



House of Commons  
CANADA

# **Standing Committee on Government Operations and Estimates**

---

OGGO • NUMBER 014 • 2nd SESSION • 39th PARLIAMENT

---

**EVIDENCE**

**Tuesday, February 26, 2008**

—  
**Chair**

**The Honourable Diane Marleau**

Also available on the Parliament of Canada Web Site at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Government Operations and Estimates

Tuesday, February 26, 2008

• (0900)

[English]

**The Chair (Hon. Diane Marleau (Sudbury, Lib.)):** I would like to call the meeting to order.

I'm going to welcome our witnesses, along with their legal counsel.

I would ask that the cameras leave, now that the meeting has been called to order.

Before we start, now that the cameras are gone, as you know, there are some legal things happening over this particular issue. I will tell you in advance that I will not allow any questions that deal with whether there was a breach of contract on behalf of the City of Ottawa with regard to the O-Train. That is before the courts, and that will not be a question I will allow. As for the others, we'll take them one at a time, and at that point we'll rule.

I would like to start by having our guests identify themselves. You can introduce yourselves. Counsel can introduce themselves as well, for both parties, so they know who you are. Welcome to Parliament Hill, and welcome to this committee.

I've also asked the witnesses, if they wish, to give a brief statement, and then we will go directly to questions from different parties.

Who would like to be first, and who would like to introduce? Maybe we'll have Mr. Wouters. You're more familiar with this.

**Mr. Wayne Wouters (Secretary of the Treasury Board):** Thank you. I am Wayne Wouters, Secretary of the Treasury Board.

[Translation]

**Mr. Michel LeFrançois (General Counsel, Secretariat Legal Services Branch, Treasury Board Secretariat):** My name is Michel LeFrançois and I am an employee of the Legal Services of the Treasury Board.

[English]

**Mr. Kent Kirkpatrick (City Manager, City of Ottawa):** Madam Chair, I'm Kent Kirkpatrick, city manager, City of Ottawa.

[Translation]

**Mr. Réjean Chartrand (Former Director of Economic Development and Strategic Projects at the City of Ottawa, As an Individual):** Hello.

My name is Réjean Chartrand, former employee of the City of Ottawa.

[English]

**Mr. Peter Doody (Legal counsel for the City of Ottawa, Borden Ladner Gervais LLP):** I am Peter Doody, legal counsel for the City of Ottawa, and this is Mr. O'Connor.

**Mr. Rick O'Connor (City Solicitor, City of Ottawa):** I am Rick O'Connor, city solicitor, City of Ottawa.

**The Chair:** I will say to the committee that the representative from Siemens has not been able to free herself to come forward. My understanding is that she can come at a later date. Perhaps I'll let the clerk explain what he's done in order to get in touch with Ms. Wessel, of Siemens.

**The Clerk of the Committee (Mr. Michel Marcotte):** Thank you, Madam Chair.

Ms. Wessel couldn't be here with us today, but she indicated to me that she might be available Tuesday, March 4, or next Thursday, March 6. And that's about it. Otherwise, it's going to be at the end of April. Seeing as we've already had a motion that we will have two meetings next week on a different topic, I told her that we would wait for the committee's decision on whether we're going to invite her again.

**The Chair:** Thank you.

Perhaps we can now move to remarks from witnesses. I believe that Mr. Wouters has something to say.

**Mr. Wayne Wouters:** Thank you, Madam Chair.

Good morning, members of the committee. I have a bit of a cold, so if you could, bear with me here today.

[Translation]

I am here today to speak to the role of the Treasury Board of Canada and of the Secretariat in the matter of the federal funding for light rail transit project in Ottawa.

[English]

Before I do so, I want to clarify that I am here in my role as Secretary of the Treasury Board, which is a cabinet committee. As such, I am limited in what I can talk about. Particularly, I cannot discuss cabinet confidences. These include submissions to Treasury Board, board deliberations themselves, and board decisions. I'm also not at liberty to discuss legal advice that may have been provided, as this remains solicitor-client privileged.

[Translation]

To provide members with some context, I believe it would be useful to set out the role of Treasury Board and of the Secretariat during the submission process.

[English]

The Treasury Board is a committee of ministers, chaired by the President of the Treasury Board. As the government's management board, it has three core roles: it promotes improved management performance through its role as the government's management office; it focuses on smart spending through its budget office role; and it's also the principal employer of the public service.

While other cabinet committees approve broad policy directions or new policy initiatives, Treasury Board approves the program design, implementation plan, and specific costs that will achieve the policy objectives. A Treasury Board submission is the official document submitted by a minister on behalf of his or her department to seek the necessary approval or authority from Treasury Board to undertake an initiative that it would not otherwise be able to undertake or that is outside its delegated authorities. It is the role of Treasury Board Secretariat to provide sound advice to ministers in their consideration of Treasury Board submissions, and to do this the secretariat works closely with departments.

Following consideration of a submission by Treasury Board, the secretariat provides the department with a formal record of decision. Treasury Board has four decision options for submissions: approve as proposed, approve with conditions, not approve, or defer the decision.

The Ottawa north-south light rail transit project is one of Canada's strategic infrastructure fund projects. These projects are selected by the Minister of Transport, Infrastructure and Communities in consultations with provinces, territories, and municipalities as appropriate.

The Minister of Transport is also responsible for undertaking the due diligence on the project and negotiating a contribution agreement—in this case, with the City of Ottawa.

Treasury Board Secretariat becomes involved in these projects once a contribution agreement has been negotiated. Treasury Board ministers are the only ones who can authorize signature of contribution agreements under this fund; therefore, submissions seeking final approval for the contribution must go to Treasury Board. This submission must be considered before a contribution agreement can be signed.

From a Treasury Board perspective, the Ottawa north-south light rail transit project submission was typical of any of the projects brought forth for consideration under the Canada strategic infrastructure fund program.

I've given you this background on the Treasury Board submission process and on the process of selecting Canada's strategic infrastructure fund projects. My goal in doing so has been to provide members with a better understanding of the role of the Treasury Board ministers and of the secretariat in reviewing the submission relating to the Ottawa north-south light rail transit project.

As I've explained, cabinet confidentiality precludes me from being able to mention the date of a Treasury Board meeting or providing you with information on a Treasury Board decision; however, as this information has already been made public, I'm able to state that the decision of the Government of Canada to approve funding for the north-south light rail transit project in Ottawa was made as a result of a submission presented for the consideration of the Treasury Board ministers emanating from the Minister of Transport, Infrastructure and Communities. In this matter the Treasury Board decided that the Minister of Transport, Infrastructure and Communities was authorized to enter into a new contribution agreement with the City of Ottawa for up to \$200 million to construct the proposed north-south light rail transit project subject to ratification by the new city council.

As the City of Ottawa is an important party in the project, the president asked me to inform the city of the decision. I did so in a letter to Mr. Kirkpatrick, city manager, on October 10.

This concludes my remarks, and I'm prepared to answer any questions you may have.

● (0905)

**The Chair:** Before I start, you said that you cannot make any of these decisions public. What about the last decision that Treasury Board made? Can you make that one public, because it is in the public domain?

**Mr. Wayne Wouters:** That is in the public domain, and as I already stated, it was in a letter that I sent on October 10 to Mr. Kirkpatrick. As I said, that decision was one where the Minister of Transport, Infrastructure and Communities was authorized to enter into the agreement to provide funding up to \$200 million to this light rail project. That was conditional on the Minister of Transport receiving ratification by the new city council that they supported the project.

**The Chair:** Was that dated?

**Mr. Wayne Wouters:** Yes, it was dated October 10, 2006.

**The Chair:** Are there any other submissions by any of the other witnesses?

**Mr. Kent Kirkpatrick:** Madam Chair, on behalf of the city representatives I would just say that we are happy to be able to respond to your request to be here today. We will answer the questions that are posed to us to the best of our ability, the only exception or issue being what you raised at the outset, which is that there may be some questions that I will need to consult with counsel on vis-à-vis how those questions may or may not affect the city's interest in terms of responding to the legal claim we're currently responding to. But other than that, we are here to do our utmost to answer the questions to the best of our ability.

● (0910)

**The Chair:** We'll start with Mr. Holland.

**Mr. Mark Holland (Ajax—Pickering, Lib.):** Thank you, Ms. Chair, and thank you to the witnesses.

Our time is tight today, and my questions will be direct, so if we could have the most concise answers possible, it would be appreciated.

I'm going to start with the Treasury Board, and then I'll go to the municipal officials if I have time in this round or in a subsequent round.

I want to ask Mr. Wouters this. Can you tell the committee how many federal departments would have been involved in the sign-off process leading up to the final submission to Treasury Board on the light rail project?

**Mr. Wayne Wouters:** I'm sorry, I can't answer that question regarding the number of departments involved in the project, but the Department of Transport, Infrastructure and Communities was the lead department for this particular project.

**Mr. Mark Holland:** Maybe I could ask either Mr. Kirkpatrick or Mr. Chartrand if you're aware of how many federal departments had signed off on this project prior to it getting to Treasury Board.

**Mr. Réjean Chartrand:** Actually, through the environmental assessment process, there were seven different departments that had to sign off on the project, and we also worked very closely with the Canadian Transportation Agency, which was providing its approval on this.

**Mr. Mark Holland:** Correct. Is it not correct as well that Minister Cannon himself signed off on this project?

**Mr. Réjean Chartrand:** Through my colleagues at Transport Canada, we understand that the minister was fully supportive of this project and that he did submit positively to Treasury Board.

**Mr. Mark Holland:** I'll go back to Mr. Wouters, if I could. Can you tell me if any federal departments, of the seven that were involved in approving it up to the point at which it got to you, had ever expressed concerns about the project to Treasury Board?

**Mr. Wayne Wouters:** I'm not aware of any department expressing concerns. Again, we dealt with the lead department in this case, which was the Department of Transportation, Infrastructure and Communities. It was its minister who submitted the Treasury Board submission to us.

**Mr. Mark Holland:** Under the Canada Strategic Infrastructure Fund, can you tell me how many projects Treasury Board refused to sign off on in 2006 after reaching this stage?

**Mr. Wayne Wouters:** Again, I cannot comment on the deliberations of the cabinet committee to Treasury Board. I can say to the honourable member that we do receive a large number of Treasury Board submissions under this particular fund each year, but I can't comment on the deliberations of the board.

**Mr. Mark Holland:** I'm not asking about the deliberations; I'm asking about outcomes. These are decisions that are publicly made.

I'll reframe the question and perhaps make it easier to answer. With the exception of this example, when was the last time Treasury Board made a federal contribution agreement to a municipality conditional upon a future city council approval? Has that ever happened in recent history? Can you cite any other example where that has ever been done?

**Mr. Wayne Wouters:** I can't cite other examples. I don't have that information with me. All I can say is that there are very varied types of projects that come before Treasury Board under this particular fund. They're all quite unique, and the board could in any given instance put specific conditions on the approval of a project.

**Mr. Mark Holland:** I've searched thoroughly, and I have not been able to find another example of this, ever. So if you could give me another example it would be appreciated, because it seems that this is the first time it's ever been done. Of all the projects approved in 2006, it seems that this was the only project—the only project—that was stopped at this stage after it received approval from seven departments.

This leads me to the next question. Who signed off on the Toronto funding, the \$350 million that went for the sole-source procurement of TTC buses from Bombardier? Was that Treasury Board?

**Mr. Wayne Wouters:** Again, I'm not aware of that project at this point. I don't have that information with me.

I should also comment that, as I said, the board can approve with conditions or without conditions, and it can defer. If conditions are put on by the board, often they're not made public.

**Mr. Mark Holland:** Here's the point. We know that in October 2006, in the middle of a municipal campaign in Toronto, a \$350-million project was signed off, and this is a project that was in fact sole-sourced, and there were no such conditions placed making it contingent upon a future council. So it seems like we have two different treatments here, depending on what the file is.

This is the concern, more broadly. The explanation that has been given to date by Mr. Baird as to why he interfered in this process was that it was a boondoggle, using his words. Yet we have seven departments under this current government that signed off on this project, including Treasury Board itself on October 10, 2006, contingent upon a future council. Mr. Wouters, do you consider this project a boondoggle? Did your department sign off on a boondoggle? Did seven other federal departments sign off on a boondoggle, and if so, why?

• (0915)

**Mr. Wayne Wouters:** The role of the Treasury Board and the Treasury Board Secretariat is not to assess the project. The role of the Treasury Board Secretariat is to assess the contribution agreement that's negotiated between the parties. That means determining if the appropriate due diligence was done by the lead department in this case, if the appropriate management framework was in place in order to release the funding, and if they are compliant with Treasury Board policies.

**Mr. Mark Holland:** So once—

**Mr. Wayne Wouters:** Treasury Board Secretariat does not undertake the cost-benefit analysis of the project itself. The role of the Treasury Board is to approve the contribution agreement; our role, therefore, is to assess that agreement.

**Mr. Mark Holland:** I have two questions stemming from that. Why did you get the contract, if that wasn't your role? And secondly, if it isn't the role of Treasury Board to assess that, if it's the role of other departments who had signed off on this and who had said it was okay, then why are we getting this explanation?

I know it's difficult for you to make that hypothesis as to why the minister then would be seemingly stepping outside the role of the department to make this determination.

Let me ask the question specifically of you: Why would you have gotten the contract if it wasn't your role to do that?

**Mr. Wayne Wouters:** I did not get the contract. The minister got the contract. My understanding is that it was as a result of an agreement between the mayor and the consortium to provide the minister with the contract. We basically assessed the contract, and that was part of the information that went back to Mr. Kirkpatrick.

**Mr. Mark Holland:** Obviously what I find very concerning about that is we have you saying that it's not the role of Treasury Board to assess the contract in this way, and yet this is the explanation Mr. Baird is giving as to why he intervened in the process.

I'm going to move on to the next question.

**The Chair:** Mr. Holland, I'm sorry, your seven minutes are up. I know it goes by quickly.

We'll go with Madame Bourgeois.

[Translation]

You have seven minutes. I'm going to be very strict when keeping time this morning.

**Ms. Diane Bourgeois (Terrebonne—Blainville, BQ):** Thank you, Madam Chair. Our witnesses will have to give us very brief answers.

Greetings, gentlemen, and thank you for coming here to shed some light on this subject. I would like to know what powers the city has and what powers Treasury Board has. We must not confuse the two.

My first question is for Mr. Kirkpatrick. In general, when city council makes a decision, it is supposed to be independent and oversee the requests made by the council members. Cities are independent, even with regard to an infrastructure program, is that right?

**Mr. Kent Kirkpatrick:** Yes, that's right.

[English]

It was the city's position that under the memorandum of understanding that had been negotiated, the city met all of the conditions. Mr. Chartrand can go into more detail in terms of the negotiation of the contribution agreement and its framework.

Clearly we were dealing with three separate governments. The city council, which voted on this project in the summer of 2006, voted fourteen to seven to approve the project. That represented a duly constituted council and a valid decision of a sitting council. And in the city's opinion, it met the conditions of the contribution agreement of both the provincial and federal governments, because the council of the city approved the project and approved the framework. They then delegated authority to me to go and negotiate the final conditions and terms of the contribution agreement. So from the city's perspective and from the Municipal Act perspective, that represented a duly constituted council and a valid decision by council committing the city to that contribution agreement.

• (0920)

[Translation]

**Ms. Diane Bourgeois:** We are not very familiar with the requirements of the Canada-Ontario Infrastructure Program. In general, provided you satisfy the requirements and you are granted funding because you have done your homework, in principle, you should be able to go ahead without having to meet any other demands or deadlines to collect the funding granted under the agreement.

Are you truly independent? There is no clause of the Canada-Ontario Infrastructure Program that states that this funding can be withdrawn under certain conditions, is that correct?

[English]

**Mr. Kent Kirkpatrick:** I'm not personally aware of all the framework of that infrastructure funding agreement. In general, the city was very aware of the need to ensure that we had identified and were able to meet all conditions from both the federal government and the provincial government as we were moving through this procurement process and negotiating these contribution agreements—and we did that.

At no time in that period of time was it ever raised that the decision of council that this was the number-one top transit priority project for the City of Ottawa or the decision to conduct a procurement process was going to be revisited as part of the federal government's approval of the project.

[Translation]

**Ms. Diane Bourgeois:** Do you understand my question? Do federal-provincial infrastructure agreements contain provisions stipulating that the money will not be paid out? Are there other conditions? Mr. Chartrand can answer me if you are unable to do so. I want to know whether the funding is conditional or whether, once you have been allocated a certain amount or notified that you are entitled to a certain amount, you are fully responsible for the project and the funding.

[English]

**Mr. Kent Kirkpatrick:** As I indicated, I am not aware of any conditions like that in the agreement. However, it was the city's understanding throughout the process that the contribution agreements would be subject to management board approval in the case of the provincial government, and final Treasury Board approval in the case of the federal government.

We understood that the process was working with the federal government and meeting all of their departmental requirements for information for environmental assessment purposes and business case purposes. All of that was done in completing the submission from Minister Cannon in Transport Canada to Treasury Board for their approval. The city was aware that in the end it would require Treasury Board approval for that contribution agreement to be valid.

[*Translation*]

**Ms. Diane Bourgeois:** Perhaps you won't give me an answer. In Quebec, once a federal-provincial agreement is reached, it is normally the province that manages the funds received. In principle, it is Ontario, in your case, that was supposed to allocate funding, because it has full powers. It is not up to the federal government to decide whether you have those powers. I know the answer, Mr. Kirkpatrick, but I just wanted to hear you say it.

Mr. Chartrand, it seems to me that you have developed a fine project. You even sent a copy to a member who sat on this committee, Mr. Pierre Poilievre. You even assured him that there would be no cost overruns, if I remember correctly.

Is it true that everything was already decided, and that the light rail project proposed by city council did not pose any problems?

• (0925)

**Mr. Réjean Chartrand:** A budget of \$730 million was approved by city council. The amounts in the tenders received were less than 2% higher. At that time, the total cost of the project amounted to approximately \$744 million, which was considered a great success by our city council. The agreements with the province and the federal governments were very clear: federal and provincial contributions would total no more than \$200 million. Any additional cost would have to be borne by the city. There was absolutely no risk for either the provincial or the federal government.

**The Chair:** Thank you, Ms. Bourgeois.

Mr. Moore.

[*English*]

**Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC):** Thank you very much, and thank you to all the witnesses for coming before us to talk about this issue.

After hearing the presentations, the first round of questioning is usually the hot stuff, as my experience goes, so I'm left wondering where the "there" is. I think this is much ado about nothing. This is an example of a fishing expedition backfiring a little bit, because what was demonstrated by Mr. Wouters is that all the necessary approaches and all the mandates by Treasury Board were followed and the appropriate behaviour took place.

As a matter of fact, there's a parallel in my riding to this one. There's a light rail project in my riding that is very hotly contested, and the community is divided perhaps evenly on it. The idea that there should be some form of community consultation, that the community's input should be taken into account, is something that I know the people in my community would certainly want to have happen before federal and provincial dollars were put forward for a project such as this.

The idea that Mr. Baird did anything inappropriate in here has been refuted repeatedly. The Ethics Commissioner was asked to take a look at this, and the Ethics Commissioner told the opposition in November 2006 that he was unable to conclude that there are reasonable grounds for believing that Minister Baird improperly furthered his or any other person's private interests in this matter.

All the rules were followed, everything that happened should have happened. With regard to the light rail project and the \$200 million

that was approved by the federal government, the \$200 million is still on the table for future light rail projects. The money was approved in the past, and if there's a re-engagement with the federal government, money for light rail going forward is still available for this region for future projects.

So the idea that something was somehow squashed is in fact not true. What was done was that a new city council that was elected by the public was consulted.

In fact, this is not a Conservative or a Liberal issue. As a matter of fact—this is an indication for Mr. Holland so he's certain of what happened here—the new city council was elected....

This was approved by the clerk, Madam Chair.

**The Chair:** Mr. Moore, do you have any paper copies of this?

**Mr. James Moore:** This is on paper, Madam Chair.

**The Chair:** I would have liked to have had advance notice of this.

**Mr. James Moore:** We alerted the clerk and he said it was all right.

In any event, I'll go through it very quickly.

The new city council—

**The Chair:** Do you have copies of this that we can bring around?

**Mr. James Moore:** It's large enough. I think you can see it right there.

**The Chair:** Well, I'm sorry, it's not very—

**Mr. James Moore:** The new city council was elected, Madam Chair—

**Ms. Raymonde Folco (Laval—Les Îles, Lib.):** On a point of order—

**Mr. James Moore:** It's being distributed, so people can have it. There's a copy of it right there.

**The Chair:** Can we wait for a second while it is distributed?

**Mr. James Moore:** Sure.

**Ms. Raymonde Folco:** Excuse me, I have a point of order. I'd like to have a clarification from the chair.

**Mr. James Moore:** This is not out of my time.

**Ms. Raymonde Folco:** Is this acceptable behaviour, to actually have something—

**Mr. James Moore:** To circulate information? Sure.

**Ms. Raymonde Folco:** I'm not asking you, Mr. Moore, I'm asking the chair.

**The Chair:** Please.

I would have preferred having advance notice, but seeing as they also have a paper copy to distribute, it is acceptable—

[*Translation*]

**Mr. James Moore:** ... in both official languages.

[*English*]

**The Chair:** —although normally we would be advised in advance of some such....

Mr. Moore, you don't like tricks when others pull them. I guess it's all right when you do, right?

**Mr. James Moore:** I'm not so sure it's a trick, Madam Chair. I'm giving you information.

Chair the meeting. You have your hands full doing that.

**The Chair:** Oh, touchy aren't we?

**Mr. James Moore:** We're handing out the information, Madam Chair, because it's important that Mr. Holland's daily quest to attack ministers, to attack their credibility without information, is in fact refuted.

What happened here was that a new city council was elected, and the new city council, people with deep lineage in the Liberal Party in fact, voted against the light rail project. This idea that John Baird intervened in a process that didn't happen in order to stop a light rail project, for his political benefit, is nonsensical. When you look at the facts, Alex Cullen is a former Liberal candidate in Ottawa West. Gord Hunter was a former candidate. Mr. Chiarelli, Mr. Bellemare, and Madam Wilkinson all have Liberal pasts, and they voted against the light rail project.

In fact, it needs to be mentioned on the record as well that the provincial government of Mr. McGuinty sent a letter saying that provincial funding would in fact be suspended if the project had any kind of change in its design or approach. And all three candidates for mayor at the time had significant changes or opposition to the light rail project itself.

Mr. Holland suggested that there was somehow political interference from the federal government. How can it not therefore be argued as well that there might have been political interference from the provincial government?

This is an example of how appropriate federal government relationships should in fact work. That is to say, decisions aren't made and things aren't rammed down the throats of municipalities and citizens without having due consultation with the elected local representatives. Treasury Board was asked to make a judgment on this file in the middle of a municipal election campaign, and that decision was deferred until a new council was elected. I think that's an entirely appropriate decision. It's what should happen in a democracy. People should be consulted. The democratic process should be respected. And that's in fact what happened here. And as the handout suggests, even the federal Liberals Mr. Holland campaigns for disagree with him that this project was in any way inappropriate.

Mr. Wouters, whose lineage with the federal government pre-exists this federal Conservative government, I would just ask you flat out if any rules were broken by Minister Baird with regard to the light rail project. Yes or no?

● (0930)

**Mr. Wayne Wouters:** No. The process was followed in due course. The departments submitted the Treasury Board submission to us. Once they felt that they were ready to seek approval for the contribution agreement, that followed due process. The secretariat, of course, provides advice to Treasury Board, and I've outlined to the members of the committee the decision of Treasury Board.

**Mr. James Moore:** Just to sum up, because I'm almost out of time, the Ethics Commissioner has said that nothing inappropriate happened. The secretariat of the Treasury Board, having examined this, has said that absolutely nothing inappropriate happened. The elected city council of the city voted against this rail line. And finally, the money that was pre-approved for a rail project for the region is still on the table for a future project.

That's some scandal, Madam Chair.

**The Chair:** Thank you, Mr. Moore.

We'll go to Mr. Angus.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you.

I'm very interested in the timeline of how all this unfolded to see if there's anything of interest here.

On September 20, 2006, in the middle of the municipal election, Pierre Poilievre wrote to the city asking if they could show that there were no cost overruns associated with this project. Now, most MPs tend to crow when there's federal government money coming into their ridings. Yet Mr. Poilievre is writing to the city asking the city to show that there are no cost overruns, even though seven federal departments have already signed off.

Were you surprised by Mr. Poilievre's letter?

**Mr. Kent Kirkpatrick:** Madam Chair, I guess I would characterize it as unexpected, but there had been a fair amount of discussion at the time in terms of the extent to which the contract was a fixed-price contract. I think, as Mr. Chartrand confirmed earlier, that was the case. And more to the point, he confirmed that the federal government contribution was capped at \$200 million. That was something that was made clear in the original memorandum of understanding in 2005, which was that no matter what, the federal and provincial government contributions would both be capped at \$200 million.

**Mr. Charlie Angus:** So it was unexpected. The very next day, candidate Larry O'Brien issued a public letter to John Baird basically asking the same thing. So the day after Mr. Poilievre raises it with the city, Mr. O'Brien, in the middle of the election campaign, goes public, and he asks John Baird to intervene in this situation.

Now, this is in the middle of a very contentious municipal election. I've written many letters to ministers as a member of Parliament. In fact, I wait sometimes months, sometimes half a year, for them to bother responding. And yet in the middle of a municipal campaign, John Baird responds to a candidate who obviously has his own personal interest in raising this.

Mr. Kirkpatrick, were you surprised to get the letter from John Baird asking to see the contract?

● (0935)

**Mr. Kent Kirkpatrick:** Through you, Madam Chair, in terms of accuracy, there was not a letter that was received. A copy of the contract was requested through the officials in the transport ministry. The purpose that was stated was that the contract was required prior to Treasury Board finally reviewing and making a decision on the file.

We were surprised. I indicated earlier that we had done a lot of work and a lot of consultation throughout the entire process, ensuring that we understood. We were able to anticipate what the information requirements were going to be of both the federal and provincial governments in terms of their due diligence and processing of this file.

I think we did that very successfully. In all cases we met all of the information requirements of both governments. And this was a requirement that had never been raised throughout that time period.

It was unexpected. In our opinion, it was unusual that a copy of the contract would be requested. There were significant commercial proprietary interest issues involved with that. It took a fair amount of consultation with the consortium to gain their approval that we would release a copy of the contract.

In doing so, we covered the contract with a letter that was very explicit and clear about what our expectations were around confidentiality and the information that was in that contract.

**Mr. Charlie Angus:** I was looking at this memorandum city officials wrote on October 5, after they had received this request. They stated:

Staff had not anticipated this new requirement from Treasury Board because both the Federal and Provincial governments have been quite clear over the three years of negotiations that they were not parties to the City's contract in any way. In fact, the Memorandum of Understanding between the City and the Federal and Provincial governments explicitly states that the Federal and Provincial governments were not parties to the procurement process or any contractual arrangements the City was undertaking for this project.

So on October 6 you complied with John Baird's request, and the city had included in that the letter stating that "...no information contained in the Agreement...will be disclosed to any person other than those who have need to review the Agreement for the sole purpose of the internal review by the Treasury Board".

That was on October 6. On October 10, John Baird went to the media. He didn't go to the city. He went to the media and said that he had found in the contract the provision that allowed the contract to be extended past the election date.

Your understanding, if I'm correct, was that they wanted to see the contract to see if due diligence was being done. Instead, Mr. Baird got access to confidential contract information and basically dropped a political cluster bomb in the middle of the campaign.

Were you surprised by his actions?

**Mr. Kent Kirkpatrick:** Chair, through you, we didn't anticipate those. We would have appreciated the opportunity to clarify exactly what the purpose and intent of those clauses in the contract were for. They were for the purpose of allowing any delay in the schedule that was required in order to bring financial closure to the contract.

The city and the consortium signed the contract on September 15. The contract allowed for a period until October 15 for financial closure. That was the expectation. It also then provided for either party to have the ability to request up to a ten-day extension. There was provision for six of those, for the purposes of arranging for the completion of issues necessary for financial closure to the project. Those purposes would extend to things like getting the contribution

agreements from the senior governments and to other issues that would allow for financial closure.

I can tell you this, and it's public, as I stated it back in October. The intent of those clauses in the agreement was not to allow for an extension of 60 days to allow for another council in place of a duly elected council that had made the decision on behalf of the city and its residents with years of public consultation behind it to be revisited. That was not the intent of those clauses in the contract.

We were very clear with council and with the federal government in regard to that.

● (0940)

**Mr. Charlie Angus:** Mr. Kirkpatrick—

**The Chair:** Thanks very much. We'll get back to you.

We'll go for five minutes now.

Mr. Holland.

**Mr. Mark Holland:** Thank you, Madam Chair.

I think in seven minutes Mr. Moore asked one question. This is supposed to be the opportunity to ask questions. But I found it interesting that the only thing Mr. Moore was missing was John Baird's radio ad. That's the only thing he didn't play.

But here's the problem. In that radio ad his defence of his involvement in this whole affair is that it was going to be a billion-dollar boondoggle. Yet seven different federal departments under your government signed off on this, including Treasury Board, under the condition that the new council would just have to agree with it. So seven different departments either signed off on a boondoggle, or it isn't a boondoggle.

It's not about whether light rail was a good idea or a bad idea; this is about whether or not a minister inappropriately intervened in a municipal campaign. We've established to this point that the decision to make the funding contingent until after a municipal campaign was without precedent. I've asked for an example, and it has never been given; it doesn't exist. The minister intervened in this process, and the question is why. In fact, we even learned that it's not Treasury Board's role to get involved in these particular details.

On that line, I want to come back to this point. Mr. Baird received a copy of the contract based on the condition of confidentiality. Specifically, the letter that accompanied it stated:

...delivery and acceptance of this Agreement is based on the premise that no information contained in the Agreement, and no part of the Agreement will be disclosed to any person other than those who have the need to review the Agreement for the sole purpose of the internal review by Treasury Board...

So Mr. Wouters, did you approve of Minister Baird's decision to leak these pages of the contract to the media?

**Mr. Wayne Wouters:** I was made aware by Minister Baird that he had received a copy of the contract. I indicated to him that we would do a legal assessment to determine whether delaying the decision would result in the project costs going up. We made a determination that the decision could be delayed up to December 15 without incurring additional costs. That information was relayed to the city in my letter of October 10. So I was informed by the president that he had received a copy of the contract, and we proceeded on that basis.

**Mr. Mark Holland:** Did Treasury Board secure consent from either the City of Ottawa or Siemens prior to Minister Baird releasing the two pages that were released to the media?

**Mr. Wayne Wouters:** You'll have to ask Minister Baird about the release of documentation. I wasn't party to any of those discussions with the minister on the release of the information he put forward.

**Mr. Mark Holland:** You said you did not receive a copy of the contract. Can you tell me if anybody at Treasury Board received a copy of this contract and reviewed it? Who was advising Mr. Baird? In the four days that he had this document before releasing this to the press, from whom was he getting advice, if anybody?

**Mr. Wayne Wouters:** I wasn't aware of when the president received a copy of the contract. We had a discussion on October 9, I believe, about the contract. He indicated that he had received a copy of it. Of course there were issues at that time around the implications of not signing the contribution agreement and whether it would result in additional costs. I indicated to him that we could have our justice department lawyers take a look at it, and we did. We made a determination that according to our interpretation of the contract, the city had up until December 15 to ratify the agreement without incurring additional costs.

**Mr. Mark Holland:** Minister Baird received this over the Thanksgiving long weekend, which covered three days, and then there was one additional day. So I'm hearing that over that time he didn't receive any particular advice before leaking this.

You didn't answer before—and I wonder if you could now—whether you approved of the decision to leak the information.

• (0945)

**Mr. Wayne Wouters:** Again, I'm not aware of any decisions the president made vis-à-vis his communications of the decisions. That was a decision of the president.

**The Chair:** Thank you very much. Your five minutes are up.  
[Translation]

Ms. Bourgeois, it's your turn.

**Ms. Diane Bourgeois:** Thank you, Madam Chair.

My questions are for Mr. Réjean Chartrand, whom I would like to get to know a little better.

You are the former director of economic development and strategic projects at the City of Ottawa. I suppose that you worked to implement the light rail project from the very beginning, is that right?

**Mr. Réjean Chartrand:** That's right.

**Ms. Diane Bourgeois:** The idea behind this light rail project, if I understood the documents clearly, did it come from one individual, that is, the then-mayor of Ottawa, or from city council?

**Mr. Réjean Chartrand:** In fact, these large-scale projects are always studied in depth. Conceptual studies dating from 2003 had been done for a light rail project and had received all the necessary authorizations from city council and the province of Ontario.

Further to the announcement, in spring 2004, concerning the funding that would be made available by the province and the federal government, the city immediately began the environmental impact

assessment study. This study, which lasted 18 months, was approved by city council in July 2005. During that period, the city began the contracting process for the project, which had been ongoing for several years and had been presented to council on numerous occasions. I think that in the two years during which we oversaw the project, we made at least a dozen submissions to city council. All the decisions had been ratified by the council, and we continued with the project.

**Ms. Diane Bourgeois:** Before you left, all the loose threads of the project had been tied up and the council was going to go ahead with no problem. There was nothing to lead you to believe that you would run a deficit.

**Mr. Réjean Chartrand:** Not in terms of the budget, no. All the conditions of the contract were very clear. The risks were to be assumed by the city. The contract conditions were such that city council was very comfortable with all its clauses. In July 2006, it had approved the awarding of the contract by a vote of 14 to 7. All that was left was to sign the three-way agreement with the province and the federal government for the final approval of the federal funding.

**Ms. Diane Bourgeois:** So at that time, everything was ready, and then you left. Then, there were municipal elections. Do you believe that these elections had an impact on the decision as to whether to grant funding?

**Mr. Réjean Chartrand:** I don't think I can answer that question. All I can say is that due process was followed. City council had approved the contract and further to the approval of Treasury Board, which was conditional on submitting the project to the new city council, the new council ratified the original decision by city council and also asked the city manager, Mr. Kirkpatrick, to negotiate the withdrawal of a portion of the project. The downtown portion had been hotly debated during the election campaign. The new city council ratified the original decision but also asked that, once the contracts were signed, negotiations begin to withdraw the downtown portion. That was the wish of the new city council and that is what we told the federal and provincial governments.

**Ms. Diane Bourgeois:** To your knowledge, does it often happen that at some point, the funding granted by a province or the federal government is withdrawn? Is it the first time that you have seen this?

**Mr. Réjean Chartrand:** I think that there are many reasons that could justify a change. In this case, following the discussions we had with the province and our colleagues from the federal government, we had fully complied with all of the conditions that had been set out for us. We had received our colleagues' approval in that regard. We were still awaiting the approval of Treasury Board.

• (0950)

**Ms. Diane Bourgeois:** Could it be said that Treasury Board's decision to withdraw was unilateral?

**Mr. Réjean Chartrand:** As Mr. Wouters mentioned, it is a prerogative of Treasury Board to impose conditions. It chose to impose that condition for its own reasons. The city did everything in its power to comply with that condition, which brought about the result that we are now aware of.

**Ms. Diane Bourgeois:** Thank you very much.

**The Chair:** Ms. Bourgeois, your time has expired.

Mr. Moore, you have the floor.

[English]

**Mr. James Moore:** I wanted to reiterate one point and also read something into the record in response to what Charlie Angus was talking about with regard to letters and what precipitated what action.

First of all, to reiterate where we ended last time, money is still available for rail transit for the region. The Ethics Commissioner said nothing improper happened. The Treasury Board Secretariat said nothing improper has happened, and the views of the elected city council of Ottawa have been respected on this matter.

Part of what precipitated the action on this was a letter—Charlie mentioned one letter, but this is in fact a letter that precipitated action—from Gord Hunter, who's the elected councillor for Knoxdale-Merivale ward. He wrote to John Baird on August 10, 2006. The letter was received four days later. I just want to read this into the record, because it's important to understand this:

I am receipt of a letter dated July 24 to Ministers Cannon, Caplan and Cansfield sent by Mr. Ted Gowan, 2 Fox Meadow Lane, Nepean. It is titled "Memorandum of Understanding Ottawa Light Rail Transit Project".

In his covering letter Mr. Gowan is scathing in his criticism of the City of Ottawa for the obvious understating of costs and overstatement of ridership projections. He asks that Federal and Provincial funding commitments be withdrawn or allowed to expire on December 31, 2006 in accordance with paragraph 6 of the MOU.

He then provides a thorough assessment of the MOU and how the City has not met the terms of the MOU. For instance, he points out that train times to downtown from Barrhaven will be less frequent and take longer than current bus service. He adds, among other points, that instead of reducing gridlock the LRT system will increase it in downtown Ottawa.

Mr. Gowan is very knowledgeable in this field. He knows that this project is not providing value for anyone's dollar. According to the MOU the senior levels of government wanted Ottawa to provide documentation that there is a business case for this light rail project. They have provided the documentation and the business case is not made.

**The Chair:** Mr. Moore.

**Mr. James Moore:** It's almost done. There's one more paragraph.

**The Chair:** I'm under the understanding that something is being distributed.

**Mr. James Moore:** This is the letter.

**The Chair:** But we have not been advised of that, nor do we have that—

**Mr. James Moore:** It's on its way. That's part of the reason I'm reading it.

**The Chair:** I just thought I'd give you a minute to let us know.

**Mr. James Moore:** That's fine, and I'm just reading this letter.

**The Chair:** It is not bilingual, Mr. Moore, and as you know we do not distribute documents that are not translated.

**Mr. James Moore:** We also don't prevent testimony—

**The Chair:** We do not accept documents that are not translated. I would ask somebody to pick up all the copies.

If you wish to read it into the record, that is your prerogative, but you cannot distribute it if it is not translated.

[Translation]

**Ms. Diane Bourgeois:** No, I would like to have a paper copy of it, Madam Chair.

[English]

**Mr. James Moore:** Madam Chair, thank you. That's why I'm reading it—so it can be translated.

**The Chair:** Yes, but you are distributing it. I want those copies picked up, because it is not translated.

**Mr. James Moore:** Just chair the meeting.

[Translation]

**Ms. Diane Bourgeois:** I would like to have a paper copy, I am visual.

**The Chair:** Ms. Bourgeois, would you like to have it in French?

**Ms. Diane Bourgeois:** If it is not translated, it cannot be distributed.

**The Chair:** It is not translated, so we cannot accept it. All of the copies that were given to committee members must be picked up.

Mr. Moore, you have every right to read the letter, if you wish.

[English]

**Mr. James Moore:** That two minutes doesn't come out of my time.

[Translation]

**The Chair:** You only have two minutes left.

**Mr. James Moore:** No, I have four minutes, because you took up two minutes of my time.

**The Chair:** Go ahead.

[English]

**Mr. James Moore:** I read the letter because it requires translation, Madam Chair—nice try—but this letter—

**The Chair:** Mr. Moore, you know the rules of committees. You were trying to pull a fast one. Go ahead and read.

**Mr. James Moore:** I'm reading the letter so it can be translated, Madam Chair, that's why.

**Mr. Charlie Angus:** Madam Chair, it was only distributed to the media.

**The Chair:** There were some.

A point of order, Mr. Holland.

**Mr. Mark Holland:** Point of order.

I saw that there was great care given to hand out copies to the media, but members of committee have not been given anything.

**Mr. James Moore:** No. For the reasons she described, it has to be translated. That's why I'm reading it.

**Ms. Raymonde Folco:** So what do you want—a translation bureau?

**Mr. Mark Holland:** It's a continuation of the game. I don't know if you have a slide show or something going on next.

[Translation]

**Ms. Diane Bourgeois:** I cannot hear the interpreter, because everyone is talking at the same time.

**The Chair:** All right.

[English]

At any rate, I will tell you this. In a committee such as this, only the clerk is authorized to distribute documents and only after they've been translated. That's the rule.

• (0955)

**Mr. James Moore:** Do I have any time left, or are you totally filibustering here?

**The Chair:** I will give you a few minutes more, but that's it. I want you to know exactly what is happening here.

**Mr. James Moore:** Madam Chair, the reason I read the letter is because I understand it needs to be translated. That's why I read it. The point of the letter is that it's from an elected city councillor from Knoxdale-Merivale ward, Gord Hunter. Gord Hunter asks John Baird to take the action that he did, and I just want to read the final two paragraphs here. They're very short, so no filibustering, please.

I ask that you support Mr. Gowan's position. It is one that is held by most residents in Ottawa. Three of the four major candidates for the Mayor's job have tested the political wind and come out against the light rail project.

Help save the City of Ottawa and withdraw funding support for this project until the City comes up with a plan that makes more sense. It is your right to do so and it is the right thing to do.

Respectfully, Gord Hunter

What happened here is precisely right, and I know for Mark Holland, as the MP for Ajax—Pickering, there's a very fierce debate on the ground about Pickering airport, about whether or not that's in the interests of the people of Pickering. So I would like to think that if he were in government again, if this debate were to arise, he could in fact engage this debate, and in fact if a decision were being made by the federal government about Pickering airport at the exact same time, in the middle of a municipal election campaign, and every major candidate for the mayor's chair, every single one of them, wanted to alter the project, an alteration that would require the suspending of the funding from the provincial government, that he would have the same position, which is that the people should be heard on this matter.

With regard to light rail, that's what happened here. The Ethics Commissioner said nothing improper happened. The Treasury Board Secretariat said nothing improper happened. The view of the newly elected city council, and therefore the public, was taken into account, and in a future light rail project, the money that was committed before is still on the table for another project.

Everything that should happen in a democracy happened here, and everything appropriate did happen here.

Madam Chair, you can now go ahead and interrupt me.

**The Chair:** Mr. Moore, you do say all the time that the Ethics Commissioner ruled that this was fine. Do you have anything to prove that? I've never seen that anywhere, and you keep repeating it.

**Mr. James Moore:** Yes, Madam Chair. I can table the letter, or I can read it into the record if you want it translated.

**The Chair:** No, I want the report from the Ethics Commissioner, if he did say—

**Mr. James Moore:** The letter is from 2006. I'd be glad to table it, but I suspect you're not really interested.

**The Chair:** Next is Madame Folco.

[Translation]

**Ms. Raymonde Folco:** Thank you, Madam Chair.

You mentioned the Ethics Commissioner, and I will take advantage of this opportunity to ask Mr. Wouters, who represents the Treasury Board Secretariat, as well as the representatives from the city, if the Ethics Commissioner or people from his office were interviewed on the subject of our meeting here today.

Mr. Wouters.

[English]

**Mr. Wayne Wouters:** I'll respond in English, Madam Chair.

I was not interviewed by the Ethics Commissioner. I'm not aware that any officials within the Treasury Board Secretariat had any discussions with the Ethics Commissioner on this matter.

**Ms. Raymonde Folco:** Would anyone like to answer on behalf of the City of Ottawa?

Mr. Kirkpatrick.

**Mr. Kent Kirkpatrick:** Yes. There was no contact made with the City of Ottawa either, to my knowledge.

**Ms. Raymonde Folco:** Madam Chair, I find it absolutely incredible. Having been a commissioner myself, although for the provincial government, I find it incredible that the Ethics Commissioner would have actually given an opinion, a legal opinion, when he had not interviewed any of the people who have been involved directly in this decision.

I would bring to the attention of this committee that my colleague across, Mr. James Moore, seems to be very much on the defensive. We're not asking for Mr. Moore or anyone else to prove a point. We're asking the witnesses who are in front of us to explain the process as they saw it, as they lived through it. We're not asking for a defence mechanism. This is not a court of law.

And speaking of courts of law, I would like to go back to the cities and I would like to go back to the process, because it is a process thing, as I understand it.

[Translation]

My question is for Mr. Kirkpatrick or for Mr. Chartrand.

[English]

At any point, did the city fail to meet what was required of them in the MOU of May 9, 2005?

**Mr. Kent Kirkpatrick:** No, the city did not. The city, as I've said, also met all information requests in a proactive manner from seven federal government departments in terms of their due diligence as well.

**Ms. Raymonde Folco:** I understand that the intergovernmental working group was constructed flowing from the MOU. For the record, at any point were concerns raised within this group that due diligence was not being performed?

• (1000)

[Translation]

**Mr. Réjean Chartrand:** I was the chair of the working group. All of our discussions led me to believe that we had fully met all of the requirements.

**Ms. Raymonde Folco:** If I understand correctly, it is a question of the seven federal government departments. Is that your opinion, Mr. Chartrand?

**Mr. Réjean Chartrand:** Yes, this was required for the approvals under the Canadian Environmental Protection Act.

**Ms. Raymonde Folco:** After Treasury Board dealt with it, did the contract raise any other problems? If so, what were they?

**Mr. Réjean Chartrand:** When we brought forward the project, we were dealing with Transport Canada. Our colleagues in the department did not point out anything in particular.

**Ms. Raymonde Folco:** And Treasury Board did not inform you that there were any difficulties with the contract?

**Mr. Réjean Chartrand:** Our only communication with Treasury Board concerned the final decision. That decision stated that funding was contingent on one condition.

**The Chair:** Mr. Kirkpatrick would like to say something.

[English]

**Mr. Kent Kirkpatrick:** Madam Chair, what we did hear from Treasury Board, as Mr. Wouters said earlier today, was that in fact Treasury Board did approve the Transport Canada submission with a condition that did not relate to anything technical or to contractual issues or to the business case that was done by Transport Canada and met the requirements of that department. The condition was...well, we know what the condition was. That was the only issue that was transmitted in terms of the approval of Treasury Board.

**The Chair:** Mr. Wouters wanted to say something. Did you have something to add?

**Mr. Wayne Wouters:** Mr. Kirkpatrick just spoke for me, I think.

I just wanted to clarify for the record, Madam Chair, that the Treasury Board did authorize the Minister of Transport to enter into this contribution agreement to provide up to the \$200 million. Again, just to reiterate, this was subject to receiving notice that the new city council supported the project, so all that due diligence was done and the board did approve entering into the contribution agreement.

[Translation]

**Ms. Raymonde Folco:** May I ask a final question?

**The Chair:** No, your five minutes have expired.

Mr. Kramp.

[English]

**Mr. Daryl Kramp (Prince Edward—Hastings, CPC):** Thank you, Madam Chair.

I have two questions, one for Mr. Kirkpatrick and one for Mr. Wouters, but prior to getting to those questions, which I hope would actually take a couple of simple answers, I would like to make a point. The point I would like to mention is it's a sad reality where this committee is finding itself right now. We're simply being what I would call manipulated and playing politics.

This same issue came to the public accounts committee. In their wisdom they didn't want to be involved in a political football and part of a smear campaign. Quite frankly, very quickly, they discounted that and recognized that there was really nothing here, other than, I suppose, partisan politics on behalf of Mr. Holland and the Liberal Party.

Of course then, not wanting to just accept no for an answer, the Liberal Party and Mr. Holland refused to accept even the opinion of the Ethics Commissioner and then the Privacy Commissioner to investigate this matter. Obviously they have access to the reports that were issued by both of those commissioners. I suppose the next thing this committee's going to want, on behalf of Mr. Holland, is perhaps to call in the Privacy Commissioner and the Ethics Commissioner to see whether their testimony and their letters on this issue were truthful too.

In other words, where are we going with this? We have a minister who exhibited prudence, transparency, and a sensitivity to the realities of the political situation on the ground in that he did not get involved with making a decision of the middle of an electoral race so as to unduly influence it. I think that is just common sense and good dealing.

In contrast—and this is certainly not an attempt to demean my colleague across the road—Mr. Holland, there was an article written, as a matter of fact, in one of your local papers. I just happened to pick it up the other day. It went something like this: it said “To the editor”, and this is a classic example—

**Mr. Mark Holland:** To the editor.

• (1005)

**Mr. Daryl Kramp:** —of the pot calling the kettle black.

But I think it's very important that Mr. Holland and this committee, and the public as well, hear what we're dealing with here. It says:

I have always believed there is no place for party politics in municipal elections. It can be argued, for example, block voting by an NDP-dominated council in the City of Toronto does little to represent the interests of residents on issues of local importance. Party politics in the diverse wards of the City of Pickering

—which, of course, Mr. Holland would be so familiar with—

—would be an even bigger disaster.

I was turned off by MP Mark Holland's efforts to manipulate the vote for Regional Council in Ward 3 Pickering (by endorsing a candidate). Mr. Holland does not even live in the ward, yet he feels important enough to direct the residents of Ward 3 to vote for a former NDP adversary with no experience in local politics and no record of having attended council meetings. Is this perhaps payback for the NDP taking a dive in the last federal election? At best, Mr. Holland's meddling insults the intelligence of the citizens of Ward 3 Pickering in their ability to make an informed choice for their local and regional representatives.

I'm not suggesting that every word of that would be accepted by every person in that area, but I can certainly tell you that it's a broad base of public opinion. As such, I think we have here now an attempt to go right down the same smear tactic.

I can tell this committee...and I would hope most committee members here would state the obvious. I would not say anything in committee that I would not say outside the committee. I would not abuse parliamentary privilege by not having the courage to say something outside the parliamentary precinct under parliamentary privilege that I would not say inside it. When you do that you void your responsibility as a citizen of Canada for telling the truth and not trying to abuse the system. That, unfortunately, is what Mr. Holland is doing here.

I have two quick questions, gentlemen, to get right to the crux of this.

Mr. Kirkpatrick, I believe the facts are clear, but could you tell me, sir, did the democratically elected Ottawa City Council vote against the light rail contract?

**Mr. Kent Kirkpatrick:** The simple answer to that, Madam Chair, is no, they did not.

On December 6, 2006, they voted first to confirm, and directed the approval of the north-south light rail agreement project. They then moved further to that to direct me to negotiate with the consortium intended adjustments to the downtown scope. Then they further directed me to work with the federal and provincial governments under the terms of the existing contribution agreement, which clearly stated that it would require the approval of the federal and provincial governments to make any of those intended scope changes.

**Mr. Daryl Kramp:** In other words, obviously, the council did not table this, but they've said it's a work ongoing.

**The Chair:** Your five minutes are up. Thank you, Mr. Kramp.

Madame Bourgeois.

[*Translation*]

**Ms. Diane Bourgeois:** Thank you, Madam Chair.

For my part, I agree with Mr. Kramp that this is a sad situation. Yes, it is really sad. The minister, who was president of Treasury Board at that time, made an unfortunate decision and that leaves a bad impression. However, I believe that the minister should have been aware. He is surrounded by people who, in theory, advise him and help him carry out his departmental responsibilities.

I think that the minister showed complete disrespect for the city, which is a separate entity. He was not careful, nor was he transparent. He spoke out during a municipal election campaign. If it was an error in judgment, we could forgive him because he is young and he was a newly appointed minister, but we cannot extend that to his staff. The new council had approved light rail. Moreover, there was a condition under which the project would go forward if the new council approved it. This is a sad situation and it leaves an unfortunate impression.

The city has a right to municipal independence. In Quebec, we really insist on our independence, precisely so that we will not find ourselves stuck in a process like the one the City of Ottawa is

unfortunately currently embroiled in. We tell ourselves that if we are dealing with only one level of government, we will be able to come to an agreement, but that would not be possible if there are two. Having said that, I think that the minister simply engaged in petty politics at a time when there was a municipal election. I find that unfortunate for the people of Ottawa. But it is crystal clear: the minister is responsible and he should not have done what he did.

•(1010)

**The Chair:** Thank you, Ms. Bourgeois.

[*English*]

We will now go to Mr. Angus.

**Mr. Charlie Angus:** Thank you, Madam Chair.

I would like to continue trying to get a clear sense of timelines so we can get a better understanding of what happened here.

On October 10, 2006—where we left off—Mr. Baird went to the media to announce that what he had found in the contract gave him the power to override the agreement. Did he ask any questions of city officials before going to the media? Did he ask for any clarifications? Were there any discussions between Mr. Baird and the city before he went and announced his decision in the media?

**Mr. Kent Kirkpatrick:** Through you, Madam Chair, the answer is no.

**Mr. Charlie Angus:** Okay.

I've read what was provided to us, and I'm looking at a memo by you, Mr. Chartrand, dated October 26, concerning what this contract provision allowed for and didn't allow for. In your memo to city officials you said that

The right to extend the closing date is expressly reserved for the benefit of the two parties to the Project Agreement. It was not designed to give the Treasury Board the right to delay the closing date for the purpose of allowing the new Council to revisit the decision of the existing Council. [...] Neither of the parties to the contract would be able to use the extension clause in the way that Treasury Board is using it. The extension clauses are being used for a purpose that was not envisioned in the contract.

Again, were you surprised by this extraordinary interference in the contract by John Baird in the middle of an election campaign?

**Mr. Réjean Chartrand:** As we've stated before, yes, this was unexpected and unanticipated.

**Mr. Charlie Angus:** Going back to the timelines again—because Mr. Moore was so good to bring forward the letter from Mr. Hunter of August 2006, where he certainly was raising questions about this project—Mr. Baird has called the project a boondoggle.

On October 3, the Canadian Public Procurement Council announced its winners for procurement projects across Canada, and the Ottawa light rail project was announced as the winner. On that very same day, John Baird was putting up the red light because he had serious concerns about this so-called boondoggle.

How could this project have won a national award for procurements if it was such an outrageous boondoggle necessitating the personal intervention of a minister in the middle of a municipal election?

**Mr. Réjean Chartrand:** Well, as we've stated before, from the city's perspective, we certainly believed we had met all of the requirements. This was not a project that came forward at the last minute; there were years of planning behind this project, and numerous council approvals throughout those many years. There were exhaustive environmental assessment studies carried out, both by the Province of Ontario and the federal government. Transport Canada had required the city to do a very detailed business case to prove ridership and value for money. All of those studies had been completed and approved. So from the city's perspective, we had done everything we could to meet the requirements under the memorandum of understanding, and we qualified for the \$200 million.

**Mr. Charlie Angus:** Now, it's my understanding that Siemens—though they're not here to speak for themselves—met with Mr. Baird and warned him there would be cost overruns if he intervened in the contract this way. The city was certainly concerned about the financial penalties they would face from this intervention.

The reason given for this intervention was that the government was concerned about cost overruns. But did this become a self-fulfilling prophecy at the end of the day? Has the city been faced with higher financial penalties because of this interference?

•(1015)

**Mr. Kent Kirkpatrick:** Chair, as I indicated earlier, I'd refrain from speaking to a potential result, but I would go back and say we did indicate publicly that there would be a potential for impacts on the costs of the project should it be delayed beyond its October 5 signing.

People may wonder how that can be the case when we had a fixed-price contract, as we've indicated. The issue is that the contract was a fixed-price contract, but were it to be delayed beyond October 15 there was the potential of significant logistical construction season issues that would bring significant cost pressure to bear on the consortium living within the contract. That of course in the end does result in impacts in terms of negotiated change orders and everything else through the life of a contract.

More importantly, what was missing, I think, is that within that budget, \$90 million—and this was the only risk to the city within this whole project budget, as we were taking the risk of utility locations, which were estimated to be in the order of \$40 million to \$50 million downtown—there were significant logistical issues, construction season issues, in terms of our ability, working with Bell Canada and the other utilities, to make those utility relocations happen in the sequence in which they needed to happen in order not to impact the timeline the consortium had the right to expect in terms of moving in and doing their construction.

So to the extent that utility relocation might be deferred, there could have been a significant impact on the overall project, and pieces of it that we, the city, did hold the risk for. That is what was being referred to in Mr. Chartrand's memos and other discussions in October about potential for cost impacts, cost overruns, if the decision to move forward with the project was delayed significantly.

**The Chair:** Thank you very much.

Mr. Warkentin.

**Mr. Chris Warkentin (Peace River, CPC):** Thank you very much.

I'd like to continue with regard to the issue of cost overruns if there was delay beyond the October 15 date. Some media have even indicated or speculated that the amount could be in the area of \$65 million. But Mr. Chartrand, weeks before the election you presented before Ottawa City Council, on October 11, and in your words, you said that if the decision was deferred for the new council to make, there'd be "little exposure to the city".

In other words, there really wasn't a \$65 million penalty if that decision was deferred for the new council. Your testimony was clear in terms of the words "very little exposure". I'm wondering if you could speak about what you were providing in testimony that assured you there'd be little exposure.

**Mr. Réjean Chartrand:** There were a lot of discussions about the \$65 million to \$80 million exposure if the contract was not executed prior to the deadline—

**Mr. Chris Warkentin:** And by "deadline", are you speaking about the December 15 date or are you speaking about the October 15 date?

**Mr. Réjean Chartrand:** The October 15 date was the date we had committed to the contractor for and to secure all the approvals. As we've explained before, we had negotiated some ability to what I would call "clean up the paperwork", both on the contribution agreement and on the property acquisition, and mostly on the property acquisition, which the city could have waived. Right.

**Mr. Chris Warkentin:** So specifically, deferment by Treasury Board allowed the city to have those additional weeks to make the decision and to ensure the new council was onside. That's my understanding, and that was the provision granted to the city and the opportunity for the citizens of Ottawa to have their say.

Mr. Kirkpatrick, you talked about the vote on December 6. I'm wondering if you could speak to the outcome of the December 14 decision. My understanding is that the decision of council was to kill the project, effectively, by what was voted on on that date. Is that accurate?

**Mr. Kent Kirkpatrick:** The decision on the 14th was to not complete financial closure to the contract, to execute the contract, and that decision was fundamentally based on the fact that on that date we only had one signed contribution agreement from a senior government. That was from the provincial government. In the absence of a signed contribution agreement from the federal government, the city could not take the risk of finalizing that contract.

•(1020)

**Mr. Chris Warkentin:** The city council effectively killed it, then, on December 14.

There is a difference between cost overruns and penalties. These are two different things. In terms of the testimony provided so far, if the decision had been deferred until December 15, what would the penalties have been? Are we talking about \$65 million?

**Mr. Kent Kirkpatrick:** No, the contract did not provide for penalties. We were talking about potential cost overruns only.

**Mr. Chris Warkentin:** Okay, so there would be no penalties if the decision had been deferred for the new city council to render their decision.

I guess maybe I'm asking confidential information about the contract—

**Mr. Kent Kirkpatrick:** No, the contract did not provide for penalties in that sense, but the numbers we referred to earlier were the potentials for cost overruns, cost pressure, both to the consortium and to the city.

**Mr. Chris Warkentin:** My understanding is that originally when the project was conceived they were looking at an amount of \$500 million. Is that correct? Was that the number originally speculated?

**Mr. Kent Kirkpatrick:** Madam Chair, through you, I would need to know what point in time the honourable member is referring to. As Mr. Chartrand indicated, this project went through years of planning. There were conceptual estimates made at many times throughout the process. As Mr. Chartrand indicated earlier, in the end the final budget estimate that council had approved for the project was in the order of \$730 million, and as Mr. Chartrand indicated, we were close to that in terms of the final price of the base LRT contract that was recommended to council.

**Mr. Chris Warkentin:** In terms of the contract, as it is still secret—

**The Chair:** Mr. Warkentin, your five minutes are up, and I've been very strict with everyone.

We'll go with Mr. Holland.

**Mr. Mark Holland:** Thank you, Madam Chair.

We know the Privacy Commissioner in fact was never called in on this matter. The Ethics Commissioner, now we are learning, did not even talk to any of the key individuals involved with this affair. And thirdly, the reason the matter was referred by the public accounts committee to this committee was because this is the appropriate committee to deal with it.

What we have also learned from Mr. Moore is an agreement that this was in fact a political decision. It was political interference. We're left with one of two conclusions from that. The first one is Mr. Baird's explanation that it was a boondoggle. But this is a project that received a national award for procurement. It was approved by seven federal departments under the current government. It was approved by the Treasury Board president himself and by Treasury Board. It was approved by the provincial government. So we can accept that conclusion, which is very hard to believe, given all of that, or that Mr. Baird wanted to interfere in a municipal election.

Those are the questions I'm asking. I ask them here. I ask them outside the House. I ask them in committee and I ask them outside committee, because they are important questions.

Mr. Kirkpatrick, on December 6, 2006, there was a vote by Ottawa's newly elected council that affirmed its support for the federal contribution agreement for the LRT contract to go forward. I'm just wondering if you can take us through some of the details surrounding this decision. You confirmed that it was Treasury Board's decision not to sign the contribution agreement made by the

December 14, 2006 deadline, which led the city to terminate its contact with Siemens-PCL/Dufferin.

**Mr. Kent Kirkpatrick:** Through you, Madam Chair, the decision by the council on December 6 is best referenced in terms of the wording of the resolution that they passed. It was a multi-part resolution. The first part of it, as I said, spoke to meeting the condition that the Treasury Board had set for the existing project and the condition to get the contribution agreement from the federal government, which was to reaffirm support for the north-south LRT project. And the first part of that resolution did that.

The resolution then went on to say furthermore that the city was interested in making scope changes to the downtown portion of the project. The motion directed me and the mayor to negotiate with the consortium for scope changes and adjustments to the contract price as a result. It then went on to say furthermore that I'd be directed to negotiate approval from the federal and provincial governments under the terms of the existing contribution agreement, which specifically stated that significant scope changes would require the approval of both the federal and provincial governments and could not be made unilaterally by the city. Council was aware of that when they passed the first part of the resolution, which was to reaffirm commitment to the north-south LRT project under the existing contribution agreement.

In other words, it was the decision of council to approve the project, unamended, and then to state the intent to go to seek from the consortium a fair credit to the project for scope changes and to go to seek approval from the federal and provincial governments for those scope changes, recognizing that this was within the control of both the provincial and federal governments independently to agree to that or not.

• (1025)

**Mr. Wayne Wouters:** Can I just make a point again, Madam Chair, for clarification?

As I indicated, the Treasury Board decision authorized the Minister of Transport to enter into a contribution agreement, so it was up to the Minister of Transport to make that determination as to the scope of the project and whether the scope of the project had changed significantly to allow the Minister of Transport to go forward. That was the decision of the board: to give the authority to the Minister of Transport to proceed.

**Mr. Mark Holland:** Mr. Kirkpatrick, can you confirm that Ontario did in fact sign the contribution agreement on December 14, 2006, and that this was achieved because it was not a new project?

Just to be clear on this, what I'm trying to establish is that the light rail project would have proceeded had Minister Baird agreed to honour his word that the newly elected council's vote was all that was needed for the federal government to sign the contribution agreement.

**Mr. Kent Kirkpatrick:** Madam Chair, through you, as Mr. Wouters just said, it was at that time the decision of Minister Cannon to execute the contribution agreement under the authority that had been delegated to him by Treasury Board.

**Mr. Mark Holland:** To Mr. Wouters, if the decision was Minister Cannon's, on December 16, 2006, why was the letter then written by the Treasury Board president?

**Mr. Wayne Wouters:** Sorry...?

**Mr. Mark Holland:** If the decision was Minister Cannon's, why on December 12, 2006, was the letter written by the Treasury Board president, Mr. Baird?

**Mr. Wayne Wouters:** I can't speak for that letter. All I can say is that government often decides which minister should communicate on behalf of the government, and often it is the regional minister that does so.

**The Chair:** Thank you very much.

We will go to Mr. Albrecht.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Thank you, Madam Chair.

I would like to just read something into the record, and then I have a question if my time allows me.

There have been a number of questions today regarding the letter from the Ethics Commissioner. I just want to read a letter to the honourable Navdeep Bains dated November 22:

Dear Mr. Bains:

Further to your letters of October 18 and 31, 2006, I have considered your request to conduct an investigation into the conduct of the Honourable John Baird, President of the Treasury Board, on the alleged improper release of certain information to the media on the Ottawa North-South light rail project.

He goes on to say that:

The sections in the POH Code that you cited are related to the impropriety of a public office holder acting in a way that would inappropriately advance his or her own private interests or those of another person. The information you have provided in support of your allegations identifies the interest of Minister Baird as "political interest". While the circumstances in a case may support a conclusion that an individual's political interest is also a private interest, for example, a Minister participating in a leadership campaign, this does not always hold true. In the present case, at least based on the information you provided, I am unable to conclude that there are reasonable grounds for believing that Minister Baird improperly furthered his or another person's private interest.

[...]

On the basis of the information you have provided in support of your request for an inquiry, I am unable to conclude, on reasonable grounds, that the POH Code applies to the allegations contained in your letters. Accordingly, please be advised that no examination of the events in question will be initiated.

Cordially, Bernard J. Shapiro, Ethics Commissioner.

I think that clarifies the fact that the Ethics Commissioner has in fact weighed in on this question.

The other point I'd like to come back to just for a moment is this question around the issue of penalties. It appears to me that at one point in October, there was some pressure exerted by council, or the previous mayor, on the federal government to sign by the middle of October or in fact there would be penalties forthcoming. But later Mr. Chartrand corrected the record, indicating that in fact the prices would remain in effect until December 14, in his statement in which he said there would be little exposure.

Mr. Kirkpatrick, you identified the fact that the 60-day extension wasn't the intent of the clause that was there. That may or may not be true, but it's hard for us at this point in history to determine what the intent was. The fact is that it was there. It was in the clause.

It seems strange to me that a council—which was very much aware that a municipal election was forthcoming and the date of that

election—and the Ottawa LRT corporation, which was also very much aware of an impending municipal election, would not be more careful in articulating those possible extensions with the impending elections coming up. I find it confusing, trying to understand how these two groups with that kind of expertise and knowledge of the municipal process would not in fact have closed that door more securely if that was not their intent.

• (1030)

**Mr. Kent Kirkpatrick:** Through you, Madam Chair, could I confirm that this was a question?

**Mr. Harold Albrecht:** I would like you to confirm that you were aware and that council was very much aware that there was going to be an election, and then you do have this opening of an election.

**Mr. Kent Kirkpatrick:** Madam Chair, of course senior city staff and members of council were aware that there was an impending election.

In response, because we were part of the negotiations, I can tell you what the intent of those clauses were. It is exactly as I said earlier. They were there to allow for any procedural issues required in getting the pieces done for financial closure. The most significant of those were the contribution agreements from the two senior governments to ensure that the \$400 million was contractually committed to.

Why were city officials and the consortium not concerned about that clause and the potential extension and impact in the context of a municipal election? I'd say it never dawned on us, because as we said earlier, the issue was whether we met all the conditions of the senior governments in terms of pursuing the approval of this project, which we did. And as I think we have said many times now, it was unanticipated, and we were surprised, that the issue of whether the existing council, who had made the decisions about this being a top transportation project for this city and how to go about procuring this, and who made the decision to award the contract under the procurement process, would ever be reconsidered as part of another council reaffirmation.

I can tell you, that context was never considered in the construction of the contract. Therefore, I remain very clear in stating that the intent of those clauses was not to allow for a period of time for this decision to be revisited after a municipal election. It was there to allow, under the intent and obligations of that contract, for process and procedural issues to bring financial closure.

**The Chair:** Thank you very much.

Madame Folco.

[Translation]

**Ms. Raymonde Folco:** Thank you, Madam Chair.

[English]

Minister Baird stated that he had been lied to after reading the contract concerning the closing date. I will ask Mr. Wouters whether that was Treasury Board's opinion, that they'd been lied to.

**Mr. Wayne Wouters:** Again, I can't comment on any discussion or deliberations of the cabinet committee of the Treasury Board. The only....

**Ms. Raymonde Folco:** Thank you. I thought you might go on.

Could I ask Mr. Kirkpatrick whether he felt that the City of Ottawa had been lied to?

**Mr. Kent Kirkpatrick:** Madam Chair, I'm not sure I understand the question—that the City of Ottawa had been lied to?

**Ms. Raymonde Folco:** Yes, that the City of Ottawa had been deceived, rather than lied to, as to the closing dates.

• (1035)

**Mr. Kent Kirkpatrick:** No, Chair. It's my opinion that the City of Ottawa was always forthwith in terms of what it said about the issues of timelines in the contract, the intent of those timelines, and any potential extensions to them.

**Mr. Wayne Wouters:** For further clarification, I can comment that in reviewing the contract, the Treasury Board Secretariat came to the view that there were no penalties, no additional costs would be incurred if there was delay up to December 15 in signing, and that there were no additional penalties in the contract per se. That was the secretariat's assessment of the contract when we reviewed it.

**Ms. Raymonde Folco:** I have another question for you, Mr. Wouters. What is the current status of the \$200-million allocation in CSIF funding for the City of Ottawa? Is this funding still tied to the 2005 MOU signed by the three levels of government?

**Mr. Wayne Wouters:** I can't comment on the specifics of this, Madam Chair. I know that the \$200 million is still available for projects for the City of Ottawa, but how that relates back to the MOU, I really can't comment. That would be something that the Minister of Transport or the Department of Transport would have the details on, or perhaps the City of Ottawa could provide the information.

**Ms. Raymonde Folco:** Could I ask a follow-up question to Mr. Kirkpatrick please?

**Mr. Kent Kirkpatrick:** As Mr. Wouters indicated, I could add some context to that. That MOU for the north-south LRT project expired on December 31, 2006.

**Ms. Raymonde Folco:** In 2006. Thank you.

Does the \$30 million for the Strandherd bridge, announced on November 26, 2007, by Treasury Board Parliamentary Secretary Pierre Poilievre on behalf of the federal government, qualify for the funding, Mr. Wouters?

**Mr. Wayne Wouters:** Again, I'm not aware of that project, Madam Chair. I can't comment on whether that project would qualify for funding under the Canada Strategic Infrastructure Fund or not.

**Ms. Raymonde Folco:** Mr. Kirkpatrick.

**Mr. Kent Kirkpatrick:** Again, Madam Chair, through you, I can indicate only that in recent discussions with senior staff of Transport Canada they indicated to us that \$200 million is still available for application from the City of Ottawa subject to a \$30 million or \$35 million reduction for the Strandherd-Armstrong Bridge.

**Ms. Raymonde Folco:** The time that is left for me, Madame Chair, I'd like to share with my colleague, Mr. Holland.

**The Chair:** Yes, there is a minute left, Mr. Holland.

**Mr. Mark Holland:** One of the things that we discussed earlier was that a copy of the contract was provided to Minister Baird and only Minister Baird. In fact we know he was acting without Treasury Board advice. It was provided to him on the condition of confidentiality, and he broke that confidentiality. So it brings me to the next question. When he broke that confidentiality, he went on to state on that same date that the contract's closing date could be delayed until December 15, 2006, and I quote, "without any penalty, without any cost". That's part of what he was leaking to the media. I'm wondering if he misrepresented that.

Mr. Kirkpatrick, was that an accurate statement made by Mr. Baird at that time?

**Mr. Kent Kirkpatrick:** One moment please, Madam Chair.

I'm sorry, Madam Chair, but after consultation with counsel here I think I would choose not to answer that question. It could have some bearing on our future issues.

**Mr. Mark Holland:** I'll go back to Mr. Wouters just to confirm that you were not apprised prior to the release that Minister Baird intended to release portions of this contract to the local media. Just confirm that you were not aware of that.

**Mr. Wayne Wouters:** No.

**The Chair:** Thank you, Mr. Holland.

Mr. Brown.

**Mr. Patrick Brown (Barrie, CPC):** Thank you, Ms. Marleau.

Mr. Holland is contending that the decision of the federal government to approve funding and provide time to allow the new council to vote on this is an issue of political interference. The Ontario government, as has been discussed, sent a letter to the City of Ottawa three days prior to the municipal election stating that the provincial funds would be reconsidered if the project was changed. The letter was given out widely to the press by the former mayor.

Now, given that the three other candidates for mayor were all proposing major changes to the project, with the exception of the incumbent mayor, and given that the mayor's campaign adviser is the brother of the premier, would you view the action by the provincial government as political interference? I ask that because the *Ottawa Citizen* said the following in referring to the provincial government's actions:

Mr. McGuinty's statement reinforces the message in a letter sent from Carol Layton, deputy minister of provincial infrastructure renewal, to Ottawa's city manager Kent Kirkpatrick. The letter was sent last week, during former mayor Bob Chiarelli's push to win the election after the polls showed his support sinking.

I ask again if it was political interference on behalf of the provincial government.

•(1040)

**Mr. Kent Kirkpatrick:** Madam Chair, through you to the honourable member, I don't think it's my place to determine whether that was political interference, just as it's not my place to determine whether the matter that's in front of this committee was political interference.

**Mr. Patrick Brown:** Mr. Wouters, would you view this as interference by the provincial government?

**Mr. Wayne Wouters:** I'm not going to comment on actions taken or positions taken by another government.

**Mr. Patrick Brown:** I find this whole line of questioning odd that we are discussing an Ottawa matter. I was on Barrie's city council for five years, and I know Mr. Holland was a member of his civic council, and if someone got involved in a local issue we'd be disappointed to see interference. So to see a Toronto MP get involved in a matter of Ottawa is odd. I hope we can move away from this waste of valuable government time and focus on some of the many issues we have in the government operations committee.

I don't think we've been productive, and unfortunately I feel this has been very much a partisan session today, not based on what this committee needs to focus on. But if there's additional time available, Mr. Moore, do you have any other questions?

**Mr. James Moore:** Are we out of time?

It's good that we've limited this subject down to one committee meeting, because it's fizzling very quickly.

Your interventions have been impressive, but with Mr. Holland, it seems like it doesn't matter what has been said at this committee, he's going to keep raising allegations. We can try to defend them, but I would repeat the four key elements, and it's been reaffirmed by the witnesses here again and again. The Ethics Commissioner said that Minister Baird did absolutely nothing inappropriate here. The secretariat for the Treasury Board said all the rules were followed and there was no inappropriate behaviour whatsoever. The newly elected council and the people of Ottawa had their say, and their views have been respected on this matter.

The money that was committed to light rail is still on the table for another project that will come forward. All the rules were followed; everything has been appropriate. I guess Mr. Holland has another couple of minutes now to continue his fishing expedition, but in fact nothing inappropriate happened here, and this is a swing and a miss.

**The Chair:** I know there's a lot of interest on this subject, and I'm at the bottom of the list for speakers, but if there are others who wish to ask questions, I will entertain that in a balanced fashion.

Mr. Angus, Madame Bourgeois, then Mr. Holland.

Mr. Angus.

**Mr. Charlie Angus:** Thank you.

I'm going to go back in time to October 10, 2006, and a city memo to mayor and council stating:

First let me emphasize that I regret that Mr. Baird did not raise these questions around the December 15th clauses in the contract directly with the City, but instead chose again to go to the media.

It goes on to say that if he had contacted the city, the city would have explained the problems with his interpretation of the contract. It further states:

The media transcripts indicate that Minister Baird has decided to apply the provisions for financial close for use never contemplated and that does not relate to the high-level due diligence review we understood from last week's media transcripts that Treasury Board was undertaking before final approval for their contribution to this project.

Mr. Wouters, why did the Treasury Board not bother to speak with the city about this contract before your minister told the public and the media what was in the contract?

•(1045)

**Mr. Wayne Wouters:** In fact, Madam Chair, I did write Mr. Kirkpatrick and provided him with the decision of the Treasury Board, including our assessment of whether there were penalties in the agreement or not.

**Mr. Charlie Angus:** I'm not interested in your decision. I'm interested in why you didn't discuss with them before Mr. Baird went public.

**Mr. Wayne Wouters:** Again, the Treasury Board Secretariat is not the main proponent of the project.

**Mr. Charlie Angus:** At this point, they certainly are. With all due respect, sir, they interfered in this project. They did not bother to even speak with the city. At that point you were the lead hand on that project, so why did you not speak with the city before your minister went and told the media what was in that contract, and basically dropped the cluster bomb in the middle of that election?

**Mr. Wayne Wouters:** I was not the lead hand on this project.

**Mr. Charlie Angus:** Well, apparently you were.

**Mr. Wayne Wouters:** The secretariat has a very specific role as the board. I've outlined what that role was. As I indicated, the Treasury Board provided authority to the Minister of Transport and the Department of Transport to enter into the contract agreement.

**Mr. Charlie Angus:** Mr. Wouters, seven federal departments signed off on that agreement. Treasury Board stepped in, asked to see that contract, did not ask questions of the city, and then went public. At that point Treasury Board became the lead hand on that project. So why did Treasury Board not do its own due diligence and speak with the city to talk about the issues surrounding the contract before taking the matter public?

**Mr. Wayne Wouters:** Again, at no point did I say that Treasury Board asked for a copy of the contract. I was made aware by the president that he had a copy of the contract.

**Mr. Charlie Angus:** Excuse me, so Treasury Board did not ask. The minister asked for his own personal copy of the contract.

**Mr. Wayne Wouters:** I didn't say whether the Treasury Board did or did not, because I cannot comment here on any deliberations of the Treasury Board.

**Mr. Charlie Angus:** But you understand the minister had a copy of the contract. You're not saying whether or not you had a copy of the contract.

**Mr. Wayne Wouters:** I did not have a copy of the contract. I've never seen the contract.

**Mr. Charlie Angus:** That's quite the cowboy way of doing business, don't you think?

**Mr. Wayne Wouters:** The minister received a copy of the contract. Our legal advisers reviewed the contract. On that basis we made a determination vis-à-vis particular penalties that are in the contract, and I made the city aware of that as well in my letter of October 10.

**Mr. Charlie Angus:** So, Mr. Kirkpatrick, Treasury Board did not have a copy of the contract. Minister John Baird had a copy of the contract. Minister John Baird did not bother to discuss the fine details of this contract before he went to the media, even though there would be severe legal issues in the fact that your department had already raised the issue with him in writing that there were confidentiality agreements tied to this and that the federal government had not been part of anything to do with the contract before.

Mr. Baird made no attempt to discuss with you before he went to the media?

**Mr. Kent Kirkpatrick:** Madam Chair, again, in response to the same question, no, there was no contact made in the intervening period in terms of when we provided the contract and when we received the decision in writing from Mr. Wouters and heard about the Treasury Board's decision through the media from Minister Baird.

**Mr. Charlie Angus:** Thank you.

**The Chair:** Now we will go to Madame Bourgeois.

[*Translation*]

**Ms. Diane Bourgeois:** Madam Chair, I want to come back to the Ethics Commissioner's position. It makes me laugh to hear that the Ethics Commissioner said that the minister was not advancing his own interests. You know that from the outset here, we did not appreciate the mandate that was given to the Ethics Commissioner. Moreover, the response is broad, it is general.

**The Chair:** Ms. Bourgeois, in order to judge a case, the Ethics Commissioner bases his opinion on the code that applies to the person in place. Mr. Tardi could perhaps talk a little bit about that.

**Mr. Gregory Tardi (Parliamentary Counsel (Legal), House of Commons):** Madam Chair, raising an ethical issue implies that the Ethics Commissioner puts the complaint he has received and the code that he has to interpret, or that he had at that time, side-by-side. I do not know if we can deduce from that that every aspect of a situation is studied by the Ethics Commissioner. The role of the commissioner is determined by the legislation that governs his mandate.

•(1050)

**Ms. Diane Bourgeois:** You say that it is not clear if every aspect is studied or assessed by the Ethics Commissioner, but that may also be due to the request that is being made of the Ethics Commissioner.

**Mr. Gregory Tardi:** Indeed.

**Ms. Diane Bourgeois:** On the one hand, we are not aware of the topic of the request; I have not seen that letter nor have I seen the request. On the other hand, the Ethics Commissioner may give a rather general response that does not necessarily deal with very specific points. In this case, I did not see it, but according to the letter that was just read out...

Madam Chair, I repeat, I want the documents translated and in written form, because I am a very visual person.

I understood sir, that the commissioner said that the minister did not advance his own interests. That tells us nothing. What were the minister's interests at that point in time? We are not in a position to assess the situation.

Having said that, I do not want to go on and on about it. I think there are some well-known strategies in politics whereby you create first of all a diversion when something does not suit you, and following that you ensure that there are leaks to the newspapers. In that way, you carry out a preemptive strike. What we say in Quebec is you bite before you are bitten.

Here, the minister struck first in the sense that he wanted to show that he was defending the interests of the people whereas at the same time there was a conflict between his department, the Treasury Board, and the Department of Transport. In my opinion, it was Mr. Cannon, or the Minister of Transport at the time, who should have withdrawn the \$200 million in funding from the city, and not Mr. Baird.

What disappoints me in all of this, gentlemen, is that they're trying to make the municipality and the members of the municipal council accountable for the failed project. I find that most unfortunate. We interfered in municipal affairs, we undermined the work of municipal officials who are supposed to know what they are doing, who are paid by citizens to get municipal projects underway. They work for the municipality and for their electors. We have no business interfering in these people's business. I find it deplorable, and even more so as this happened at a bad time. It is unfortunate.

Thank you.

**The Chair:** Thank you, Ms. Bourgeois.

Mr. Holland.

[*English*]

**Mr. Mark Holland:** Thank you, Mrs. Chair.

Perhaps if the members opposite, instead of just making statements and reading off talking points that they brought in before the meeting about the reasons why this matter should be dismissed, were listening to the questions that were posed by the opposition members and the answers given...because I am actually left with the opposite conclusion. I'm much more concerned about this matter now than I was going into it. Certainly I will be seeking the committee to continue hearings on this matter, and will be bringing forward a motion in that respect.

Turning to Mr. Brown's point, I agree with him. When I was on municipal council, I had a great deal of concern if another level of government were to try to interfere. Particularly in a project where the basis for the interference was to try to change the outcome of who was going to be elected, I would be very concerned. If a minister were trying to use his powers to influence the outcome of an election, I agree, I'd be very concerned.

**Mr. James Moore:** You have no evidence of that.

**Mr. Mark Holland:** In that regard—and this is what we're trying to find out here—I want to go back to Mr. Wouters.

Given that both the City of Ottawa and Siemens/PCL/Dufferin cite Treasury Board's intervention into the LRT project as grounds for their inability to fulfill their contractual obligations, and given that Siemens, for example, characterized as unlawful Minister Baird's decision to extend the closing date by withholding approval until a newly elected council—which is, again, an unprecedented action—could vote to approve the project, and that it “constitutes a tortious interference with the plaintiff's economic interests”, has Treasury Board assessed the federal government's exposure should either party file a third-party statement of claim?

**Mr. Wayne Wouters:** Again, I don't think I can get into those details vis-à-vis the current claim. That is now subject to a legal dispute, so I do not want to comment on that.

**Mr. Mark Holland:** But could you simply state whether or not you've assessed that? I'm not asking you for the outcome of it. Have you assessed it?

• (1055)

**Mr. Wayne Wouters:** Madam Chair, I'm not prepared to comment on any aspect of those particular accusations.

**The Chair:** I agree with you, Mr. Wouters. I don't think you should be made to answer those questions.

**Mr. Mark Holland:** Okay.

Perhaps, Mr. Wouters, you could tell me who, if anybody, in Treasury Board advised Minister Baird with respect to his interpretation of clause 6.1.7 on the extension of the closing date of the contract. Did you or anybody else advise him on his interpretation? Because that's obviously very much in dispute.

**Mr. Wayne Wouters:** Again, we had our lawyers, who are lawyers with the Department of Justice, review the contract. They provided us with their advice and we made the determination. You're referring to a certain clause, and I'm not going to comment on a specific clause.

We made the determination that while it didn't state December 15, if you read through the contract there would not be any additional costs as applied to the contract. Now, there were comments made by the city about other costs—the cost escalation of the project—but as applied to the contract, if that decision was not made until the December 15 date....

**Mr. Mark Holland:** Well, to Mr. Kirkpatrick, this is a critical point. I mean, the confidentiality agreement was broken. Maybe I can ask you if the City of Ottawa was asked to confirm Minister Baird's interpretation of clause 6.1.7. Was there any consultation with the city to confirm the clause before he made the statement he did?

**Mr. Kent Kirkpatrick:** Through you, Madam Chair, just to clarify, the confirmation was asked for by whom?

**Mr. Mark Holland:** You may recall that Minister Baird said that the contract would be extended because of clause 6.1.7. My question is with regard to the consultation. Obviously you more than anybody else, and Siemens, would know this contract. Presumably any intelligent minister would have approached you beforehand to confirm that a clause could actually be used to extend a contract.

So before he made a public declaration that the clause could be used to extend, was there any consultation with you, who had been working on this project over all this period of time?

**Mr. Kent Kirkpatrick:** Madam Chair, no. There was no consultation, as I indicated earlier, between that period of time of when we forwarded the contract and when we were advised of the decision of Treasury Board and heard about the interpretation of the contract, through the media, by Minister Baird.

**Mr. Mark Holland:** I would ask that question of Siemens, but of course they're not here.

To Mr. Wouters, can you confirm whether or not Mr. Baird was briefed on the internal review that Treasury Board performed? Was he ever briefed on that?

**Mr. Wayne Wouters:** Madam Chair, when the honourable member says “internal” review, I assume he's referring to the review of the contract that was provided to the minister.

Madam Chair, yes, we did brief the minister on the review we undertook and the determination we made.

**The Chair:** I think we are out of time. It's 11 o'clock.

Before you go, Madame Faille has requested a short question.

Is it a question of the committee and not of the witnesses?

[Translation]

**Ms. Meili Faille (Vaudreuil-Soulanges, BQ):** I see it is late and I would like the clerk to give me some clarification before the end of the meeting.

We agreed before the break that we would be kept informed of Mr. Soudas' appearance next Thursday. I would just like to be informed of the procedure.

**The Chair:** I will ask the clerk to answer your question, given that he is working on that file.

**The Clerk:** I tried to reach Mr. Soudas several times, particularly yesterday morning and this morning. I left a message on his voice mail. However, I have received no call back from him nor any answer to my e-mail. The last conversation I had with him was on Wednesday, February 13, at 12:41 p.m. He told me that he could not yet confirm his presence for Thursday, February 28, but that he could make himself available if the other witnesses were. I have not had any news since that day.

**Ms. Meili Faille:** During our last meeting, we had said that if it was a problem getting this person to appear, we would proceed in a

more official manner. I would simply like to know what we are doing in this regard.

**The Chair:** Thank you, Ms. Faille.

*[English]*

I thank our witnesses very much for coming forward. I think we have shed some light on some of these issues. Have a good day.

I'm going to close the meeting now.

---







**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliament of Canada Web Site at the following address:  
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**