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# Standing Committee on Justice and Human Rights

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**Tuesday, April 8, 2008**

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**Chair**

Mr. Art Hanger

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## Standing Committee on Justice and Human Rights

Tuesday, April 8, 2008

•(1535)

[Translation]

**Mr. Réal Ménard (Hochelaga, BQ):** Mr. Chair, I guess you would not be totally surprised if I asked you to observe the rules and pick up where we left off. We had asked for a recorded division on the motion filed by our colleague, Mr. LeBlanc. Let me remind you that this is completely in line with our rules in Marleau and Montpetit. I would like to deal with this matter once and for all by asking you to call for a vote on this motion immediately without debate, and I am going to exercise my right to call for a recorded vote. That is where we were when we left off. I will remind you that there is no debate, that it is automatic, and I think that everyone will benefit if we hold the vote.

[English]

**The Chair (Mr. Art Hanger (Calgary Northeast, CPC):** Right. Certainly that's what I expected to hear from you, Monsieur Ménard, and my statement will be as follows. I'm going to read it for the benefit of the entire committee here and the media, since they are present:

Since some time has passed, I would like to remind the committee members why I have ruled this motion out of order. As I said at the time, I ruled along two points, the first being that this motion falls outside the mandate of this committee; secondly, this motion requires the committee to act in a manner contrary to the purpose it was created for. Hence I might point out the clerk's clear statement on the reasons.

On the first point in relation—

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** I don't remember a statement by the clerk.

**The Chair:** It was my ruling, actually, that was generated through—

**Mr. Derek Lee:** Are you saying you let the clerk create your ruling?

**The Chair:** No, I do not.

**Mr. Derek Lee:** You just referred to the clerk's statement.

**The Chair:** I was assisted. She helped me prepare for it, Mr. Lee. I'm sure you understand that fully.

**Mr. Derek Lee:** Thank you, Mr. Chair.

**The Chair:** On the first point, in relation to the mandate of this committee, I will save members from reading the entire standing order related to mandates for committees, but I will draw your attention to Standing Order 108(2), which reads:

108(2). The standing committees, except those set out in sections (3)(a), (3)(f), (3)(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate,

management and operation of the department or departments of government which are assigned to them from time to time by the House. In general, the committees shall be severally empowered to review and report on:

- (a) the statute law relating to the department assigned to them;
- (b) the program and policy objectives of the department and its effectiveness in the implementation of same;
- (c) the immediate, medium and long-term expenditure plans and the effectiveness of implementation of same by the department
- (d) an analysis of the relative success of the department, as measured by the results obtained as compared with its stated objectives; and
- (e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.

As committee members can see, there is no authority here for an investigation into a particular case or a specific event outside of the management and the effectiveness of the Department of Justice.

With regard to my second reason, it is my ruling that this motion asks the justice committee to do something beyond what it was created to do. This motion would require a committee to act as a trier of fact, which is the role of the judiciary, and it should be respected as such. We do not have the authority to examine particular cases or make attempts to determine facts or investigate the conduct of a particular individual or individuals. As we all know, the courts are charged with applying and interpreting the law. If an individual were accused of murder or break and enter, it would be absurd to imagine that this case would be heard by the justice committee. The specific case would be dealt with in the judicial system.

The role of the House of Commons and membership thereof is to create laws and to review the findings of the court to see if those laws are adequate. As no judicial or quasi-judicial body has made a finding on the topic contained in this motion, this committee cannot commence any such review.

It is a well-established principle that neither parliamentary committees nor the Speaker of the House is in a position to determine questions of fact. Indeed, when disputes as to questions of fact have arisen in the House, the Speaker has consistently taken the position that he is simply not prepared to rule in favour of one member against another. Similarly, this committee is not a trier of fact and should not be expected to make any such determinations.

It should be self-evident that this committee is not in a position to make any kind of legal ruling. In some, the motion is beyond the scope and mandate of the committee and is out of order.

Now, Mr. LeBlanc, since the time of that ruling, you have introduced a new motion in the House of Commons. I note this motion is quite different from the one you have been pushing here in the committee. I take that as an admission of guilt, so to speak, that the motion you have been insisting on studying here is completely out of order, as I have been ruling all along.

• (1540)

**Mr. Derek Lee:** Mr. Chairman, I've got to interrupt on a point of order. It seems to me the member who moved this challenge to the chair is entitled to have a vote on it without debate, and a few words from you as to how you got to where you are is acceptable—

**The Chair:** Yes.

**Mr. Derek Lee:** —but it sounds to me as if you're not just engaging in debate on that particular question, but you've now moved over to a motion that one of our members has introduced in the House and you're making inferences on his motivation.

**The Chair:** Right.

**Mr. Derek Lee:** I think we're all prepared to listen to a few words from you, but if you're going to engage in debate, then I think some of us might want to, because it should be clear from what's gone on here that we don't all agree with your conclusions. To allow you to make a statement without any challenge from us, when there should be no debate on a challenge to the chair, is giving a lot of leeway.

So I'll make that point of order.

**The Chair:** Thank you.

[Translation]

**Mr. Réal Ménard:** Mr. Chair, I rise on a point of order.

[English]

**The Chair:** On a point of order, Monsieur Ménard.

[Translation]

**Mr. Réal Ménard:** Mr. Chair, I would remind you that, if you had the decency to comply with the rules and had sided with the clerk, you would find that, in allowing you to read a ruling that you have already brought to our attention many times, even this committee is putting you in a situation in which you are not complying with our rules.

I have to say that, in the Bloc Québécois, despite our friendship with you, we are questioning your ability to continue chairing this committee. I do not know if you feel that you still have the confidence of the committee, but we are wondering about your attitude. We do not understand your position, which is preventing us from resolving the crisis in which we find ourselves. Soon, you will be inviting us to question your ability to chair this committee, which would be a shame.

So, for the last time, in the name of the work that we have accomplished in the past, I am going to ask you, please, to respect the rules by immediately calling for a vote. There is nothing stopping you from doing so. There is no way out.

You are putting the committee in an unproductive situation in which we cannot honour our mandate. You do not have the authority not to call for a vote. So, once again, I am asking you, in the name of all the work we have done since 2006.

How is it that you allowed your ruling to be challenged when it was a matter of amendments filed by colleagues concerning government bills? You agreed that a recorded division on the motion would follow. But since you dislike the subject that we want to debate, you are refusing to enforce the rules.

I have been sitting in the House for 14 years, and I have never seen an attitude like this. So, I reiterate my request for the last time. Otherwise, you will be inviting us to think that you no longer deserve the confidence of this committee. This is not what we want, but we do not intend to waste our time. So, call for a vote. We challenge your decision to rule our colleague Dominic LeBlanc's motion inadmissible. Let us vote on it, and then you will have the members' co-operation. However, stop being so obstructive. Unfortunately, when we talk about you in the hallways of Parliament now, you have come to symbolize obstruction. I know that you will not be seeking another mandate. I do not believe that this is the legacy you wish to leave to this Parliament.

So, call for a vote now so that we can put this matter to rest.

• (1545)

[English]

**The Chair:** I recognized Monsieur Ménard on a point of order.

Go ahead, Mr. Moore.

**Mr. Rob Moore (Fundy Royal, CPC):** Mr. Chair, I see the opposition continually bringing this issue forward and calling for a vote on this motion, when in fact there have been numerous opportunities. There have been at least three, perhaps four, opportunities when a member of the opposition has taken the chair. Even in spite of, say, having witnesses who have travelled to appear before the committee, rather than hearing from those witnesses, rather than conducting committee business, which we're now falling far behind on, and rather than even conducting this vote, the members have simply adjourned the meeting. That's happened multiple times.

I'd like to know if it is within the capacity of the opposition to continue calling for a vote when they've in fact been refusing to hold this vote time and time again, on a weekly basis. There have been a number of opportunities when they could have held the same vote they're asking for, and they refused to hold it. They adjourned the meeting.

If the opposition wants this vote so badly, why are they not conducting the vote? As a matter of fact, I've not seen this reported once, despite the following of this committee and the interest it's garnered. Time and time again Mr. Murphy's been in the chair or Mr. Ménard's been in the chair. They could have chaired the meeting, we could have conducted business, and they could have called a vote, but they didn't do it. They adjourned the meeting.

**Mr. Derek Lee:** Let's have the vote now.

**Mr. Rob Moore:** I would like to know what your thoughts are on that.

**The Chair:** On the same point of order, we'll have Mr. LeBlanc.

**Hon. Dominic LeBlanc (Beauséjour, Lib.):** Thank you, Mr. Chairman.

I'm not seeking to prolong the agony. I'm in agreement with Monsieur Ménard that we should proceed to a vote. If Mr. Moore is concerned about the numbers and the math in terms of when we should have the vote, we're very fortunate to have our full-time, permanent chair here today with us in the chair.

That's why, Rob, we're absolutely looking forward to taking the vote shortly. If you really thought it was a matter of having a vice-chair in the chair and having a vote, there wouldn't be six of you sitting on that side of the table waiting to sign in when your chair evacuates.

Mr. Chair, I would really urge you to proceed to the vote. It's amusing, this discussion. I'm not hating it; I just think it would be in the interest of all of us if we got back to the work this committee should be doing. And I remind you, Mr. Chair, that this is why we have offered to have one or two sessions on the Cadman issue, extra sessions, and not take away from the committee's work. That's why we find it regrettable that we keep arriving at this dead end.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra (St. Catharines, CPC):** Mr. LeBlanc actually aroused an interest in me to partake in this discussion. It was a comment that he made about getting back to the business that this justice and human rights committee is supposed to be doing. I think it's probably the most salient point he's made in the last four meetings during which we've tried to work through this.

With all due respect, I would like to remind him that it's very clear that the motion that he has moved has nothing whatsoever to do, through you, Mr. Chair, with the work and the responsibilities of the justice and human rights committee.

It's pretty clear that if his suggestion is—and in fact if he's prepared to move a motion—to get back to the work and the efforts that this committee was doing prior to the introduction of a motion that at the ethics committee was actually turned down by a colleague of his who chairs that committee and who actually said that the motion was out of order there.... It arrived here at the justice committee not because it was changed, not because it was corrected, not because it was made to fit the confines and responsibilities that we have as a committee, but simply as the exact same motion that ended up not being heard at the ethics committee.

Perhaps it's debate, Mr. Lee, but I don't think so, because what Mr. LeBlanc suggested was that we get back to the business of the committee. All I'm doing is taking his comments and expanding on them a little bit in terms of what our responsibilities are at this committee.

In fact it's very clear. The motion proposes that this committee conduct a study to determine the facts of a particular case. While this committee is fully able to undertake studies into matters concerning the Criminal Code, it does not have the authority to examine particular cases or make attempts to determine facts or investigate the conduct of a particular individual or individuals.

It can't be any clearer. It is the ruling of the chair. It is the ruling of the chair here at the justice committee. It is the ruling of the chair at the ethics committee. It is the exact same ruling.

● (1550)

**Mr. Derek Lee:** That is what's being challenged.

**Mr. Rick Dykstra:** Mr. LeBlanc was suggesting that we get back to the order and responsibility of what this committee is supposed to be doing, which we were doing extremely well prior to the introduction of a motion that actually is out of order.

I've never heard any question around whether the motion is out of order. All I've heard from those in favour of moving ahead with a challenge of the chair is that they don't like the decision that he's made. They've never actually articulated whether he was right or wrong.

**Mr. Derek Lee:** I'd be delighted to.

**An hon. member:** That's debate.

**Mr. Rick Dykstra:** The point is that what we have in front of us is a motion. And you're well within your rights to be able to challenge the chair on this, but the fact is that the motion is out of order. It's been ruled out of order.

I couldn't agree with you more, Dominic. We want to get back to the responsibilities of what we have to do here at this committee, and certainly I am looking to you to do that as quickly as possible.

**The Chair:** Mr. Moore.

**Mr. Rob Moore:** On that same point that's been raised, on the issue of getting business done, as a matter of fact, this committee has been handed one of the heaviest workloads of all committees. I think something we could all be proud of, in fact, is that we were getting a lot of great work done on behalf of Canadians until—and I think the Speaker himself spoke to this in his ruling—we had an attempt at a partisan hijacking of the committee.

I'm going to reference something again, for the benefit of those who probably haven't been aware of this. The Speaker gave a ruling that was exactly on point to what we're dealing with today, Chair. I would like to make a comment on one thing he said. He was speaking to the situation at committees.

He said:

Since that time appeals of decisions by chairs appear to have proliferated, with the result that having decided to ignore our usual procedure and practices, committees have found themselves in situations that verge on anarchy.

This is a ruling by the Speaker of the House of Commons.

Even the prestigious Standing Committee on Procedure and House Affairs, which, as the Striking Committee, is the very heartbeat of the committee system, has not escaped the general lawlessness.

He goes on to say:

Last week, I understand that the committee elected as its chair a member who stated unequivocally that he did not want the nomination.

So the Speaker calls on all of us, as parliamentarians, to not, in his words, invoke the tyranny of the majority and to allow a sound ruling by the chair of a committee to stand, rather than having the majority on a committee overrule what is a valid ruling.

I think that's what we have here, Chair. We have a valid ruling by you. This is directly on point to what the Speaker has ruled, and I see the opposition continuing to act, flying in the face of a sound ruling and a statement by the Speaker of the House.

The Speaker goes on to say—and I think we should all take this to heart—and I quote:

Frankly speaking, I do not think it is overly dramatic to say that many of our committees are suffering from a dysfunctional virus that, if allowed to propagate unchecked, risks preventing members from fulfilling the mandate given to them by their constituents.

I would suggest that the mandate given to us by our constituents is to work on their behalf as a committee dealing with legislation that's been put before us, not to go on what I would say is a partisan witch hunt completely outside the scope of the work this committee should be doing—in fact, the work with which this committee is vested.

I just want to say one more thing, Mr. Chair. The Speaker must remain ever mindful of the first principles of our parliamentary tradition to protect the minority and restrain the improvidence and tyranny of the majority in order to secure the transaction of public business in a decent and orderly manner.

I'm calling on all members at the table. We have worked together very well on legislation that is important to all Canadians. We've worked on legislation that's important to our constituents. We've seen, time and time again, an attempt to introduce something in this committee that you, Chair, have ruled out of order. The challenges to your sound ruling fly in the face of the Speaker's ruling, and I ask that members respect the Speaker's ruling.

• (1555)

**The Chair:** Thank you.

Mr. Murphy, for a final word.

Mr. Comartin, on a point of order.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** On a point of order, I just want to correct Mr. Moore. He is lumping me in with the opposition parties. The NDP has made it very clear that it agrees with the Chair's ruling.

**The Chair:** Yes. Mr. Moore, that is an important distinction.

**Mr. Rob Moore:** I apologize to Mr. Comartin. I hadn't seen him there, so I apologize. Now that you're here, I don't want to lump you in unfairly with the Bloc and the Liberals.

**The Chair:** I have recognized Mr. Murphy, apart from Mr. Comartin's point of order.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Mr. Chair, I know it might be completely out of place at the justice committee to inject a brief view of what the law might be, but any decision—really in any tribunal, any administrative board, or any court—has, roughly speaking, four elements of natural justice that we observe in this country, in the British Commonwealth system. There are basically four.

One is that you have to know what the issue is. That has been very clear. We know what the issue has been.

Sides have the right to be heard *audi alteram partem*. Mr. Chairman, you did a wonderful job of letting people be heard.

When a decision is reached, you have to know what the reasons are for those decisions. And again, you've been stellar as a chairman in eliciting your reasons, so compliments to you.

It's on the last aspect. What remedy is there for a decision that's laid down? The law recognizes in various tribunals, courts, and everywhere, and at this committee, a right of appeal. That is what, by your actions, you are denying. You are abridging the rules to your own opinion and satisfaction, but you are denying the right of appeal; and for that reason, I can't...

Otherwise you have conducted, in the last two years I have been here, a stellar record on responses to all the questions I've ever had, as a member of this committee. On this one, sadly, you fail me, and you fail the Canadian justice system.

**The Chair:** Thank you very much, Mr. Murphy. I'm going to give you a grand opportunity to fulfill all those very words you just spoke to me, that you feel I neglected. However, before I do, for the record I will go through my original statement on the ruling, for the benefit of the committee and those listening today.

I have to say that I'm more than troubled by the insistence of the opposition in introducing this motion. It flies in the face of what this committee should be about doing, and they know it. However, for the record, this is it.

As observers of this committee will note, this committee is meeting for the second or third time in public to discuss committee business. We have now had five consecutive meetings in which certain members of the committee insisted on pressing their point before we could do the work that this committee has already agreed should proceed.

In three of those meetings, witnesses who travelled across the country were unable to testify because of the opposition's antics. It is my opinion that these actions do not show proper respect for the witnesses. I will not allow the witnesses at my committee to be treated in this manner; hence there are no witnesses here today.

Now, I have been blamed, to put it mildly, both here and in the media for ending these meetings. This is simply not true. Marleau and Montpetit, chapter 20, page 829, makes it clear that when a chair of a committee is not available, a vice-chair—which would be you, Mr. Murphy—is fully authorized to take his or her place and conduct the committee's business. When I left the room, the meeting did not end. Either of the vice-chairs who were in the room were free to preside over the vote and were certainly free to preside over the hearing of the witnesses on Bill C-27.

But that is not what occurred. Instead of taking the vote or continuing our Bill C-27 study, the vice-chair simply adjourned the meeting, leaving the witnesses high and dry. I can only assume—

• (1600)

**Mr. Réal Ménard:** Mr. Chair, you are out of order. We are supposed to have a vote. I don't understand why you're doing this.

**The Chair:** I can only assume—

[Translation]

**Mr. Réal Ménard:** Mr. Chair, it is out of order.

[English]

**The Chair:** —that until this issue is resolved....

Monsieur Ménard—

[*Translation*]

**Mr. Réal Ménard:** I do not understand why you are doing this. I do not understand why you do not call for a vote. You are perpetuating the disarray of this committee. Your position is out of order.

[*English*]

**The Chair:** That opportunity will come here very shortly.

[*Translation*]

**Mr. Réal Ménard:** Mr. Chair, it is out of order.

[*English*]

**The Chair:** I can only assume that until this issue is resolved by the committee, the same thing will continue to happen. As chair, I will not put the witnesses in that position.

Now, if the Liberals and the Bloc wish to proceed with their motion, I have no issue in saying I will not preside over the vote. I will not preside over the overturning of a correct procedural ruling I have made, or a mockery of Parliament in clear violation of the rules. And the Speaker has attested to that.

**Mr. Réal Ménard:** That's what you're doing now.

**The Chair:** Nonetheless, if the Liberals and Bloc want to take the vote in my absence, that is their prerogative. As chair, it is my job to protect the committee for its stated purpose under the routine Standing Order 108(2). It's an important purpose.

I can understand the need for firm and fair criminal justice legislation. That is what I have spent my career doing. My life's work has been dedicated to the pursuit of justice. We have Bill C-27, which is an important piece of legislation that will protect Canadians from identity theft. I want to see it passed.

We now have a backlog of very important business to process by this committee. We have not dealt with confirmation of the nomination of the Director of Public Prosecution with Bill C-27, as already mentioned.

[*Translation*]

**Mr. Réal Ménard:** Respect the rules, Mr. Chair.

[*English*]

**The Chair:** We have not dealt with Bill C-25—

[*Translation*]

**Mr. Réal Ménard:** That is your doing.

[*English*]

**The Chair:** —which updates the Youth Criminal Justice Act; the impaired driving study report; or private members' bills, Bill C-426, Bill C-484, Bill S-207, and Bill S-213, which have been referred to this committee.

I would like to turn everyone's attention to a recent and most unprecedented statement by the Speaker of the House, which is aimed directly at our committee.

[*Translation*]

**Mr. Réal Ménard:** Respect the rules! Mr. Chair, call for a vote. It is out of order.

[*English*]

**The Chair:** On March 14 he said:

Inherent in the power the House grants to its committees is the basic principle that each committee will respect its mandate.

[*Translation*]

**Mr. Réal Ménard:** You are breaking the rules.

[*English*]

**The Chair:** Finally, gentlemen and ladies, the Speaker says:

...neither the political realities of the moment nor the sheer force of numbers should force us to set aside the values inherent in the parliamentary conventions and procedures...

There are procedures on which the ruling was based, by which we govern our deliberations. My job is to protect this committee, which is why—

[*Translation*]

**Mr. Réal Ménard:** Respect the rules.

[*English*]

Your job is to respect the rules. If you choose to not respect the rules you are going to lose, Mr. Chair.

**The Chair:** If certain members want to move that motion again, I'm telling you now that I will not preside over it. But if I vacate this chair again in the interest of upholding our parliamentary rules, let me be clear that there is absolutely nothing stopping a vice-chair from holding the vote once I walk out of the room, just as there was nothing stopping the vice-chair from hearing witnesses at any of the previous meetings.

So to the members of this committee, I would say we are clearly at a crossroads again. I would like to see the proper functioning of the justice committee restored within the rules that govern Parliament. We have done a lot of work that we can be proud of, but as the Speaker said, we are on the verge of anarchy, and I will not allow this anarchy to prevail under my watch.

Mr. Murphy, would you like to take the count? I am vacating the chair.

**Mr. Réal Ménard:** Why are you leaving? Act like democrats and apply the rules, because you're going to lose. Shame on you!

**Some hon. members:** Oh, oh!

**Mr. Réal Ménard:** Shame!

● (1605)

**The Vice-Chair (Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.)):** It's a shame that a man who has purportedly dedicated his life to the law chooses to ignore the law with respect to appeals, procedural fairness, and natural fairness.

**Some hon. members:** Oh, oh!

**The Vice-Chair (Mr. Brian Murphy):** The committee is in disarray. There's anarchy caused by the chairman.

The meeting is adjourned.

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