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LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 29 June 2009

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Witnesses

Ms A. O'Rourke, vice-president, and

Mr J. Gardiner, vice-president, Liberty Victoria.

The CHAIR — I welcome Anne O'Rourke and Jamie Gardiner to this hearing. Thank you both very much for coming and for earlier providing the submission which we have had a look at.

There are a couple of preliminaries before we proceed. You will be aware that this hearing is being held under the Parliamentary Committees Act and the Defamation Act, and that affords you parliamentary privilege for comments you may make within the confines of this hearing, but if you make the same remark outside the hearing you will not be afforded the same privilege. Hansard is recording the discussion we will have this afternoon. You will be provided with a copy of the transcript afterwards, and you are free to make any small amendments to that but obviously no substantive changes to it.

Ms O'ROURKE — Just before we start, I want to make a quick apology. When we wrote this submission I had just moved offices and had a new program and there was trouble with the system so sentences and letters dropped out, so we have brought a corrected one. The mistakes in it were unintentional. Having said that, I will move on to the substance of our submission.

Partly our submission follows from earlier ones we have done both federally and at the state level. The last one we did was a similar one to the Public Accounts and Estimates Committee; that was to the inquiry into strengthening government and parliamentary accountability in Victoria. We endorsed the discussion paper by the Australasian Study of Parliament Group titled *Renewing Accountable Government*. This is sort of a follow-on from that submission in one way.

One of the things that Liberty Victoria has always argued is for a more comprehensive approach, not just to a register of interests but to parliamentary behaviour in general. Instead of just having a narrow version which is the register of interests, there should be a more global approach that includes the register of interests but also a kind of code of conduct in one document somehow similar to the Ontario model and picking up on the ethical values that the Nolan Committee highlighted in Britain. We thought an approach that was more comprehensive was better than just having a narrow vision.

One of the reasons we thought that is because there is a general perception out there in the public about politicians' behaviour. Having a more comprehensive legislative model — and we prefer a legislative model to self regulation for the obvious reasons — would not only lift parliamentary standards but also meet that perception amongst the public that there was a model that parliamentarians adhered to. We also felt that another reason to have a comprehensive code is that it takes political wrangling out of the process. What you see in the federal Parliament at the moment is wrangling over conflicts of interests and whether, with regard to Wayne Swan, there was a conflict of interest and all the political bunfight around that and subsequent media highlighting of the issue.

If you have a comprehensive approach, say a code of conduct that includes a register of interests and there is a person who oversees that and then those sorts of issues go to, say, that ethics commissioner, it takes it out of the parliamentary or the political process. In that sense that is a better approach to those sorts of issues.

If anybody looks at the poll results this morning they will see that bunfights over this issue do not necessarily favour the politicians who raised them, so having it go off to a third party who is not associated with either of the parties may be a better way to address some of those issues.

We do favour a more comprehensive or global approach to the issue, something like the Nolan Committee's approach. There were also models produced in the appendix to the Fitzgerald inquiry report, as well as the WA Inc. report and also the *Renewing Accountable Government* report that Alan Hunt and Ken Coghill did. I am not sure whether they had a full model there but they certainly addressed what should be in a model.

In any of those sorts of models there is a strong overlap between them, although there is some variation because of different political systems when you are looking at different jurisdictions. We believe there is a need to have some sort of comprehensive approach that looks at not just monetary conflicts of interests but at an ethical code. One that we looked at in the beginning — this is picking up on the Nolan Committee — is one that should highlight qualities like selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These are good qualities for a code of conduct.

There are other things we think need to go into a document, and they can be things like disclosure requirements. In the Ontario model the integrity commissioner has two; there is what is called a public disclosure and a private

disclosure. There are things that the public does not need to know about a politician but a politician should declare, which may be about family income or personal income, so it is on the record and the integrity commissioner just keeps that private.

Then there is a public document which is very similar to the kind of disclosures that are publicly available for politicians now. Also, the integrity commissioner after a certain time has the ability to destroy those documents. It is the integrity commissioner in Ontario who, if any complaints are made, investigates those and then makes a report. It is a completely depoliticised way of dealing with conflicts of interest and ethical behaviour.

There are other things we have argued for that should be included in, I suppose, a parliamentary process. They are things like unwarranted or groundless actions against citizens and fellow parliamentarians that often happen in Parliament. When those kinds of things happen there should be a right of reply where an accusation turns out to be baseless or groundless because once things like that are put in the public domain and are proven to be groundless, it is very difficult for a person to repair their reputation once it has been damaged. That should be something that is considered as well.

Another area which is not so much part of a code of ethics or register of interests but one we think should be looked at is confidentiality, accountability and freedom of information. We have argued for a long time that the increasing use of commercial in confidence is not in the public interest, and when public money is used, that Parliament should err towards disclosure rather than commercial in confidence. That picks up on some of those ethics that I read out before from the Nolan Committee, that the parliament is actually there to serve citizens and wherever possible the behaviour of politicians or the release of information should promote democracy and accountability to citizens.

The CHAIR — To open up questions, focusing on Victoria, you are proposing we develop a code of conduct and then we have a position that is analogous to an integrity commissioner. How might that work? Could you step us through how that might be structured in Victoria and how it might contrast to the present process of using the Privileges Committee? How are they different?

Ms O'ROURKE — I have had a look at a few of them. The UK one has some values that are quite good, and there is also a Scottish local government one that is quite good, but the Ontario one seems to be the best one. It has set down in legislation the role of the commissioner, the powers of the commissioner, what the commissioner cannot do. It is very clear to politicians the process they have to go through, the penalties, and various other things. It is a very good model.

But what is different about having a person like the integrity commissioner in Ontario to a committee is that it takes it right out of the political process, because it is an independent person who is connected to neither of the political parties and so it makes it a more objective process that the public can have more faith in and more respect for?

Mr CLARK — I am having a quick look at the Ontario act. It seems to me that although it is more prescriptive and detailed than our legislation and it has the integrity commissioner, it is still predominantly focused on conflict between public duty and private interest.

You mentioned in your remarks the example of Wayne Swan, where I understand that the main allegation about his conduct is that he misled Parliament. It seems to me that that would not be covered either by the Ontario legislation or by the Nolan Committee out of the UK. Do you have any views on that?

Ms O'ROURKE — That just means ensuring that if you do something like this, you have legislation that enables an integrity commissioner to look at those sort of issues. You do not have to take this legislation and mirror it exactly. It is up to you as parliamentarians to work out what you want in any process you develop in Victoria, and there is no reason why you cannot broaden it to cover, say, a general code of conduct, broader than just conflict of interest issues.

Mr CLARK — You accept the Ontario act does not go as far as you are saying it should?

Ms O'ROURKE — Yes. It is a good model but it does not mean that it is 'the' model. It is better than the UK model but that is not to say that it is a perfect model and each jurisdiction will have changes in it but it is also one that you can use as a base to build upon.

One of the issues that we raised in ours is that you can also look at the obligations that the Corporations Act puts on directors. Some of those obligations there may be a good model that you can adapt to suit politicians: the requirement to act with due diligence, the requirement to avoid conflicts of interest. In terms of conflicts of interest, if you look at the related party transactions, it is far broader than what our legislation covers so that can also be used as a model and you can adapt parts of directors' duties with parts of this members integrity act. It is up to you to design the model. We are just saying that we think that whichever you decide to use, it should be more comprehensive than just a narrow register of interests. It actually does need to cover ethical values.

Mr CLARK — Do you think members should be prohibited from engaging in misleading or deceptive conduct?

Ms O'ROURKE — Yes, they should be.

Mr CLARK — How would that be enforced?

Ms O'ROURKE — It would depend on, if you have an integrity commissioner, that may be an issue that goes to the integrity commissioner. In many respects I would not imagine it would be different from how Parliament operates now, that you have those issues, similar issues would come up, politicians accuse each other of doing that, but what would be different with this model is how you resolve those allegations.

Do you have politicians standing up in Parliament, slanging across the Parliament that, 'You did this' or 'You did that', or if there is a genuine allegation there, then it goes off to the integrity commissioner. That will do two things: firstly, it will stop the accusations flying around if they are groundless; secondly, if there is something in the allegations, then the integrity commissioner could look at them. In that sense you have got an independent process but you also contribute to making the Parliament work a bit better.

Mr FOLEY — Anne, you raised the issue of the commercial-in-confidence issues which I took to be more a cabinet level process, so in the Ontario model and in the model perhaps that Liberty Victoria is discussing, are we talking about broadening out the role that the independent external regulator has of government, or the Parliament, or both?

Ms O'ROURKE — It was really something that was put in at the end because it was one of our own bugbears. It is not something that you would include in this. It was picking up from our earlier submissions.

Mr FOLEY — To the PAEC inquiry?

Ms O'ROURKE — Yes, but just making the point that one aspect of getting Parliament to work better is to actually favour disclosure and public accountability where you can, rather than choose to go towards — —

Mr GARDINER — It is to some extent, in relation to that, the distinction between Parliament's integrity and government integrity, it goes in fact to Liberty's view that government ought to be more open with Parliament, and that provisions like commercial in confidence as excuses for not informing the Parliament properly ought to be looked at more seriously. But this is really about members of Parliament and so it is the parliamentary arm of government that we are talking about here, although there is, and we do refer to and the Ontario act refers to, provisions around the executive council ministers, therefore cabinet and their continuing obligations not to profit from their knowledge and their lobbying. But apart from that it is about members' roles as members of Parliament, rather than as the executive government.

Mrs KRONBERG — I would like to ask a question of either of you. In terms of the issue of what you are implying in terms of governments withholding information on the basis of things being commercial in confidence, there is an increasing trend towards public-private partnerships. Are we to conclude that that process would be reviewed under greater scrutiny, that direction of partnering with government?

Because there are some realities associated with any tendering process; the Chinese walls are built around each bid, wanting to encourage people to continue to trade and do business with government and offer their advice, their expertise and so on. This goes to the heart of really doing business with government.

Mr GARDINER — Liberty has no problem with government doing business with business, with private interests. The question is not whether things are done that way but whether they are done openly and

accountably. Again, we have no problem with the fact that there are stages within any business transaction which have to be kept confidential.

At the negotiating stage where parties are bidding for a contract it would, I suspect, make such things impossible if their detailed processes had to be exposed to each other. It is not like the simple auction in the street in Fitzroy where you can see who you think may be bidding, although you do not always know. But the blanket overuse of commercial-in-confidence provisions reduces the capacity of Parliament to carry out its proper role of the supervision of government and Liberty thinks needs to be checked, to be reined back.

There are some things which have to be kept confidential but they should be limited in time — not kept confidential any longer than is necessary — and they should be limited in scope, so only the bits that need to be confidential should be kept confidential. It goes to the whole integrity question, both because of the need for members of Parliament to be informed about what the executive is doing and because it is inherent to integrity that dealings are open. They should be as open as possible.

Things that are kept secret and silent feed the cynicism that unfortunately pervades the population about the activities of members of Parliament. It is in your own interest as well that that be pared down to the minimum so the public can have confidence that the only things that are kept secret are those that actually need to be at the time they need to be and no longer and no more.

Mrs KRONBERG — Your concern is with this blanket coverage and you are saying there could be elements that could be revealed without upsetting the relationship in terms of competitive pressures?

Mr GARDINER — We have no doubt that that would be the case. This was not a central part of our submission, as Anne remarked, but it does go to the principal core of it. But we have no doubt that there are plenty of things that are kept confidential that do not need to be or are kept confidential longer than they need to be.

Mrs KRONBERG — Just a further point: is this a trend? Have you been plotting the incidence of this blanket coverage?

Ms O'ROURKE — Not in relation to this as much, but over a 10-year period we did look at the committee inquiry process. It was not in terms of commercial in confidence but we did find that there was an increasingly short period of time in which the public could respond to committee inquiries. Mostly we looked at the federal Parliament. It got down to sometimes we were getting a notice to respond to a change in legislation a day after the submission date was finalised.

We did get research done to look at that and found over a 10-year period that what used to be a three-month process to allow people to respond to changes in legislation or indeed any other matter that Parliament put out there almost came down to seven days over that 10-year period. In a sense that is an accountability process. That is an opportunity for the public to respond to changes. But that was at the federal level. We did look at it a bit at the state level but the federal level was really problematic. That was not in relation to confidentiality but it was a process that limited the public's ability to respond to legislative changes.

Mr GARDINER — Certainly the big problem that this particular study looked at was the federal one. But at the state level, as we have a Charter of Human Rights and Responsibilities, any practice of the Parliament that reduces the capacity of citizens to take part in public life, which is one of the human rights established under the charter, is to be avoided. The right of freedom of expression under the charter includes the right to receive information. There is a sense in which, whether there is a trend or not, anything which inhibits the free flow of information, preventing accountability, is something which diminishes the effective enjoyment of human rights by members of the public, and for that matter by members of Parliament.

The CHAIR — Could I just came back to the point which, I think, Anne made in talking about the UK model and the Ontario model? The big issue in the UK is they have a model there that you are asserting is better than what currently exists in Victoria in the act, whether the act needs some review, which is why we are here, but we have a major issue in the United Kingdom.

Ms O'ROURKE — In the UK, yes.

The CHAIR — What I am inviting, and we have asked other witnesses to reflect on this as well, is the broader context. What is the role of political parties, what is the role of the media, what is the impact of the kind of adversarial model we have that has an inordinate focus on question time and the kinds of things that happen there in relation to public trust? How does a code and a change of practice relate to that general climate?

Ms O'ROURKE — It politicises the process. Even to a small degree the email business highlights this. The polls and just general conversation that I have come across in the last week since this has been going on show that while politicians may think that this one has hit a home run by diminishing the reputation of another politician and then the other side hits back and someone else stands up and makes another point and some media commentators then respond saying, 'So-and-so king-hit this one', you have this small circle who somehow think they are achieving something here, and the media often is part of that, the broader public just finds that behaviour — I do not know if 'disgrace' is the right word — —

Mr GARDINER — An embarrassment.

Ms O'ROURKE — Yes. It does not reflect well on politicians. I think part of the process of taking it out of politicians' hands is it becomes depoliticised. It does not destroy reputations left, right and centre, whether groundless or whether there is something there. Part of this process that has been going on both in Britain and here is that nobody in the end knows who is telling the truth and who is lying. We had a black mark possibly over Kevin Rudd's reputation that has now vanished because of subsequent processes about the email. Now you have a question over Wayne Swan's reputation as well as Malcolm Turnbull's reputation. The broader public does not care whether it is Labor or Liberal, it is more — —

The CHAIR — I understand the issue. What I am getting at is the changes that were made in the UK, from this distance, and I am not across it, do not appear to have had much of an effect. I do not know enough about what is happening in Ontario, but the point I am making is it is clearly not just a matter of having a code.

It is about having training for MPs, it is about changing the culture, but it is broader than that. As witnesses said this morning, it has got to do with political parties' culture, it has got to do with what the media's focus is, all those sorts of things. That is what we are kind of wrestling with. We do not want to limit the space that we are working in to making a few technical changes to the current act and then think the problem is resolved. We want to be able to write a report that canvasses some of those broader things, that gives food for thought, not only to our colleagues in the Parliament but obviously to the wider public. We are seeking reflection on some of those broader things.

Ms O'ROURKE — It is a process that needs some thinking about, and it will take some sort of education campaign — what is an ethics commissioner about or integrity commissioner, whatever you want to call that person. It will be an education process for the public and, as you say, for politicians and the media. It will also involve some public discussion of how these things operate overseas, in very much the same way that went on with the human rights charter in Victoria and is going on federally. Any change that changes the culture of Parliament will require some discussion.

Looking at it in a more narrow sense, you do not want a document that is so tight that it ends up not recognising the legitimate mistakes that people make — politicians, the public or whatever. You do not want a code, for want of a better word, that does not recognise honest mistakes or genuine flaws that people make. You also need something that does not become a moving target every time a new issue comes up.

If you look at the code that Prime Minister Howard brought in, every time there was an issue the interpretation of that code changed. It then became such a cynical process that the public had no trust in it whatsoever. You have to find something that provides a framework for politicians that is sufficiently broad that it enables honest mistakes to be made, but when they step outside that process that there is some penalty. Without that there will not be public confidence and trust. That also requires a public discussion and in some sense some explanation of what the interpretations of the document will mean.

One of the problems we had with the federal one was whether it meant that if a politician was intentionally reckless, was it that he was just reckless or was there some other standard. It kept moving. That is why it should be a third-party process. You cannot just pick up a model from overseas; you need to examine them and say to politicians as well as the public, 'These are the various models that exist. This is a process. We wish to improve

parliamentary behaviour and faith in the Parliament, and it is a process we would like to go through'. You need to have that public discussion first. It is healthy for the public as well as politicians.

Mr GARDINER — It occurs to me that in one sense your question wondered about how broad the process might go and the way the media responds to Parliament might be borne into the process. On that particular question we have no view, apart from wishing it could be better than it is. The point that Anne has made about a code being a framework with flexibility is the same one that we have in many areas.

The vital importance of education in a continuing way is exactly the same with a new code of conduct as it is, for example, with the Charter of Human Rights and Responsibilities. That, too, is a framework document, the full meaning of which will take many years to elucidate. It is a framework document which has to embed itself, its values in particular, in the consciousness of all Victorians, all members of Parliament and all public servants.

All those categories overlap. The process by which you go from legislation, which is very much black and white — unless the Government Printer is very modern! — can set out a framework as well as specific rules, but it becomes of real value when it is used and real flesh is put on the framework. That is done by processes of education, reflection, induction — I know that the process of induction for new members of Parliament has significantly improved over what it was years ago — and continuing professional development, as most professions have. This would enable the values inherent in the code, which we would recommend be the same values that the Nolan Committee puts up — and which clearly were not followed by the Westminster Parliament in recent years — and that the framing of the legislation code has to bear in mind the emphasis on the values.

How it connects with the charter is very important in its relation to the human rights of members of the public who wish to be a part of private life and how it reflects those values, and to build in a process for ongoing reflection and education. I think the only way to involve the media as a player in this is by doing it well and letting the facts speak for themselves.

Ms O'ROURKE — The way that Jamie has put it together is that this sort of process and getting a public discussion on ethics and the sort of ethical values that they would like to underpin politics can be connected to the charter process. We now have the Charter of Human Rights and Responsibilities, and implicit in that charter are democratic values, the right for the public to participate in the political process.

Part of extending that is to now have this discussion about political values, ethics and the adoption of a code that in some sense reflects the values embedded in the human rights charter. One way of going forward is to use the charter as a document to bounce off. It continues that process, but it is also a way to approach the media in some sense about how to frame that debate. To connect it to the charter might be one way of starting a public debate that the media can pick up on.

Mr FOLEY — You referred earlier to the model of perhaps something like the Corporations Act and its responsibilities. I notice in your submission, in item 10.3 on page 7, that you refer to the penalties all the way through to using that model, including disgorging of profits made by directors of companies. I am wondering how you see that applying to one specific issue in a member of Parliament's system of operating using that model. Is it suspension from the house or selling their land up from under them?

Ms O'ROURKE — The Ontario model has a number of penalties. We are suggesting these as models you can look at, rather than saying, 'You have to do this'. It ranges from a number of penalties — in section 34 — depending on what the issue is. It can be no penalty, the member can be reprimanded, the member's right to sit and vote in assembly can be suspended for a specified period, or, in very serious cases, the member's seat can be declared vacant — but I have not seen any examples of that. I imagine that would be for something extremely serious. There are a number of penalties.

Under the UK model I am pretty sure that the politicians are allowed to have a second job, a second income. I do not think that is allowed under the Ontario model, so it is not likely to be an issue if parliamentarians are not allowed a second income. It would be more an issue under the UK model. It may be the case that there has been a conflict of interest or they have used information that has come to them in their role as a parliamentarian to make an additional income. In those sorts of circumstances something like the disgorgement that occurs under the Corporations Act might be appropriate but generally here as far as I know, correct me if I am wrong, politicians are not allowed to have a second job. Is that correct?

Mr FOLEY — I do not know. I do not think it is prohibited but I am not aware of any.

Mr GARDINER — One knows of the occasional barrister who occasionally takes briefs while sitting in Parliament.

Ms O'ROURKE — But normally you would see that.

Mr GARDINER — But when the notion of disgorging of profits effectively obtained by a public accountability version of the fiduciary duties — for those sorts of profits it would probably be more sensible to look at safer jurisdictions like, say, Italy and Prime Minister Berlusconi's media interests, which seem to be ineluctably intertwined with his parliamentary interests.

If, for example, he had succeeded in his bid to have sitting members exempted from the criminal law, which was finally stomped on, then in those circumstances a code of conduct might be just a piece of laughable graffiti. But if it were not, then changing laws in such a way that the land you own becomes vastly more valuable or other things allow — even if it is not a criminal matter which the Corporations Law would have — gains got unethically through the misuse of public office, it ought to be possible, routine in fact, to say at the end of the inquiry concerned that that land, that chain of television stations or whatever, ceases to be the property of the former member and becomes the property of the receiver of public goods or whatever our statutory office is.

Yes, there ought to be that. But again I am not aware of any 21st or even 20th century example where that might happen but in principle it is part of the armoury. I can certainly recall instances in the 19th century activities of this Parliament where, if this code of conduct were the case, members might well have been asked to disgorge portions of Toorak or Brighton back to the public purse.

The CHAIR — We have not got much time left. Could I just ask another one? The issue of how far a declaration goes in terms of family members has been raised. Do you have views on that? It has been put to us that maybe it is too onerous, for example, for the member to have to declare the interests of his partner, on the one hand; on the other hand, it has been put to us that it should be extended perhaps a bit further than that. Do you think it is about right that it is the spouse and children under the age of 18?

Mr GARDINER — It is what we have said in the submission.

The CHAIR — I see. All right.

Mr GARDINER — We acknowledge that it is one of those issues where we end up with different holders of rights and different holders of duties. It ends up being in a contest of rights in the human rights sense, and in the legal sense. So that the autonomy of an individual member's partner is entrenched upon by a requirement that their interests be disclosed in a parliamentary register. As Anne said earlier, there is a limit beyond which they should be disclosed to the integrity commissioner but not on the public record; but for some things more directly, they are on the public record.

The broader issue comes down to the question of actual or constructive knowledge. We think that the things which we would all expect a member of Parliament to have knowledge of, not necessarily detailed knowledge but enough to know that benefiting from a particular interest would probably boost their children's inheritance or their partner's business, even if they do not know for certain, would be a misuse of public office. Putting the interest into the public register enables everyone to know that it is there, and that is the safeguard. But, as you say, it is obvious we have moved a long way from the 1870s where all the property in a marriage belonged to the husband and where the partner, particularly of course of the opposite sex — the female partner — had no effective rights. Fortunately we are not there any more and the way that the disclosure of other people's interests is done must be in a way that respects their human rights, their privacy, but in a way that ensures public confidence that the member is not going to be acting in conflict. The broader notion of not doing anything to advance the interests of another person — that is to say, a known person outside the general interest — would then kick in.

You cannot have a register of everyone's interest that you know. For some people a second cousin might be an almost inconceivably distant family connection but to some people a second cousin might be terribly close and important. It is better to talk about it in terms of what the member knows, knows of and ought to know rather

than anything depending upon a narrow and confined predetermined set of assumptions about how people run their lives.

Some couples know all about each other's affairs; some do not. If they really do not know, then they probably should not be required to disclose. The question of integrity goes down to working out how to deal with whether or not a member says, 'I really do not know' or, 'Maybe I have an idea'. That is not an easy one.

Ms O'ROURKE — But I think that is where the Ontario model is a good one, where you have that public and private divide so that you can respect the privacy of family members. It only goes to the integrity commissioner; it is not a public document. That way you are not breaching the privacy of the broader family members but the politician has done all that he or she had can do to make sure that any likely conflict of interest is registered.

The CHAIR — One final matter: it has been put to us that section 8 of the act that deals with the publication of information should be removed because it is redundant, because the matters that it deals with have now been taken up by the changes to the Defamation Act 2005. Have you looked at that at all? Do you agree with that?

Ms O'ROURKE — No, I do not think we looked at that one.

The CHAIR — It might be something that we come back to you about then. The general argument was that the section no longer has any value because the issues that it deals with have now been included in the defamation legislation that has been tidied up and is now nationally consistent, so that passes that away. The committee heard that this morning. It received a submission that substantially made reference to that. Maybe that is something you might like to look at and if you have any views, we would be interested.

Mrs KRONBERG — In terms of the integrity commissioner's management and oversight of a two-tiered system, one where a lot of information with financial details — that is the private one — is under the custodianship of the integrity commissioner and then there is the — —

Ms O'ROURKE — The usual public one.

Mrs KRONBERG — The usual public one. In terms of that information, would that only be within the domain of the integrity commissioner if it is information that has been subpoenaed or requested from a commissioner of taxation, that sort of thing? Have you thought about the extension of that?

Ms O'ROURKE — No, we have not given any thought to that. We were looking at how to ensure that there is not a conflict of interest but at the same time protecting that member's family and other acquaintances who may be involved in business or in other monetary matters that may impact on their parliamentary position. I would imagine that if there were a criminal matter where the courts could subpoena any documents, they would be able to subpoena these documents as well if they were relevant to any criminal case before the courts.

Mr GARDINER — It might be worth distinguishing between matters relating to a breach of the code of conduct and other matters.

Ms O'ROURKE — Yes.

Mr GARDINER — In a matter relating to a breach of the code of conduct, in which prima facie the integrity commissioner would be the one who did the investigating, the integrity commissioner would have to stay. Taking your question, there is also the suggestion that one would have to safeguard information voluntarily disclosed about other people's affairs to the integrity commissioner by having in place all of the safeguards that would apply to it in the hands of the original party, I think, so that it would be protected from any intrusion in any other context that would be not capable of being made by a search warrant on the party's premises in the first place. It should not be a shortcut for other investigations to chase after information they would not get legally otherwise.

Ms O'ROURKE — Also, there is one other thing. I had a look through the various ones for this, and it is different in different models. In Ontario the commissioner makes a report that can be quite a comprehensive report. One of the things I could not see and did not pick up in this act was some sort of an appeal process. I think if you had a legislative model where you have an integrity or ethics commissioner who oversees a code of conduct, and if you implemented something like the register of interest, it would be comprehensive. It would

include a code of conduct and a register of interest, but you would want an appeal process too in that, just to be fair to any parliamentarian who was likely to be investigated.

In some of the ones I have seen in other places there have been court cases about whether a parliamentarian has a right to an appeal. It may be a flaw in some of these other models that they actually did not consider that process.

Mrs KRONBERG — Additionally, the right to appeal may not coincide with the benefit of a member, because an election could be held before an appeal is heard, for instance. Members of Parliament are always accountable, ultimately, because they live in a system of democracy and they will be voted out of office.

Ms O'ROURKE — That is true, but it does not detract from the fact that there should be some process.

Mrs KRONBERG — No, not at all, but it is the ultimate punishment; that is what I am saying.

Ms O'ROURKE — Yes. But in suggesting that you look at appeal processes as a part of it, it is in the sense of ensuring that there is fairness to any parliamentarian who is investigated by a commissioner.

Mrs KRONBERG — And obviously there would need to be assurances that those processes would be conducted expeditiously so that they would not flow into, as I said, the ultimate accountability when the member meets the electorate.

Ms O'ROURKE — Yes, that is right.

The CHAIR — We will have to call it quits at that point. Thank you both very much for your generous time today. As I said, you will be provided with a copy of the Hansard transcript. I hope you do not mind if we give you a bell about something we may want to clarify.

Ms O'ROURKE — No, that is fine.

Witnesses withdrew.