years.

[English]

Anyone can make an allegation and inform the office about a suspected breach of the Lobbying Act or the Lobbyists' Code of Conduct. We also identify potential breaches from our own observations of the media and other publicly available information. The commissioner takes all allegations seriously. She will initiate an administrative review or a fact-finding exercise if she suspects that a breach of the act or of the code has occurred. An investigation is opened if the commissioner believes it is needed to ensure compliance with the act or the code. An administrative review is closed when the allegation is not well founded. An administrative review may also be closed in other circumstances.

•(1540)

The commissioner may choose to take measures that are better suited than an investigation to ensure compliance with the act. These measures may include educating the subject or requesting that a correct be made to the registry of lobbyists. These files are also subject to further monitoring.

In cases where the commissioner determines the allegation is serious and appears to be well founded, she will initiate a formal investigation if there's reason to believe an investigation is necessary to ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct. If the commissioner has reasonable grounds to believe an offence under the act has been committed, or has been committed under any other act of Parliament, she will refer the matter to the RCMP. The act requires that.

The investigations process is similar to the investigative review process. One of the main differences is that once an investigation is initiated, the commissioner can summon witnesses to give evidence and can compel the production of documents. These are special powers that have been provided in the Lobbying Act.

When a file is referred to the RCMP, the Lobbying Act requires the commissioner to suspend the investigation until the matter has been dealt with. Once the matter has been dealt with by the RCMP or in court, the commissioner may choose to resume her examination as an investigation under the Lobbyists' Code of Conduct.

The Lobbying Act includes penalties that may be imposed upon conviction in court of an offence under the act. A fine of up to \$50,000 and imprisonment for up to six months may be imposed on summary conviction for knowingly giving false information, making a misleading statement, or failing to file a return. The maximum fine goes up to \$200,000 and imprisonment for up to two years for a conviction by way of indictment. If a person is convicted of an offence under the Lobbying Act, the commissioner may also prohibit that person from engaging in lobbying activities for up to two years.

The Lobbyists' Code of Conduct is a non-statutory instrument and there are no fines or jail sentences associated with breaches of the code. A report on an investigation must be tabled in both Houses of Parliament to disclose findings, conclusions, and reasons for the conclusions once the investigation into an alleged breach of the code is complete. Reports on investigation are primarily intended to expose wrongdoing and deter the lobbyist from repeating the offence. Reports to Parliament also provide an incentive for all lobbyists to comply with the act and the code.

The act requires the commissioner to refer a breach of the act to the RCMP, however there must be a strong public interest to start a prosecution. For less serious transgressions, for example late filings, the public interest is not well served by referring such a file to the RCMP. Rather, in the commissioner's view, late filings are regarded as not warranting a criminal investigation, but they do negatively impact transparency. Our office currently uses a range of compliance measures, including education and monitoring, to ensure greater compliance with the Lobbying Act. This serves our office and the public well.

Approximately 5,000 lobbyists are registered to lobby federal public office holders and every month hundreds of communications with designated public office holders are disclosed by lobbyists. Several lobbyists have been coming forward to voluntarily disclose that they were late in registering and many lobbyists disclose breaches of the act voluntarily and give the office assurance they have taken the appropriate measures to comply with the Lobbying Act.

[*Translation*]

Experience in enforcing the act does leave a question as to whether the compliance measures available to the commissioner are appropriate, given the range of possible infractions. The commissioner, in her 2011 report on the statutory review of the Lobbying Act, recommended that the act be amended to include administrative monetary penalties.

I want to thank you for your attention, and I will now be pleased to answer your questions.

The Vice-Chair (Mr. Alupa Clarke (Beauport—Limoilou, CPC)): Thank you very much, Mr. Bergen.

We will now begin the first six-minute round. Four people will have six minutes each. For reasons beyond our control, we must stop our meeting at 4:45 p.m. today.

We will begin with our colleague Mrs. Kusie, for six minutes.

• (1545)

[*English*]

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Mr. Vice-Chair.

Thank you very much to the three of you for being here today.

Part of our consideration as we go to examine the requirements of Air Canada, in addition to other airlines, is whether it is feasible and possible for private corporations, corporations that are not historically crown corporations, to both be obliged and to have the will to follow the Official Languages Act.

Is the commissioner mandated to deal with private companies? If so, can you give an example in the past where you have done this? I think it is crucial for the consideration of the probability that we can have entire sectors comply with the act.

Mr. Bruce Bergen: Yes.

Ms. Lyne Robinson-Dalpe: I will let you answer because the act only applies to reporting public office holders, so they're not private companies.

Mr. Bruce Bergen: That's the Conflict of Interest Act, yes.

With respect to the Lobbying Act, it applies to lobbyists who are required to register under the act, and the vast majority of them are private citizens. It also applies to organizations and corporations. Corporations effectively under the act are share capital corporations, and organizations include not-for-profit corporations and many other types of charities, unions, and other organizations like that.

Effectively, the answer to your question is yes, the Lobbying Act applies to the private sector and almost exclusively, although of course on the other side of the lobbying, there are public office holders because they are the ones who are being lobbied.

Mrs. Stephanie Kusie: Would you know of a case similar to the one that we are studying, that is a former crown corporation that has become a private company and under certain legislation is considered a federal institution?

As well, I wonder about cases in other countries, for example, if there are comparatives in other jurisdictions to something similar that we are studying at this time.

Mr. Bruce Bergen: I can't really speak to other countries and what they're studying. I understand that the Official Languages Act applies to Air Canada and that it was formerly a crown corporation, and that requirement is in the Air Canada Public Participation Act. Under the Lobbying Act, airlines would be corporations and be required to register their lobbying activities. I can't speak to whether that airline or any other airline is registered. I suspect that many of them likely are.

In addition, an association that represents airlines or any other industry would also be required to register under the act.

The commissioner has issued guidance with respect to crown corporations, departmental corporations, and shared-governance organizations that essentially states that when those sorts of organizations deal with public office holders.... For example, under the Financial Administration Act, crown corporations have a number of requirements that they must meet; they must report to their minister. Those sorts of discussions about the mandate and the financing of crown corporations are not registerable lobbying activities.

That doesn't really answer your question that well, but that's how under the Lobbying Act these sorts of organizations are treated.

Mrs. Stephanie Kusie: No, I think that's a great answer, Mr. Bergen. Thank you very much.

I think I've started to combine the two issues of the application of conflict of interest and ethics, in addition to the application of the Official Languages Act, so it does get a little blurry for me as well.

I appreciate you answering the question to the best of your experience with conflict of interest and ethics. Thank you very much.

Mr. Bruce Bergen: Okay, you're welcome.

[Translation]

Mr. Alupa Clarke: Perfect.

We will now hear from Ms. Lapointe.

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you, Mr. Chair.

Good afternoon and welcome everyone. Thank you for giving us some new insight through your experiences.

The Commissioner of Official Languages has submitted several reports regarding Air Canada's non-compliance with the Official Languages Act. You have probably read them. Today, with your help, we are trying to determine whether we should give the Commissioner of Official Languages the power to issue administrative monetary penalties.

As I understand it, you have the power to issue sanctions, but in a different way.

In your case, Ms. Robinson-Dalbé, your powers apply to reporting public office holders.

• (1550)

Ms. Lyne Robinson-Dalbé: That's right.

Ms. Linda Lapointe: In your case, Mr. Bergen, it applies instead to lobbyists.

Earlier, you said that there were approximately 5,000 people in the Registry of Lobbyists. Are they primarily from the private sector?

Mr. Bruce Bergen: Of course.

In fact, a public office holder can be registered as a lobbyist, but I don't believe that there are many.

Ms. Linda Lapointe: However, Mr. Bergen, your office imposes different fines.

As I understand it, Ms. Robinson-Dalbé, the fines that you assess are not as high. You said that your goal was to encourage people to follow the rules, disclose violations, and be transparent.

For your part, Mr. Bergen, you said that there were hundreds of disclosures of meetings each month.

Mr. Bruce Bergen: These are meetings with people like you, designated public office holders. Lobbyists who have oral communications with such individuals in the required and arranged way must necessarily file a brief report each month, or before the 15th of the following month, regarding those exchanges.

Ms. Linda Lapointe: They report on what was done, the subject of the conversation, and the purpose of the meeting.

Mr. Bruce Bergen: Yes. They must also indicate the name of the person with whom they met.

Ms. Linda Lapointe: Regarding lobbying, you said that the act came into effect in 1997 and that the code was revised in 2015. Is that right?

Mr. Bruce Bergen: The Lobbyists' Code of Conduct.

Ms. Linda Lapointe: You said that there were 5,000 people in the Registry of Lobbyists. Has that number continued to rise, or has it stagnated?

Mr. Bruce Bergen: I believe the answer is yes.

Ms. Linda Lapointe: Air Canada's non-compliance with the Official Languages Act is nonetheless a recurring thing. The committee is studying the entire matter. We are asking whether the Commissioner of Official Languages should, as he himself suggested in his report, be allowed to impose administrative monetary penalties. What do you think?

Mr. Bruce Bergen: Would you like to respond first, Ms. Robinson-Dalbé?

Ms. Lyne Robinson-Dalbé: Thank you.

For us, the real purpose of penalties assessed against reporting public office holders is to encourage compliance. Penalties are certainly a measure that the commissioner can use, but she genuinely believes in public transparency. In her opinion, a public report is the most important tool available to her to respond to substantive violations of the Conflict of Interest Act. When she investigates a public office holder, she must then submit a report. At this time, she feels that a public report is truly the tool that represents the best sanction, as it informs people of the situation that has occurred.

Ms. Linda Lapointe: Air Canada is a public company, after all. The Commissioner of Official Languages has submitted several reports, but the nonetheless persists. We have heard several witnesses from various parties. In short, we would like both official languages to be respected.

Maybe the transparency factor works well in your case, at the Office of the Conflict of Interest and Ethics Commissioner, but I'm not certain that it is enough in the case of official languages.

Ms. Lyne Robinson-Dalpé: For us, it's really a matter of violations of deadlines. That's really administrative. The penalties are not related to substantive violations. For example, if someone breaks the rules by taking part in a discussion and putting themselves in a conflict of interest situation, we do not assess a penalty, but an investigation is conducted by the commissioner, followed by a report.

So there are really two standards.

However, the amounts must be taken into consideration. Imposing an administrative penalty of \$500 against Air Canada would have no effect in my opinion.

Ms. Linda Lapointe: Earlier this week, someone told us that, if that was what it cost, the company would continue operating as usual.

For you, Mr. Bergen, you said that your office imposed fines between \$50,000 and \$200,000. Those are amounts that begin to hurt.

Mr. Bruce Bergen: Yes, but I must say that that is not an administrative monetary penalty that the commissioner can impose on a company like Air Canada. Such penalties were suggested by the commissioner in 2011. She believed that it might be a good idea, for the same reasons that were mentioned by Ms. Robison-Dalpé. In effect, it would encourage lobbyists to register correctly, within the time required under the Lobbying Act.

Allow me to continue my answer in English.

• (1555)

Ms. Linda Lapointe: That's not a problem.

[English]

Mr. Bruce Bergen: Under the Lobbying Act, there are offences for failure to register, lobbying while prohibited from registering, and in fact there have been prosecutions under the law. In our office, when the commissioner reaches the conclusion that there may have been an offence committed under the act, she is required under the act to refer the matter to a peace officer, which are the words in the act. We refer to the RCMP here in Ottawa. In fact there have been four persons convicted of offences under the Lobbying Act in the last few years.

The first one, in 2013, was fined \$7,500 for a failure to register lobbying activities. Earlier this year and last year there have been a couple of other convictions where one gentleman in Montreal was fined a total of \$9,000 on four separate charges of failure to register, and here in Ottawa another fellow was fined \$20,000 and a fourth gentleman was fined a grand total of \$50,000 for three charges. It's under appeal now. There have been some serious penalties, but these are handed out by the courts and not the commissioner.

[Translation]

The Vice-Chair (Mr. Alupa Clarke): Thank you, Mr. Bergen. Ms. Lapointe's speaking time has ended. Mr. Choquette may let you continue your response.

Mr. Choquette, the floor is yours.

Mr. François Choquette (Drummond, NDP): In effect, I'll briefly come back to what Mr. Bergen mentioned regarding the Office of the Commissioner of Lobbying of Canada.

The Lobbying Act provides for criminal penalties.

Mr. Bruce Bergen: They're quasi-criminal penalties.

Mr. François Choquette: Okay, let's talk about the quasi-criminal penalties; I don't know the exact terms. In short, that exists. However, certain less serious offences could be resolved internally, through the commissioner's office. That's why, in one of the recommendations in her report in 2011, the commissioner asked to have a bit more power regarding penalties in cases that, despite being significant, did not necessarily require court or RCMP involvement and could be resolved internally.

Can you give us more details in that regard?

I think that is somewhat similar to what the Commissioner of Official Languages is seeking, namely that there be an internal process for violations of the Official Languages Act that are not criminal in nature, but that infringe upon the rights set out in the act. In such a case, it would be possible to impose an administrative monetary penalty on the person who did not comply with the Official Languages Act.

Mr. Bruce Bergen: Yes.

Mr. François Choquette: I'd like to know your opinion on what the commissioner requested in 2011.

Mr. Bruce Bergen: She asked to be granted the power to impose administrative monetary penalties on lobbyists who did not comply with certain regulations. For instance, a consultant lobbyist must register as a lobbyist within 10 days of an agreement. That means that if it's done after 11, 15 or 20 days, that person is no longer in compliance with the Lobbying Act. In such a case, an administrative monetary penalty is useful.

We now have a compliance monitoring process. If a lobbyist registers 15 days after the 10-day period indicated in the act, we send a letter indicating the problem and asking that the individual comply with the 10-day period in the future. Following that, we monitor that person's lobbying activities for one year. That's the right way to work.

• (1600)

Mr. François Choquette: Thank you.

Ms. Robison-Dalpé, you mentioned that, at the Office of the Conflict of Interest and Ethics Commissioner, you also had the power to impose administrative monetary penalties under very specific circumstances, such as in the case of missed deadlines, as I understand it.

Even though they're small amounts, do those penalties have positive effects? How do you use them? Is it a good tool? Does it help you?

Ms. Lyne Robinson-Dalpé: In the beginning, when I took office and the penalties began, more people did not comply with the primary deadlines, namely the obligation to file their confidential report within 60 days. We had to do a lot of work to inform reporting public office holders of this compliance requirement. Compliance with this rule is completely their responsibility. They must complete the return and send it to us.

Initially, we sent a lot of reminders. We established a process to ensure that people would be well-informed of the rules.

In our case, the commissioner normally issues a letter within two or three days following an individual's appointment or after being advised of the appointment. Thirty days after the appointment, the commissioner's office issues a notice advising public office holders that it has not received their return and that they still have 30 days to file it. We send another reminder after 50 days, again to ensure that the public office holder returns the information within the required time. It's therefore an administrative process.

Since this process was implemented, we've noticed that people are filing their confidential reports a lot more efficiently within the required time.

Mr. François Choquette: So, even though it's a small amount, administrative monetary penalties encourage people to comply with the deadlines.

Ms. Lyne Robinson-Dalpé: I don't know whether it's due simply to the penalty or the fact that the penalty is then made public. Many people say that they'll pay the penalty, but they wonder whether it's really necessary for it to be made public. However, the act provides that penalties must be made public.

The Vice-Chair (Mr. Alupa Clarke): Very good. Thank you, Ms. Robinson-Dalpé.

We'll now hear from Mr. Lefebvre.

Mr. Paul Lefebvre (Sudbury, Lib.): Thank you, Mr. Chair.

Since my colleague Mr. René Arseneault is itching to ask a question, I'll give him my speaking time. If there's any time left after that, I'll ask some questions.

Mr. René Arseneault (Madawaska—Restigouche, Lib.): Thank you.

I'll continue in the same vein as Mr. Choquette and follow up on Ms. Lapointe's questions.

The Commissioner of Official Languages has oversight authority over several federal departments, but does not have any coercive or dissuasive powers. In his last report, he asked us to grant him that type of power.

Let's step away from the Commissioner of Official Languages and take a look at what happens in your organizations.

If you had no coercive powers to enforce your regulations and only had the power to write reports and give written reprimands, would your work change?

Ms. Lyne Robinson-Dalpé: For my part, I don't think so. We've implemented measures that allow us to monitor continually.

However, we don't represent the private sector. We're limited to reporting public office holders.

Section 19 of the Conflict of Interest Act states that compliance with the act is a condition of employment. First, we have that condition. It's in the interest of public office holders to comply with the act. For our part, we advise them of the prescribed deadlines to ensure that they fulfill their obligations under the act.

● (1605)

Mr. René Arseneault: Mr. Bergen, what about you?

Mr. Bruce Bergen: We've seen that public reports tabled in both houses of Parliament were a way of discouraging lobbyists from not complying with the Lobbyists' Code of Conduct. It's clearly bad publicity when a report names a lobbyist for failure to comply with the principles and rules of our code. Even though it's not a monetary penalty, it's still a penalty.

Mr. René Arseneault: I want to be sure I understand what you're explaining.

Whether it's the Office of the Conflict of Interest and Ethics Commissioner or the Office of the Commissioner of Lobbying of Canada, if your only deterrent power were to make a recommendation, that would be enough. Have I understand, or is that wrong?

Ms. Lyne Robinson-Dalpé: The commissioner genuinely believes in transparency and feels that making a report public is the best penalty that can be assessed. I share that opinion. The commissioner conducts an investigation, which is followed by a public report, and that is the commissioner's preferred penalty.

Mr. René Arseneault: If that didn't exist, if she only had the power to make recommendations, what would you think?

Ms. Lyne Robinson-Dalpé: Even when she investigates a violation of the Conflict of Interest Act, the commissioner does not impose any penalties. She issues a recommendation. She can assess a penalty, in that she can tell the employer, the Prime Minister, or the minister in question, that an employee has committed that violation. It's then up to the minister, the Prime Minister, or the employer to penalize that employee.

However, when she produces an investigation report, the commissioner does not impose any penalties. She believes that the publication of that report truly is a severe enough penalty.

Mr. René Arseneault: Yes.

What you're telling us is that, at the end of the chain of events, there's always someone, such as the employer, as you say, who can impose a penalty based on the commissioner's recommendations.

Ms. Lyne Robinson-Dalpé: The employer could impose a penalty. However, the Conflict of Interest Act does not provide for a substantive penalty.

Mr. René Arseneault: Thank you very much.

Mr. Lefebvre, the floor is yours.

Mr. Paul Lefebvre: Thank you.

There is a major distinction to be made, in my opinion. We're talking here about a public office holder, a member of Parliament, or someone working in a minister's office. The deterrent is therefore the embarrassment caused to that person. It's embarrassing to see your name mentioned in a report. The situation is different.

With the Official Languages Act, however, if someone contravenes the act and if it likely won't bother them to have it included in a report, because the situation has been going on for 20, 30 or 40 years, there's clearly no embarrassment or deterrent.

I fully understand what my colleague Mr. Arseneault wanted to know, and I agree with him. However, we're comparing two different situations, in my opinion.

If an individual receives a penalty, I want to know what happens next.

Mr. Bergen, you said that there's an appeal mechanism. Who considers the appeal? Clearly, it must be an administrative tribunal, as it's done internally. We're dealing here with administrative law. If a person receives a penalty in the form of a fine, they have the right to appeal. Can you explain how that works?

Mr. Bruce Bergen: In effect, the commissioner does not have the power to issue a fine.

Mr. Paul Lefebvre: I understand.

Mr. Bruce Bergen: The act indicates that a person must be found guilty by a court of law for the offence to be sanctioned. Here, in Ontario, it's the Ontario Court of Justice that handles that. The RCMP conducts an investigation and the public prosecution office lays charges.

Mr. Paul Lefebvre: That's very interesting. Clearly, you—

• (1610)

The Vice-Chair (Mr. Alupa Clarke): Mr. Lefebvre, your speaking time has ended.

Mr. Paul Lefebvre: Okay. Maybe I can come back to that later.

The Vice-Chair (Mr. Alupa Clarke): Mr. Samson, it will be your turn in a moment, but first, I would like to very quickly make a comment and ask a question.

Mr. Arseneault asked an extremely important question that goes to the heart of our study today.

Regardless of the nature of the measures that you can impose, the fact remains that you have power and authority that the Commissioner of Official Languages does not have. You say that a public report is the worst penalty that can be imposed on a politician. The question is a fundamental one: without that power, without the authority that you have, regardless of its nature, could your office function properly?

Ms. Lyne Robinson-Dalpe: As I already said, for us, the answer is yes. We can't impose penalties for basic violations. Thus, someone who contravenes a substantive provision of the Conflict of Interest Act and is in a conflict of interest would not receive any penalty from us.

The Vice-Chair (Mr. Alupa Clarke): What about you, Mr. Bergen? Without that absolute power, could you function properly?

Mr. Bruce Bergen: It's hard for me to answer that kind of hypothetical question.

[English]

When the Lobbying Act was first enacted back in the 1990s, there was consideration of the possibility of having a voluntary registry of lobbyists. Parliament considered that and committee hearings were held and many people made representations. In the end, Parliament decided that we couldn't have a voluntary registry of lobbyists because then some people would do it and others wouldn't and there wouldn't be any way to get them to do it.

[Translation]

The Vice-Chair (Mr. Alupa Clarke): That answers my question quite well. Thank you.

Mr. Samson, the floor is yours.

Mr. Darrell Samson (Sackville—Preston—Chezzetcook, Lib.): I'll give some of my speaking time to Mr. Lefebvre so he can finish asking his questions.

Mr. Paul Lefebvre: Thank you, Mr. Samson.

In effect, your measures present considerable differences.

For our part, we're examining the possibilities and determining whether we should recommend that the Commissioner of Official Languages have the power to impose administrative monetary penalties or to apply other measures

I'd like to come back to Mr. Bergen's comments.

You're now at 10 cases, right?

Mr. Bruce Bergen: We've filed 10 public reports related to the Lobbyists' Code of Conduct.

Mr. Paul Lefebvre: Do you think that the Lobbying Act has had the desired effect? Have you been able to achieve the goals and objective of the act?

Mr. Bruce Bergen: In my opinion, the reports had the effect of informing not only the lobbyist who was the subject of the report, but also other lobbyists, of the obligation to comply with the principles and rules of the code, as those reports result in bad publicity. It's not much, but there are articles on the topic in the media for a few days.

In my opinion, it really is a useful way of informing lobbyists, public office holders, and the general public.

Ms. Lyne Robinson-Dalpe: A public report attacks the integrity of the individual, whether it be public office holders or members of Parliament. Even companies don't want that kind of media coverage.

Of our two systems, I think the most useful tool is the report issued under such circumstances.

Mr. Paul Lefebvre: Thank you.

Mr. Samson, the floor is yours again.

Mr. Darrell Samson: There's no doubt that we are comparing apples and oranges here. It's not the same thing. You're talking here about an individual who's embarrassed by a public report or a company that has done something wrong that could cause it a lot of problems with its clients in the future. The situation is totally different.

The commissioner, himself, referred to four possibilities. He needed to be assured that it would make Air Canada or other federal institutions assume their responsibilities.

In your opinion, are there other options that could work in the case of a violation of the Official Languages Act? Clearly, in the case of Air Canada, public reports don't work. Public reports have been published about Air Canada for years, among other things, but the situation hasn't necessarily changed.

Do you have any other suggestions to give to ensure that the official languages are respected?

•(1615)

Mr. Bruce Bergen: That's a hard question to answer because it's not exactly in our area of expertise.

Mr. Darrell Samson: Has the Commissioner of Official Languages ever spoken to anyone from your offices about this topic? After all, you represent government commissioners and you have those powers.

Ms. Lyne Robinson-Dalpe: We'll check. Then we'll give you the information. At this time, unfortunately, I can't answer the question.

Mr. Darrell Samson: The commissioner made four suggestions. Are you aware of the four suggestions?

Ms. Lyne Robinson-Dalpe: Yes.

Mr. Darrell Samson: Based on your experience, your expertise, and your know-how, which ones are most effective?

Ms. Lyne Robinson-Dalpe: I've clearly noted the question. As we've said, we could follow up after checking the information.

Mr. Darrell Samson: The question is quite simple. Of the commissioner's four suggestions, which ones would be most effective? Is there one in particular?

Yesterday or the day before, we heard from a lawyer who seemed to indicate that a monetary penalty would probably be the most effective. Do you have any comments in that regard?

Mr. Bruce Bergen: Personally, I consider administrative monetary penalties to be effective. It's a deterrent. I'm certain there are people who think differently, but that could be a possibility.

Mr. Darrell Samson: What do you think Ms. Robinson-Dalpe?

Ms. Lyne Robinson-Dalpe: That could be effective.

However, I find it hard to imagine how it could be administered. In effect, monetary penalties are generally associated with violations other than substantive violations. How will the Office of the Commissioner of Official Languages determine that there has in fact been a substantive violation and that a service has not been rendered in an official language? They will still need to prepare a report, conduct an investigation, and so on. That could then lead to a more substantial penalty than a simple amount of money like we would impose under our system.

The Vice-Chair (Mr. Alupa Clarke): Thank you very much, Ms. Robinson-Dalpe.

Mr. G n reux, finally, the floor is yours.

Mr. Bernard G n reux (Montmagny—L'Islet—Kamouraska—Rivi re-du-Loup, CPC): Thank you, Mr. Chair. It seems to me that you've been overly generous with my colleagues across the way. They've been speaking for 20 minutes.

The Vice-Chair (Mr. Alupa Clarke): That's a matter of perception.

Mr. Bernard G n reux: Ha, ha!

I won't waste time arguing.

Thank you very much to the witnesses here today.

I'll get right to the point. Are your respective offices subject to the Official Languages Act?

Ms. Lyne Robinson-Dalpe: That's a good question.

Mr. Bruce Bergen: Yes.

Ms. Lyne Robinson-Dalpe: Yes.

Mr. Bernard G n reux: Do you know whether any official languages complaints have been filed against you?

Ms. Lyne Robinson-Dalpe: I'm not aware. I can check.

Mr. Bruce Bergen: I'm sure that we've received at least one. I know of one complaint against our office.

Mr. Bernard G n reux: A complaint was filed against your office.

Mr. Bruce Bergen: Yes.

Mr. Bernard G n reux: You are government organizations. We agree on that.

Mr. Bruce Bergen: Yes.

Mr. Bernard G n reux: You are there to enforce the laws that apply to you.

The Office of the Commissioner of Official Languages is also a government organization that is subject to the Official Languages Act and that, according to the special report submitted by the commissioner, wants to subject Air Canada to special penalties because the company is not complying with the Official Languages Act.

A suggestion was made that we are now examining. Instead of putting all our eggs in one basket and having a measure that only applies to Air Canada, why not include provisions in the Official Languages Act that apply to all federal organizations, including your own?

I ask you the question, and we asked it of the other witnesses as well. Do you think it would be fairer if all federal organizations subject to the Official Languages Act were treated in the same way, instead of only Air Canada suffering penalties, whether monetary or otherwise?

•(1620)

Ms. Lyne Robison-Dalpé: In my opinion, I find it hard to imagine that the federal government would be penalized for violations. It must be remembered that all of the money is from the same budget in the end. The Office of the Commissioner of Official Languages is a government organization. The funds would go from one to the other and vice versa.

Mr. Bernard Généreux: I just wanted to hear you say it.

Ms. Lyne Robison-Dalpé: But that's my personal opinion.

Mr. Bernard Généreux: So, you're telling us that the Commissioner of Official Languages would want us to consider Air Canada as still being a public institution because it's subject to the Official Languages Act. To some degree, that's what you're saying, right? Do I understand that correctly?

Ms. Lyne Robison-Dalpé: No, not necessarily.

Mr. Bernard Généreux: I'm not trying to corner you.

Ms. Lyne Robison-Dalpé: I understand.

However, Air Canada is currently a private company.

Mr. Bernard Généreux: Yes, absolutely.

Ms. Lyne Robison-Dalpé: That would be a matter of penalizing someone externally.

In our case, we penalize individuals. It's not the federal government, but individuals who have committed a violation of our act.

Mr. Bernard Généreux: Exactly.

Ms. Lyne Robison-Dalpé: It's simply that, in your hypothetical scenario, an agent of the federal government would impose a penalty on another federal organization.

Mr. Bernard Généreux: I totally agree with you that it doesn't make sense.

The idea is that the entire Canadian public service is inevitably subject to the Official Languages Act. However, it's all interrelated, in fact, so it serves no purpose for the government to penalize itself and then pay itself.

That said, the commissioner's suggestions apply only to Air Canada, which is a private company. As I understand it, VIA Rail is also subject to the Official Languages Act. However, the commissioner's suggestions rule out the possibility of penalizing VIA Rail.

Once again, I must say that I'm not defending Air Canada, to the contrary. However, why is a carrier like VIA Rail, which is also subject to the act, not penalized, but a private company subject to the act is? These organizations are both subject to the act. Is that not a form of inequity?

To my knowledge, VIA Rail is also a public carrier. I'm sure that the company has failed in the past to meet its obligations under the Official Languages Act. VIA Rail must have received complaints, just as you have received at your office, Mr. Bergen.

Mr. Bergen, you mentioned earlier that, under your current system, your commissioner was able to impose or not impose penalties. Does the commissioner have the discretion to decide

whether or not a case of non-compliance warrants a monetary penalty?

I'd like to digress slightly. According to the suggestion by the Commissioner of Official Languages in his report, people would not need to substantiate the violation of the act of which they were a victim. The commissioner would be able to impose penalties even if the individual did not substantiate the offence.

Mr. Bruce Bergen: I simply want to clarify one element: the commissioner does not have the power to impose administrative monetary penalties.

Mr. Bernard Généreux: Can you say that in English? I want to be sure I understand.

[English]

Mr. Bruce Bergen: The commissioner does not have the power to issue fines herself.

Mr. Bernard Généreux: The court does.

Mr. Bruce Bergen: The court does. There are no administrative monetary penalties under the act.

[Translation]

Mr. Bernard Généreux: Earlier, though, you referred to flexibility.

[English]

Mr. Bruce Bergen: I think it's because we're calling them fines. Usually administrative—

[Translation]

Mr. Bernard Généreux: One moment. I took note of it.

[English]

It's to avoid the justice system.

Mr. Bruce Bergen: We're going to have a different kind of justice system. You're right; when the commissioner forms the belief on reasonable grounds that there has been an offence under the act committed, then she's required under the law to refer the matter to the police. We refer it to the RCMP and then they investigate. They have to determine whether the offence has actually occurred, whether somebody was being paid to lobby, whether they were lobbying with specified things that are set out in the act, whether they should have registered but didn't, and then they have to determine whether it's in the public interest to lay a charge and commence court action.

Mr. Bernard Généreux: But she has a choice.

[Translation]

The Vice-Chair (Mr. Alupa Clarke): Your speaking time has ended, Mr. Généreux.

[English]

Mr. Bruce Bergen: When she has reasonable grounds to believe an offence has occurred then she's required to refer it the RCMP.

•(1625)

[Translation]

The Vice-Chair (Mr. Alupa Clarke): Thank you, Mr. Bergen.

I'm told that two Liberal members, Mr. Arseneault and Mr. Vandal, will share the next six minutes.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): I have only one question.

[*English*]

Is there ever a situation where you settle out of court?

Mr. Bruce Bergen: We don't really settle out of court per se. When a prosecution is started it's not actually our office that does the prosecutions. It's the police and the Public Prosecution Service of Canada. In fact, there could be a plea bargain in a case like that, or in any case. As I mentioned, technically if a consultant lobbyist is required to register he's required to register within 10 days. So really on the 11th, 12th, or the 15th day that person is in breach of the law. If we get a situation like that, we will not refer that file to the RCMP because they will say, "It's not in the public interest to prosecute that person". What we will do is send them a letter and tell them, "Don't do that again and we'll be monitoring you essentially".

Mr. Dan Vandal: Is there a fine imposed?

Mr. Bruce Bergen: There is no fine at that stage.

Mr. Dan Vandal: There is no monetary penalty at that point?

Mr. Bruce Bergen: No, the commissioner does not have that authority.

Mr. Dan Vandal: She doesn't have that authority.

Mr. Bruce Bergen: That's correct.

[*Translation*]

Mr. Dan Vandal: Ms. Robinson-Dalpe, your administrative penalties are not punitive as such. They exist only to reinforce incentives. Is that right?

Ms. Lyne Robinson-Dalpe: Indeed, it's to encourage compliance.

Mr. Dan Vandal: The limit for the fines is set at \$500, is that right?

Ms. Lyne Robinson-Dalpe: That's correct. For a first offence, the penalty is \$100.

Mr. Dan Vandal: That's what's set out in the legislation that governs you, right?

Ms. Lyne Robinson-Dalpe: That's what allows us to do that, yes.

Mr. Dan Vandal: That said, there's nothing preventing an administrative penalty of \$2,000.

Ms. Lyne Robinson-Dalpe: That's correct. For our part, we're limited to the amounts included in the Conflict of Interest Act.

Mr. Dan Vandal: Okay. I understand.

Thank you. That's all.

The Vice-Chair (Mr. Alupa Clarke): Mr. Arseneault, you have four minutes.

Mr. René Arseneault: There are four minutes left? I thought I understood that there were three minutes to share.

The Vice-Chair (Mr. Alupa Clarke): You still have speaking time. The floor is yours.

Mr. René Arseneault: Actually, I have no more questions for the witnesses, as the answers have been quite complete.

If someone else has questions, they can have my speaking time.

The Vice-Chair (Mr. Alupa Clarke): In that case, we'll move on to Mr. Gagné and then to Mr. Choquette.

Mr. Bernard Gagné: You're giving me your speaking time? I must say that you're generous. That's incredible.

I'll use all of the remaining time, all 15 minutes.

Voices: Ha, ha!

Mr. François Choquette: No, don't forget me, Mr. Gagné.

Mr. Bernard Gagné: Very good, Mr. Choquette.

Ms. Robinson-Dalpe, I don't at all agree with what Mr. Samson said earlier. The commissioner has filed several reports regarding Air Canada in relation to official languages. To my knowledge, none of those reports have ever been positive, or at least very few have been. Those reports have inevitably had consequences for the carrier's reputation over time. As evidence, we're sitting here today discussing a special report that the Commissioner of Official Languages tabled before leaving to tell us that Air Canada was a very poor student in terms of official languages and that a means of punishing it must absolutely be found.

I believe we've all reached the same conclusion. We've been looking at this issue for a year and a half. We've met with the president of Air Canada, who gave a very poor performance before they the committee. He was even condescending. I believe that was a fairly unanimous opinion. However, we've seen that, since then, people at Air Canada have considerably changed the way they deal with the matter. They have applied all types of measures. The report on the issue that we are now studying will also propose new measures.

Inevitably, that has an impact on Air Canada as a company and on how the public perceives it. The fact that its image and reputation are affected is, to some extent, a penalty. I believe that this report was detrimental, to some extent. Detrimental may not be the right term, but condemning Air Canada in that way was harmful to it. The fact remains that the company took the bull by the horns and adopted corrective measures, to some extent.

I'm sorry if my preamble is long, but we heard from a witness this week who has sued Air Canada several times over the last 15 years. He has even gone to the Supreme Court. According to him, the fact that Air Canada uses the term "exit" rather than *sortie* on a sign in an aircraft, in a building, or on its property infringes on his right to be served in his official language.

If the commissioner were given the power to impose monetary penalties and if everything the commissioner suggests in his report were done, do you think it could get out of hand?

The commissioner proposes that people need not necessarily prove the prejudice that they had suffered, such as having to read the word "exit" on a sign. They could simply file a complaint with the commissioner, and, as such, Air Canada would have to pay an amount to those people.

Are there more constructive ways to ensure that Air Canada complies with the act? It already does in part, I think

My preamble has been long. I don't know whether you want to add anything.

• (1630)

Ms. Lyne Robinson-Dalpe: I'm not an expert in official languages. However, when we administer our system, we follow a process of fairness in determining the penalty. We consider the history and situation as it is presented. There may have been violations, but they were proven.

If an individual responsible for administering that system had the tools needed to strike a balance between a complaint and an offence and mitigate the result accordingly, that could be reasonable.

Mr. Bernard Généreux: Does the same thing apply to the Office of the Commissioner of Lobbying of Canada?

Mr. Bruce Bergen: I agree with with Ms. Robinson-Dalpe, of course.

Mr. Bernard Généreux: I'm not an expert either, but I'm still concerned about what would happen if the commissioner were to have the four tools that he suggests. Each of those tools is different, but imagine that they applied only to Air Canada, without taking into account the other organizations subject to the act.

Once it's known that someone who sees an “exit” sign in an aircraft—an aircraft that Air Canada did not build, by the way—can consider that their rights as a francophone in Canada have been infringed upon and that they can file a complaint, I believe that thousands of people could file complaints to try to receive \$100, \$200, or \$1,500. In fact, they wouldn't have to prove that they were harmed; they would simply have to say that they saw a sign that said “exit”.

Of course, my example is an extreme one, but is it possible—

The Vice-Chair (Mr. Alupa Clarke): You have 10 seconds left, Mr. Généreux.

An hon. member: That's really pushing it to the extreme.

Mr. Bernard Généreux: I understand, but I'm using the examples we were given.

Mr. François Choquette: Your understanding is not accurate.

Mr. Bernard Généreux: My understanding? I'll let you—

The Vice-Chair (Mr. Alupa Clarke): I'll interrupt here, as your speaking time has ended.

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

Mr. François Choquette: I simply want to correct something. First, a complaint must be filed with the Office of the Commissioner of Official Languages, then, the complaint must be proven, and, after that, a penalty can be imposed. That's the order in which things are done.

That said, my questions are about our need to ensure respect for official languages. We are currently in a situation in which people are not respecting the act once, twice, three times, and over and over again. It's in that situation that we're trying to find a solution to ensure compliance with the act.

Could you give me examples of individuals or organizations that have repeatedly failed to comply with the law? If so, what did you need to do to try to change their behaviour?

Ms. Lyne Robinson-Dalpe: In our case, the commissioner issues reports. On our website, we have reports indicating that certain individuals have contravened rules under the Conflict of Interest Act.

Mr. François Choquette: Was it two times, three times, four times?

Ms. Lyne Robinson-Dalpe: No, it doesn't go to three or four times.

Mr. François Choquette: That doesn't happen in your case.

Ms. Lyne Robinson-Dalpe: There may be cases where it happens twice.

In those cases, the commissioner is of the opinion that the information must be publicly disclosed and that it's then up to Canadians to do something.

• (1635)

Mr. François Choquette: So, no individual or organization ever contravenes the act more than twice, in your case.

Ms. Lyne Robinson-Dalpe: In terms of investigations, it's never happened. For penalties, I believe it's happened once or twice.

Mr. François Choquette: So, this isn't a problem for you.

Ms. Lyne Robinson-Dalpe: No.

As we said in our initial presentation, once the information is publicly disclosed, people don't want to see their name mentioned in the media.

Mr. François Choquette: So that's enough to resolve the situation.

Ms. Lyne Robinson-Dalpe: Exactly.

Mr. François Choquette: What about you, Mr. Bergen?

Mr. Bruce Bergen: At our office, we have a compliance monitoring process. The first time a person contravenes the rules, they receive a letter from the director of registrations and client services. If it happens a second time, we open an administrative review file and the person receives a letter from our director of investigations. The third time—although that's a hypothetical situation—the commissioner sends a letter to the person in question.

In general, I get the impression that we have good information and that this process works well for us. In fact, after the second letter, people respond that they will develop a process for complying with the Lobbying Act and ensuring that the monthly communication reports are sent within the required time limit.

[English]

From my perspective, this is our alternative to administrative monetary penalties. It's been working fairly well, maybe not 100%, but quite well.

[*Translation*]

Mr. François Choquette: Unlike the Office of the Conflict of Interest and Ethics Commissioner, you have the power to penalize, in a quasi-criminal manner, offenders who commit very serious violations.

Mr. Bruce Bergen: Yes.

Mr. François Choquette: Is that what you've done about 10 times over the last 5 years, or is that something else?

Mr. Bruce Bergen: No. The commissioner has, on 10 occasions, prepared reports regarding lobbyists who did not comply with the Lobbyists' Code of Conduct. A few other times, we referred files to the RCMP.

Mr. François Choquette: How many times have you transferred files to the RCMP?

Mr. Bruce Bergen: I'm not sure of the exact number. I'd say 10 to 12 files.

Mr. François Choquette: So it's still about 10 files that have been transferred to the RCMP over the last 5 years.

Mr. Bruce Bergen: Yes, over the last 5 to 7 years. Of those files, 5 people were found guilty by the court. Various levels of sanctions are possible. I believe the penalties range from \$20,000 to \$50,000.

Mr. François Choquette: That's enormous.

Mr. Bruce Bergen: Yes, it's enormous.

The Vice-Chair (Mr. Alupa Clarke): Unfortunately, that concludes our time with witnesses for today.

On behalf of the committee, I'd like to thank you, Mr. Bergen, Ms. Robinson-Dalpe and Ms. Koulaib, for coming to answer our questions on such short notice. You can rest assured that you have contributed tremendously to our study.

I remind you that our goal is to understand what your offices would be without the power and authority to impose real penalties. If you think of anything else, feel free to contact our analysts or our clerk by email.

I also thank you for the work you do to help maintain ethics in our society and to ensure that lobbyists abide by the law in Canada, while informing us of problems that arise here.

Thank you very much.

I don't think we have any committee business to deal with. Everything is in order for our return in a week and a half.

Mr. Darrell Samson: I'd actually like to ask one question, Mr. Chair.

The Vice-Chair (Mr. Alupa Clarke): I'm listening, Mr. Samson.

Mr. Darrell Samson: Thank you very much.

You have—

The Vice-Chair (Mr. Alupa Clarke): One moment, Mr. Samson. First, we'll let our witnesses take their leave.

I'll therefore suspend the meeting for a moment, and then we'll come back to discuss committee business.

[*Proceedings continue in camera*]

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