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Chair

Mr. Paul Szabo

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Standing Committee on Access to Information, Privacy and Ethics

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• (1540)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order. This is the fifth meeting of the Standing Committee on Access to Information, Privacy and Ethics.

We have two orders of business. I have been advised by Mr. Walsh that he is aware of the other business we have carried forward from our last meeting, and he is available to be called to appear should he be necessary.

The order of the day is the motion by Madam Freeman, which has received the necessary notice of the committee. The motion has been circulated in both official languages to all honourable members, so I don't believe it's necessary to read it into the record.

Madam Freeman, are you prepared now to move your motion?

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Mr. Chair, I'm sorry to interrupt, but I'm wondering about this. I saw the agenda that you had prepared. Would it be more beneficial to hear from Mr. Walsh before we deal with the motion? Would anything he would have to say to us to any of our questions have any bearing on the debate that we have regarding the motion?

The Chair: I can only speculate, but Madam Freeman's motion was on for Monday's meeting, and with only 48 hours' notice, and it is the right of all honourable members to have their matter dealt with when they're prepared to move it after 48 hours. In addition to that, Mr. Walsh was scheduled to appear after that item in any event, so that point could have been brought up at an earlier time.

The practice is to respect the rights of the members and to deal with unfinished business carried forward from the last meeting. We had a very good meeting with the Privacy Commissioner on Monday, but it did take the entire meeting and we were unable to get to the remaining business, so we have to give the member an opportunity to exercise her right to move the motion. Thank you.

Madam Freeman, have you moved your motion?

[Translation]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Yes.

[English]

The Chair: All right. Perhaps you'd like to speak to it, then.

[Translation]

Mrs. Carole Freeman: Yes, I would like to say a few words about this.

I move this motion because I think it is crucially important. We need to go on with the committee's study on the financing practices of the Conservative Party. I remind the hon. members that in July and August 2008, before the election, the committee sat for six days to hear witnesses on the issue of the election expenses of the Conservatives during the 2005-2006 campaign. The committee heard the chief electoral officer and a few Conservative candidates and organizers. But that study was never completed. Several people refused to appear, and we did not hear the main strategists of the Conservative Party.

We think it is imperative to complete this study and make a report of this issue, so that our efforts are not in vain. We should keep in mind that all the work has been done, and that a report should come out of that. We think this study should be completed because the issue is most serious. The Conservative Party allegedly spent \$700,000 more than it was allowed. For its own interest, the Conservative Party should demonstrate that it does not have anything to hide, especially since it ran on a platform of openness in 2006. It should also be noted that nothing has changed since the last meeting of the committee, in August 2008. The questions that were asked then have still not been answered. We do not know who was responsible for this scheme, how much money was illegally spent and who knew what about it.

Legal proceedings are ongoing, and it is quite possible we will have another general election before we know what happened. Like I said in a previous meeting, this situation is very worrisome, since some people who were involved in this scheme have named by the Prime Minister to public positions. Let me mention among others Michel Rivard, who was called to the Senate on December 22, 2008 and Mr. Irving Gerstein, who was also named a senator on the same date and was until recently the chair of the Conservative Fund Canada. Both he and Mr. Rivard were summoned on July 31, 2008, but both of them refused to appear before the committee.

As a second point, I would like to emphasize the need to take action concerning those who refused to appear. A number of people like candidates, financial agents, and organizers of the Conservative Party who were summoned did not appear before the committee. I think this constitutes contempt of Parliament and its committee et should not go unpunished. If we turn a blind eye to this problem, we will jeopardize our work in the future, since witnesses could duck out as they see fit. The power to compel witnesses to appear is a parliamentary privilege, and it should be respected. We all know that the Conservative Party urged its candidates and organizers to refuse to appear. This is unacceptable.

We suggest that this committee should give these witnesses a last chance to appear because they perhaps did not realize how serious their refusal to obey was. Some of them may have had good reasons not to appear because they were sick or had other reasons, but it would be hard to admit that they all suddenly became sick. If they still refuse to appear, we should take steps to condemn them for contempt.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Madam Freeman.

Just so we are clear, I want to read into the record the motion that was passed by the committee to do this work in the first place. I think it's important we understand what the—

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): We weren't discussing this motion, Mr. Chair.

The Chair: I understand that, but Madam Freeman has made some statements that I believe have gone beyond the scope of what the study was in the first place. I think it sets the committee up for doing much more than the committee in fact undertook to do.

Mr. Russ Hiebert: Mr. Chair, just before you proceed on those lines, based on what you're about to review and based on the history of this issue, I would like to get a ruling from you as to whether this motion is in order.

The Chair: The motion is to resume business from the prior Parliament. It is in order.

This is only four lines long. The motion was:

That the Standing Committee on Access to Information, Privacy and Ethics investigate the actions of the Conservative Party of Canada during the 2006 election, in relation to which Elections Canada has refused to reimburse Conservative candidates for certain election campaign expenses in order to determine

—this is where our mandate comes in—

if these actions meet the ethical standards expected of public office-holders.

Just to remind all honourable members, in the Parliament of Canada Act, a public office-holder is a cabinet minister, a parliamentary secretary, or other order in council appointee.

The reason I wanted to put this into the record is that Madam Freeman raised the question about how we don't know who is responsible, etc. This is going beyond what the committee was doing. It is not our job, not our authority, and not our jurisdiction, and if that is what this motion is intending to do, madam, it would be

totally irrelevant to the debate because it is not within the scope of the work that was being done by the committee.

I want all honourable members to understand that we are dealing with only the ethical standards expected of public office-holders. That's what we were studying: whether or not there are some ways in which we can identify potential changes to the existing conflict of interest guidelines or the code of ethics prescribed for public office-holders as defined.

Please, let's not make this a matter that is related to the jurisdiction of the courts or some other jurisdiction. It is not ours. Our mandate is specified clearly under the Standing Orders. I have here, and would refer members to, meeting 38 in the last Parliament, in which I ruled on the admissibility of the motion in the context of the mandate of the standing committee, as specifically laid out in the last paragraph for our committee in the Standing Orders. Having said that, let's be clear on the scope.

I have a speakers list going. Members, please get the attention of the clerk if you wish to speak. I have four members already: Mr. Hiebert, Mr. Dechert, Mr. Dreeshen, and Mr. Siksay.

Would you like to change that?

• (1545)

Mr. Russ Hiebert: Yes. We'll switch.

The Chair: Okay.

Mr. Dechert, Mr. Hiebert, Mr. Dreeshen, and Mr. Siksay.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

One of the reasons my colleague had suggested we wait for the testimony of the law clerk is that it was our thought that he might help enlighten us as to (a) what the mandate of the committee is in terms of the review of the ethical standards for, as you've pointed out, public office-holders, which is at issue here, and also (b) to address the issue of contempt of Parliament, which is also at issue here. It seems to me that to proceed without the benefit of his advice would be counterproductive. I would suggest to Madam Freeman, if she would agree, that we wait until Mr. Walsh has had an opportunity to testify so we have the benefit of his advice. If that's not acceptable to her, then I would say we will have to vote against this motion at this time.

I can go into greater detail, if you wish, about why I think this motion is not within the purview of this committee, but perhaps Madam Freeman would like to respond before I do that.

The Chair: Okay. I think it's in the interest of the committee to hear from Madam Freeman on that specific question.

[*Translation*]

Mrs. Carole Freeman: I will read my motion into the record:

That the Committee resume the study it began during the Second Session of the Thirty-Ninth Parliament regarding the Conservative Party's election campaign expenses during the 2005-2006 election campaign; that it deem the hearings held during that Parliament to have been held during the Second Session of the Fortieth Parliament;

This is the first part of my motion.

Let me be perfectly clear. This motion says that a committee sat until the month of August and its intent is that we go on with the work and hearings of the committee so that we can write a report on the work that has been done.

The motion also provides:

that the Committee issue notices to appear to all witnesses who did not appear during the study; and that it report its conclusions and recommendations to the House of Commons.

Some witnesses did not appear. Maybe they did not understand that had to, or maybe some of them had good reasons, like sickness, not to come. We want to give them a last chance.

• (1550)

[English]

The Chair: Madame, I think you're going beyond answering Mr. Dechert's question. I think he has asked whether or not you would be prepared to suspend the debate on your motion, pending hearing from Mr. Walsh.

[Translation]

Mrs. Carole Freeman: No, I do not think it is necessary.

[English]

The Chair: Okay, Mr. Dechert, I'll give the floor back to you.

Mr. Bob Dechert: All right. Thank you. It's unfortunate because I think he may have some things to say that may change the way people might view the appropriateness of the study of this particular matter.

In my opinion, it is not within the mandate of this committee to review this matter for the following reasons. One, none of the people identified would have been public office-holders at the time of the events that are under question, including the Conservative party; it's not a public office-holder. I think that you stated earlier, Mr. Chair, what an appropriate definition of public office-holder is and we agree with you. It's a cabinet minister, a secretary of state, a parliamentary secretary, or other order in council appointee.

You also—on June 19, I believe—went on to say that in your view, political parties are not public office-holders and that MPs are not public office-holders. I think you were correct in your interpretation of the mandate of the committee at that time, and I certainly support that and I believe my colleagues on this side of the table do as well.

In addition, if you look at Standing Order 108(3)(h)(vi)... I'll just read the provision. It is that the mandate of this committee include “the proposing, promoting, monitoring and assessing of initiatives which relate to access to information and privacy across all sectors of Canadian society and to ethical standards relating to public office holders”

I believe, as I've stated, that nothing in Ms. Freeman's motion refers to public office-holders. Secondly, I believe the word “and” is instructive in that it is conjunctive and not disjunctive. It would suggest to me that you have to read the ethical standards relating to public office-holders as modifying the preceding part of that phrase. If the drafters of this mandate wished us to review the ethical standards of any public office-holder, regardless of the preceding language, they would have used the word “or”.

I think that's pretty clear. That's a well-understood rule of statutory interpretation.

So that's my primary argument on whether or not the mandate exists. I assume we will have a discussion at a later stage about what might constitute contempt of Parliament, and so perhaps I can leave that argument until the appropriate time.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Hiebert, I believe. Did you want to speak or delay a little bit?

Mr. Russ Hiebert: I'm happy to speak.

Mr. Chair, the reason for my earlier intervention, in terms of questioning whether this motion was in order, goes back to the issue raised during the last Parliament before this committee. There was extensive debate and discussion about a different motion that was ultimately put before this committee, and that issue was so contested by all the parties that ultimately it landed in the lap of the Speaker. The Speaker himself, at your request, made a ruling as to whether the root motion, which we're kind of addressing here, was in order.

I will unpack this in just a minute. My question to you, Mr. Chair, is whether the committee can actually pick up on a study that you yourself, as chair, ruled out of order in a previous Parliament.

Let's think about this. When the motion came forward, after extensive debate, you ruled that a motion that did not address public office-holders—we all agreed that it did not; there were no public office-holders present during that 2006 election—was out of order. It was acknowledged that political parties are not public officer-holders, so they were not appropriately addressed. Based on that ruling and based on Standing Order 108(3)(h)(v), it was your conclusion that the motion was out of order. It was only as a result of the strong-arming of this committee, breaking all reason and direction provided by the Standing Orders, that we were forced into this study in the first place.

You brought this to the Speaker's attention after that, and I quote the Speaker's ruling, because he cites your efforts. This was March 14, 2008—

• (1555)

The Chair: Are you referring to the minority speech again?

Mr. Russ Hiebert: It might very well be. This was almost a year ago. I'm starting a little bit into it. It says that the member for Mississauga South—that's you:

...indicated that, as chair of the committee, he had ruled this motion inadmissible as it did not include any reference to the Conflict of Interest Code for Members or any ethical standards that may have been violated but rather actually made direct reference to potential violations of the Canada Elections Act.

It goes on:

The member for Mississauga South contended that the access to information, privacy and ethics committee has now embarked on a study which is beyond its mandate...

He's citing your words, Mr. Chair. You were saying that this study was beyond our committee's mandate.

The Chair: Can I hang onto that?

Mr. Russ Hiebert: Can I just finish?

The Chair: Please.

Mr. Russ Hiebert: In fact, “he maintained”—that’s you—“that this committee was encroaching on the mandate of the Standing Committee on Procedure and House Affairs”.

I could go on at length, and I might choose to at some point, but that is the point I’m trying to get at here, Mr. Chair. How can a future committee pick up on a previous committee when the study that the committee was looking at was ruled out of order?

The Chair: If I may, would you happen to have the transcript to which the Speaker is responding that identifies the study he was giving a ruling on?

Mr. Russ Hiebert: I have just this portion that I just read.

The Chair: I understand, because I know that well. I went there, and that was with regard to the study that was proposed to the committee by the Conservatives, supported by the NDP, to study the fundraising practices of the Liberal Party. I ruled it out of order because it didn’t have to do with public office-holders, and that alone would make it out of order.

Mr. Hiebert very clearly, if you check the transcript of this committee, has asserted that the Speaker’s decision was with regard to the in-and-out study, not the study of the Liberal fundraising practices. As a matter of fact, the chair was overruled by the committee to go ahead and do the study on Liberal fundraising practices, and we in fact commenced that study and even had a witness list, because it was provided by Mr. Hiebert and colleagues. We just decided to go for it, because the committee decided it wanted to do it even though it was beyond our mandate.

I know where this is going. The members need to read my ruling on the motion to do the in-and-out study—based on the motion that was proposed by Mr. Hubbard at the time—to explain that we’re not talking about what happened during an election campaign at which none of the people were public office-holders. In fact, they were all members of the official opposition or new elected members. However, if you read my decision, our work was not based on whether or not they broke the law with what they did, which is the subject matter of court cases right now; it is with regard to, subsequent to being elected and subsequent to becoming public office-holders—and I named them—the ministers and parliamentary secretaries, who in fact were public office-holders and who as public office-holders filed election expenses returns with Elections Canada, which the Chief Electoral Officer ruled had claimed expenses to which they were not entitled, and therefore there was a pecuniary interest. And that was part of the Robert Thibault case about the pecuniary interest, because he was threatened with a law suit.

So these public office-holders filed, according to the Chief Electoral Officer, misleading election expenses returns. That is the basis on which it falls under the mandate: that we have public office-holders; that they did something that was contrary to the law of Canada based on the decision of the Chief Electoral Officer; and that there was a pecuniary interest to them, and that was his decision. Whether that’s taken to the courts doesn’t matter to us; what matters is what the Chief Electoral Officer said. And there was definitely a pecuniary interest, because there would have been rebates received or claimed by those public office-holders to which they were not entitled.

The motion that was adopted was to try to determine whether or not the Conflict of Interest Act and the ethical guidelines for public office-holders, which were produced by the Prime Minister, were robust enough to address this, and if not, whether this committee should make recommendations to Parliament for changes to the conflict of interest guidelines or ethical guidelines for public office-holders.

I encourage members to read the facts of the 38th meeting in the last Parliament to understand why I ruled that the motion to look into this matter was in order and was within the mandate. I can go further. This matter subsequently went to the Speaker on the last day of the last Parliament, and it was raised on a matter of privilege. I believe it was with the Conservative whip, and his privilege issue was that the committee was doing work that was beyond its mandate. If you look at that—and this is something else the committee is going to have to consider: whether or not this is the way things should work—the Speaker said he had no material or reports from the committee on that particular study and, as a consequence, had nothing on which he could give a ruling; however, should a subsequent report come to the House, the Speaker would consider whether that report dealt with matters that were beyond the mandate of the committee, and if so, he would not permit the report to be tabled.

● (1600)

It is complicated. I understand. And I wish we had had all the consultations with Elections Canada on the status and with Mr. Walsh with regard to some of the legal questions and with regard to some other matters. But as the chair, I have to respect the rights of an individual member to submit a motion. The motion, as all members know, is simply to resume work from the prior Parliament, just as we did with the privacy study that we were doing. It is no different. It’s no different in its factual effect. The member has given proper notice. She has brought it before us. We can discuss it.

There may be some time for some discussions about maybe our being able to unravel this a little bit and maybe do it in a different fashion. Mr. Dechert made an attempt at that. Unfortunately the member would prefer to move forward with her motion at this time. The members also know that the same motion could be brought again at another time if the circumstances should change, etc. So everybody has options.

But at this time, the chair is not going to make a decision for the committee on this matter. The committee can entertain itself for meeting after meeting after meeting after meeting, talking about things, and I’m keeping a list of points made. I will try to enforce relevance and repetition, and there will come a point at which there is no new information for the committee, and we’ll just have to put the question. So that’s what we’re faced with.

I want the members to consider very carefully what we're doing here, and not to stray off, because I'm not going to allow any latitude to start meandering in areas that end in discussions that have nothing to do...and once a point is made, it's made. I don't want to see other members being substituted in here and go right back to the beginning and try to take us back to ground that is already covered. Substitutes coming to this meeting, or people who weren't there in the first place, have a duty and an obligation to inform themselves before they come here so that they do not put us into a situation where the committee's time is being wasted.

I raise that because we've been through this before. It was a little bit painful, and we did get through it, but we do know that the committee of the last Parliament made a determination, and it was a vote because the decision of the chair was challenged on the admissibility of the motion to look at the in-and-out implications to the public office-holders. It was challenged, the chair was sustained, and the committee commenced. We did some work near the end of the last Parliament. We also had some hearings during the summer.

Now we are at a point where there is a question about whether or not this matter should be picked up and resumed and whether it's in the public interest to do so. The member has made that motion. Her motion is in order for members to consider, and we will have to take a decision at some point.

So I'm in the hands of the members. I'm not going to instruct the members on how to conduct their affairs, but if you can, have some discussions with each other or have some rethinking or whatever. We have other work to do that we can get on to right away, but that is going to take collaboration among the members of the committee, if that exists.

Mr. Hiebert, are you complete? Would you like to carry on, or would you like to pass the floor to Mr. Dreeshen?

• (1605)

Mr. Russ Hiebert: I'm pleased to pass the floor. Yes, that's fine.

The Chair: Mr. Dreeshen.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much.

I guess I'm one of those new members who is trying my very best to get up to speed on the things that have happened. I know that as a member of the public I was somewhat bewildered with this committee during the last Parliament. I didn't understand—and perhaps you have helped to fill in some of that information—how a committee could pick one particular political party and try to make decisions about their actions, when it seemed that perhaps this was something that was happening in other political parties as well.

I've also heard and have now read about the rebukes from the Speaker regarding the actions of the previous committee, but again, as you've indicated, perhaps the context of that might be somewhat different, and I appreciate that.

I guess really what I'm looking at is this. There are so many other important things we've heard about in the last few meetings, and I hope we would be able to concentrate on that.

I'm not sure whether I'd have anything else perhaps to add to this particular motion. I just wanted to let you know that we'll be trying

our very best to get up to speed on some of those areas, but I believe this is one horse that has been beaten to death.

Thank you.

The Chair: Mr. Siksay.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair.

I want to thank Madame Freeman for bringing this matter to the committee, because I think it is important that we give consideration to resuming this study, especially given the importance that it was seen to have in the last Parliament. I don't think we should, as parliamentarians, raise issues without the political will to follow through on them, especially when they are controversial issues and when they create controversy. For that reason we need to complete our work on this particular issue.

Chair, I want to thank you for your clarification on it, because that's very helpful to me as a new member of the committee. I know you'll do your best to keep our focus on what we should and can be considering, given the limitations of our mandate and the limitations of previous rulings. That was very helpful to me, and I appreciate that we need to take care in how we proceed on this issue.

I agree as well that we need to keep our appointment with the legal counsel, Mr. Walsh, to hear and to further understand issues of contempt of Parliament, because they do seem to bear on the work before us in a number of areas. And again, as a new member of the committee, I want to have an understanding of those issues and I think he is the appropriate person to at least get us started on that. I don't think we have to delay consideration of this motion to hear from him, but I do believe it is very important that we hear from him and I know that is the next item on our agenda after we consider this motion.

That being said, Chair, should we pass this motion, I hope it would go to the agenda and planning committee for scheduling. I know we've already made other commitments of work we're going to do. I don't see this motion superseding those decisions that were already made, and I would see that this goes into the hopper, so to speak, to be scheduled for our future work.

Chair, I just want to say that I too have been concerned about how parliamentary committees seemingly became bogged down and became very partisan and dysfunctional in the last Parliament. I just want to say that I'm prepared to work to find ways we can move forward with an appropriate agenda and complete the work before us in the interest of the folks who sent us here.

Thank you, Chair.

• (1610)

The Chair: Mrs. Block.

Mrs. Kelly Block: Thank you, Mr. Chair.

I am not sure how long a grace period lasts for a new member of Parliament or how long we can plead that we are new members of Parliament, but I appreciated the caution that you shared with us earlier when you reread the original motion that you were dealing with as a standing committee. I perhaps would be seeking some clarification either from you or other members who were on this committee during the 39th Parliament just with regard to the wording that Madame Freeman has chosen in the motion where she asks us to “resume the study it began during the Second Session of the Thirty-Ninth Parliament regarding the Conservative Party's election campaign expenses during the 2005-2006 election campaign”.

You have intimated that the work that was happening was work that was happening after the election, when election expenses were being submitted to Elections Canada once these candidates became members of Parliament and parliamentary secretaries. So I am thinking that this wording in this motion is somewhat misleading to what you had stated.

Also, I would love to know who the witnesses were during that study and what the hearings were all about, because we're being asked to deem all that work that was done to have happened now, and with nine new members on this committee, we're either taking it on faith.... I guess we go back and we look at all the work, read through everything that's happened, and get ourselves up to speed so we know what that work was. Or could I ask for a list of the witnesses and the basic context of those hearings?

The Chair: Again, the chair is going to be a little reluctant to defend, or whatever, Madam Freeman's motion. And I looked carefully, because the wording is not exactly what I would have used, but the intent here is clear.

To help you a bit, I also noticed the word “regarding”. If you look back at the original motion, it states, “investigate the actions of the Conservative Party...during the 2006 election”. So it's in both, and I think it would be very difficult for someone to argue that what we were doing in the 39th session, the so-called in-and-out hearings, is not what Madam Freeman is referring to. So I've ruled it in order.

You ask a very good question with regard to, if we do this...and Mr. Siksay also has made some assumptions about how we might do this. I've given it a bit of thought. As a broad indication, this committee would not embark on any work until the members have received all the documents, transcripts, exhibits, lists, everything, from the officials and the resources we have. I have kept mine in some semblance of order. I have a pretty good idea of how large they are, and I would say there are probably about 2,000 or 3,000 pages of testimony and exhibits, etc.

This will not happen quickly. Should this pass—I'm speculating, and I shouldn't be—it has to be a given that everybody has to be up to speed. There has to be enough time, and members have to have an opportunity to ask questions so their starting point is clear. I give you that undertaking.

Back to you, Mr. Dechert.

● (1615)

Mr. Bob Dechert: Thank you, Mr. Chair.

Obviously I still think it would be very helpful to have the advice of the legal officer of Parliament that what we're doing is within the purview. But we've had that discussion. Hopefully we'll hear from him later today. Then we may be in a position to revisit this discussion.

However, you mentioned in the description of your ruling from the last Parliament that you had come to the conclusion that some of the members involved in the events the study looked at became public office-holders after the fact and they filed candidates' returns. For the record, I note that it's a candidate's return; it's not a public office-holder's return. Every candidate for office, whether or not they are elected, files that same return. It seems to me that's putting a retroactive interpretation on the term “public office-holder” that is not mandated by the standing order.

How far back would you go if your ruling were to stand? Somebody might have done something 40 years ago in an election and then subsequently become a public office-holder. If returns were made, they were done as candidates, not as public office-holders.

The Chair: Okay, when did you file your election expenses return for the last election?

Mr. Bob Dechert: I filed it in mid-January, I suppose. But I wasn't a public office-holder then, and it didn't have anything to do with me being a public office-holder. It still doesn't.

The Chair: But it was after Parliament started.

Mr. Bob Dechert: That's true.

The Chair: Perhaps I'll just clarify this for you.

Mr. Bob Dechert: But it would be like an income tax return. It's not.

The Chair: No, I understand that.

The ethics officer comes into play here, as Mr. Hiebert knows. With respect to the issue with Mr. Robert Thibault where he was sued by Mr. Mulroney, he was actually prohibited from speaking in the House. It had to do with being in that position at that time. These people were in fact public office-holders, as defined. During the time they were public office-holders they filed election expenses returns, which were ruled to be misleading or false returns by the Chief Electoral Officer.

Mr. Russ Hiebert: They didn't do so as public office-holders.

The Chair: No. This was after.

Mr. Russ Hiebert: That was inconsequential to their applications.

The Chair: No. Okay, that's my ruling. If they were public office-holders and they got involved in a land deal that turned out to be shady, etc., it would be a problem and studyable by this committee.

Mr. Bob Dechert: I disagree with that, actually.

The Chair: No, I mean, that's the fact. It's anywhere there is a pecuniary interest, a potential conflict of interest or anything like that.

Mr. Bob Dechert: It had nothing to do with the public office they were holding.

The Chair: No, that's not a criterion, and that's why we have to get into that as well.

Mr. Bob Dechert: I think that's why we would need the legal officer here for that.

The Chair: However, let me please refer you again to the ruling in detail in the 38th meeting of the last Parliament.

Mr. Bob Dechert: Fair enough. Let me make another point.

You mentioned the Speaker's ruling in the case that Mr. Hiebert cited, which was that if the committee were to study and prepare a report and then submit it to the House, the Speaker would rule at that time on whether or not that report could be submitted to the House. It seems to me that it would be a gross waste of taxpayers' dollars for this or any other committee to do a report that may not be admissible to the House, and therefore we should seek the ruling of the Speaker now and get the benefit of the legal officer of Parliament before we embark on spending any taxpayer dollars.

•(1620)

The Chair: Let me refer you to the Speaker's ruling on the point of privilege by Mr. Jay Hill, who I believe was the whip at the time, on the last day of the last Parliament, in which he raised on a privilege precisely the point that you just made. The Speaker said, "I have received nothing from the committee. I can't make a ruling on it. But should a report come and I deem it to be beyond the mandate, it would not be receivable by the House."

Your point is well taken, but those are the rules. The Speaker has no basis for making a ruling until he gets something formal from this committee.

Mr. Bob Dechert: So let it be on the record, then, that at least I believe that for this committee to embark on a study that may not be within the purview of this committee would be a terrible waste of taxpayer resources.

The Chair: I agree.

Mr. Bob Dechert: And therefore, on that basis, I would encourage all the members of this committee to defeat this motion at this time and then let's hear what the law clerk has to say. I think we could do great work not only for this committee but for all committees if we were to get a ruling on this point, which all committees could use in further deliberations on this sort of issue.

Thank you.

The Chair: Good points.

Mr. Hiebert, please.

Mr. Russ Hiebert: Actually, Chair, along those lines, I'd like to make an amendment to this motion that at the beginning of the—

The Chair: Do you have it written down?

Mr. Russ Hiebert: I don't.

The Chair: Could you please then read it slowly, so that our clerk and researchers can also write down the wording, to be sure.

Mr. Russ Hiebert: I was going to try to verbalize it and then perhaps the clerk can help me do so clearly, but it follows along the point that Mr. Dechert was making. Instead of our commencing this study, which could, as you indicated, in the preparation alone take a tremendous amount of time, not even considering the number of witnesses we'd have to hear from, why not get an advance ruling from the Speaker, have him clarify for this committee whether or not

this is within our mandate? If it is, then we commence the study, and if it's not, then that informs our priority.

So the amendment would be something like "that the committee resume the study that it began", etc. Before the semi-colon, once or depending upon....

Mr. Bob Dechert: In the event of an affirmative ruling by the Speaker that this study is within the purview or mandate of this committee.

Mr. Russ Hiebert: Perfect.

The Chair: I think everyone understands the intent of it. We'll have to be careful about getting the wording, but I think the clerk...in the event of an advance ruling from the Speaker confirming—

Mr. Russ Hiebert: That the study is within the mandate of this committee.

The Chair: Okay, the amendment is in order.

Mr. Russ Hiebert: Could I speak to that?

The Chair: Just a moment.

Madam Freeman, do you understand the amendment? And Madam Thi Lac, are you okay? We tried to get it in both official languages. I know you may have had the translation, but because of the chit-chat going on in trying to craft this thing....

So after the colon in the main motion, we would include the words "in the event of an advance ruling from the Speaker confirming that the study is within the mandate of the committee", and then carry on with the rest. I think everyone understands the intent.

Mr. Hiebert, please.

•(1625)

Mr. Russ Hiebert: Yes, I just want to talk ever so briefly more, because I am actually looking forward to hearing from Mr. Walsh.

You have indicated that there needs to be some clarification here. You said to Ms. Freeman that perhaps her expectations are out of line with what she's hoping to accomplish, based on the comments that she's made. If the Speaker says that this is the parameter under which we can investigate this, I think that would provide our committee a great deal of assistance.

I know that in the last Parliament there was much discussion about the very issue that we're discussing—whether or not it's within the mandate. I think all of us would be relieved to find out whether or not it is. It does not need to take a great deal of time. There's no reason why we wouldn't want to know what the Speaker has to say about this ruling. We all certainly want to operate within the mandate of the Standing Orders; there's no fear there.

It would be my hope that we could quickly address this matter, and if ruled in order, the study would commence according to how the planning committee chooses to put it in our priorities.

The Chair: You can see why the chair should really not say very much, because others may interpret or put words in one's mouth. I'm not going to say anything more.

Mr. Wrzesnewszkyj, please.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): I'd hate to think that in some of the discussions that are taking place we might be engaging in delay tactics to avoid the inevitable.

I'd like to go back to a comment made by Mr. Dechert. He referenced wasting tax dollars and perhaps going down a path that isn't within our mandate. It's been made quite clear that it's a very limited mandate we have. It's public officer-holders; that's been defined to us. I can't imagine how much clearer it could be. Those are the only individuals this would pertain to. I'm very concerned that by continuing this discussion while talking about wasting taxpayers' dollars by going down this path, we are in fact doing that. We're wasting time and wasting taxpayers' dollars.

Let's not forget that at the very core of this was the fact that Elections Canada was seriously disturbed, and criminal investigations have begun, because it appears that taxpayers were abused by individuals who were public office-holders. That's a very serious allegation. If we allow that to slip by us, it seriously undermines the confidence the public holds for public office-holders, and it gets to the very essence of whether or not we respect those taxpaying citizens.

The Chair: Madam Simson, please.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you, Mr. Chair. I want to speak to Mr. Hiebert's motion.

I don't know how we could include that in this motion, based on the fact that the chair has stated earlier that we can't get a ruling from the Speaker without presenting a report. I understood that very clearly. So I don't know how we ask permission to proceed with this, because it was quite clear that he would only rule on a report from the committee, and if it were deemed not to be within our purview, it would not be presented in the House.

I also want to take issue with the public office-holder, and I'd like to thank the chair for clarifying that. There is no question—it's a matter of public record—that the returns that are filed are dated; and if that date is subsequent to the swearing in of a minister, I'd have to argue that it indeed falls within our purview.

That's all I'd like to say. Thank you.

The Chair: Mr. Dechert, please.

Mr. Bob Dechert: Mr. Chair, I'd like to respond to Mr. Wrzesnewskij's point about the timing.

First of all, we asked that we simply wait to deal with this motion until we've heard from the legal officer of Parliament. That's what he's there for, to give us advice. As legal counsel for 25 years, I always advise my clients to get a little bit of legal advice before they go into any business venture or venture down any other path of procedure not knowing the actual legal viability or legal mandate of what they're trying to do. So I think that's something we could simply do by waiting until later today and not be wasting a significant amount of taxpayer dollars, as we might, by doing a multi-week or month-long study.

Second, as Mr. Hiebert pointed out, getting a ruling from the Speaker based on the opinion, I assume, from the same legal officer we're going to hear from later day presumably would not take very long. If we don't do that, we have to explain to the taxpayers we

represent why we didn't get a legal opinion from a gentleman who's employed by the taxpayers to give legal opinions on matters just like this before we embark on a very expensive study. It just makes sense to me to do that.

Thank you.

• (1630)

The Chair: Mr. Hiebert.

Mr. Russ Hiebert: Following along Mr. Dechert's point, to answer your question, Ms. Simson, he's absolutely right. The Speaker would provide us a legal opinion in consultation with Mr. Walsh, the very person we're here to hear from.

There are two ways to do this. We could have Mr. Walsh give us his opinion and have an answer this afternoon as to whether this motion is in order, or we could pursue the amendment and seek the Speaker to consult with the law clerk to give us a ruling.

It's prudent. There's nothing sinister about wanting to know whether we're operating within the mandate of this committee. I don't know what the concern is.

The Chair: Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

I don't support the amendment. I don't think it adds anything to it. What we're doing is resuming a study that has already been ruled in order, and the limitations on that study have been clarified. I don't believe the addition that's being proposed will further clarify anything for us. I think we need to get on with the work, make our report, and see where it goes from there.

The Chair: Madam Simson.

Mrs. Michelle Simson: Thank you, Chair.

To the point that Mr. Hiebert made, I think it's fairly clear what the mandate of this committee is. I understood it when the chair read it out to us. It was about public office-holders. I don't know about this, other than calling Mr. Walsh in and simply asking him if it is his legal opinion, in his capacity as law clerk, that they were or were not public office-holders.

I wasn't here at the time, but I believe this investigation or study was undertaken as a result of Elections Canada concerns that were raised with respect to what transpired with election expenses. This was subsequently investigated with respect to public office-holders. As the chair indicated, it wasn't the Conservative Party and it wasn't members of Parliament, and it would have been related to precisely what we're mandated to do.

The Chair: We have to be careful about summarizing what's already been said, but we're going to move on to Mr. Hiebert.

Mr. Russ Hiebert: I'd just like to respond to Ms. Simson.

I was here in the last Parliament, and you know what, the suggestions you make are fairly common sense suggestions. You'd think that this committee in the last Parliament would have consulted the law clerk as to whether or not this study was within its order or within its mandate, but the reality is that it never happened.

The chair's ruling came after lengthy debate. More than several meetings occurred prior to the chair's ruling on whether or not this particular study was in order. His ruling was then challenged. It was upheld only because of the brute force of the opposition parties pushing it over the top.

So to suggest that this is a common sense approach doesn't really summarize the degree to which this question needs to be debated. The very first question I would ask Mr. Walsh, the law clerk, would be exactly the question you raised. Based on subparagraphs 108(3)(h)(v) and (vi), does the ethics committee, as its mandate, have the responsibility or the authority to investigate individuals who are not public office-holders without specific authorization from the House?

Clarity is needed here. We're not asking irrelevant questions. These go to the heart of our mandate. I think we can very quickly get the answers. It's unfortunate that we didn't have this opportunity before we commenced on weeks and weeks and, as Mr. Chair states, thousands of pages of testimony, but the reality is that it never happened.

My hope is that we start off on the right foot this time, that we just get some clarification from the law clerk very quickly and reasonably, giving us the answers to our questions about whether or not this has been our mandate. If it is, so be it, and let's commence this study, but prudence, reasonableness, and accountability to the Canadian people would suggest that we answer those questions first and not make the presumption that it's within our mandate.

• (1635)

The Chair: Mr. Dechert, please.

Mr. Bob Dechert: Thank you, Mr. Chair.

I want to make this clear in response to Ms. Simson's comment that we would not be simply asking the legal officer of Parliament for his opinion on the definition of public office-holder. You may also recall I made an argument earlier that in subparagraph 108(3)(h)(vi) the word "and" is different from the word "or" in subparagraph 108(3)(h)(v), as used prior to the words "the ethical standards of public office holders". There's a reason that two different words were used there.

We would be asking him to give us his opinion on the study itself as to whether it's within the mandate, based not just on the definition of public office-holder but on the interpretation of that whole subparagraph. That's a significant legal argument, and one, I would suggest, that probably comes up in the mandates of many other committees of Parliament.

On this very important matter, I think it's of great value to Parliament and to the taxpayers to have the legal opinion of someone who's employed by Parliament, to have those legal opinions before we launch into a multi-meeting, multi-week, or multi-month study dealing with three or four thousand pages of information, as the chair has pointed out.

Thank you.

The Chair: Mr. Hiebert.

Mr. Russ Hiebert: In light of this discussion, I'm wondering if perhaps Ms. Freeman can give us her discretion. Would she be willing to allow the law clerk to enter and to answer a few simple

questions? We can get this out of the way very quickly and we could resume this discussion and have a vote perhaps even later today.

The Chair: If I may, Madam Freeman, Mr. Walsh was a witness for us two meetings ago. We only had him for the last five minutes because we seemed to go a little longer on the first item. I guess we didn't want to hear what he had to say then. But he was asked to come, and I think if you go back to the steering committee discussion and to the meeting we had subsequently, the whole reason for having Mr. Walsh had to do with contempt of Parliament issues, which I raised because of the Mulroney-Schreiber hearings, because of the subsequent evidence that came out, disclosed by *The Fifth Estate* and provided to me by Mr. Schreiber himself. This evidence showed, if the evidence was valid and real, that Mr. Fred Doucet, the subsequent president of GCI, Marc Lalonde, and I think one other person had lied to the committee during their testimony before the committee.

I asked if we could have Mr. Walsh to determine whether or not we could bring that forward and whether the timing and all other good things, and how do we do this...simply because I wasn't sure. I did not ever mention that we should have Mr. Walsh to advise us on our mandate. And I can tell you that, in my opinion, he would not give us an opinion on whether this matter was within our mandate because he knows what the Speaker ruled already, that—

• (1640)

Mr. Russ Hiebert: If that's the case, Mr. Chair, then why not give him the opportunity to answer?

The Chair: Here's how we go in circles. I agree. If that would help members, I think it would be useful to let him say, "I cannot answer that question; the committee is the master of its own work". But I also said—and it is overriding in this regard—that the member put a motion forward. The motion has the proper notice, and for all its bumps and warts, it's in order, we're debating it, and we're going to have to deal with it. And if the member and the committee can't seem to find a way to get to where we would prefer to be, or where some would prefer to be, that's unfortunate, but we're going to have to deal with the problem we have in front of us.

Mr. Bob Dechert: Chair, I'm not asking for a ruling now. Just to respond to your point, were you suggesting, then, that we would be limited in the questions we'd be allowed to ask Mr. Wash, were he here?

The Chair: From what I understand from the committee members, they would like to ask Mr. Walsh whether, in his opinion, doing this would be within our mandate. That's vanilla questioning.

Mr. Bob Dechert: Correct, that's one way. An interpretation—

The Chair: I don't think he's prepared to do that. I'm giving you my opinion, but maybe I shouldn't.

Mr. Bob Dechert: Fair enough, but perhaps we could let him answer that question.

The Chair: Sure, absolutely. But we can't get there from here unless—

Mr. Russ Hiebert: Okay, unless Ms. Freeman offers to.... That was my original question.

The Chair: But we've already offered that, and she's declined.

Mr. Russ Hiebert: But I haven't heard her respond.

[Translation]

Mrs. Carole Freeman: It is the only answer that is possible since the decision belongs to the Chair.

[English]

Mr. Russ Hiebert: Ms. Freeman, you could choose to say that we're going to set this aside until later today or until the next meeting, but even later today, in favour of hearing from the law clerk. That's your discretion.

The Chair: Okay, excuse me.

[Translation]

Mrs. Carole Freeman: No. I tabled a motion.

[English]

The Chair: Okay. For the second time, I think Madam Freeman has indicated that she would like to proceed with her motion, and that's her right. We'll respect the member's right in this matter. That's not debatable.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, thank you.

Could I ask Ms. Freeman to state for the record, enlighten us, as to why she does not wish to wait for a legal opinion from the parliamentary legal officer on whether or not this is within the mandate of the committee and on these other questions, such as the contempt of Parliament issue? I'd just like to know why she is not willing to wait half an hour until Mr. Walsh appears before the committee.

The Chair: Okay. I think we had better establish that members do not have to answer any questions from another member unless they wish to do so. It is unusual, but sometimes in the interests of the committee, it may be accommodated. Would madam like to respond now?

[Translation]

Mrs. Carole Freeman: No, I have my motion, sir.

[English]

The Chair: Okay. I think everybody understands. It has not unfolded in the best way that might have facilitated the best interests of all on the committee. Having said that, we are faced with a situation where we have a motion with an amendment.

At this time, I'd like to put the question on the amendment of Mr. Hiebert. The amendment of Mr. Hiebert is to insert the words, after the colon, "in the event of an advance ruling from the Speaker confirming that the study is within the mandate of the committee".

Does everyone understand the Hiebert amendment?

Mr. Siksay, you have a question.

Mr. Bill Siksay: Could I ask for clarification, Chair? What's going to cause this advance ruling by the Speaker to happen?

• (1645)

The Chair: I don't have to answer that. This is an amendment that is in order before us, and the members will have to deal with it as is. I think it's kind of self-evident.

Mr. Hiebert, please.

Mr. Russ Hiebert: Mr. Siksay, we would simply direct the chair to make the request. That's all. If this is passed, he would have direction to do that.

The Chair: Are all honourable members now paying attention? I want to put the vote on the Hiebert amendment.

All those in favour of the Hiebert amendment will please raise their hands. All those opposed will please raise their hands.

It is a tie, so the chair votes opposed.

(Amendment negatived)

The Chair: I will now move the vote on the main motion.

Mr. Bob Dechert: Mr. Chair, could I propose an amendment?

The Chair: Yes.

Mr. Bob Dechert: I propose that we delete the words "Conservative Party's election campaign expenses" and replace them with the words "activities of public office-holders".

I will repeat that. It's to delete the words "Conservative Party's election campaign expenses" and replace them with the words "activities of public office-holders". It would read: "That the Committee resume the study it began during the Second Session of the Thirty-ninth Parliament regarding the activities of public office-holders during the 2005-2006 election campaign", etc.

The Chair: Thank you, Mr. Dechert.

The chair has already indicated that it's very clear which study we're talking about. The study has its own motion and terms of reference. The effect of this motion is simply to resume a prior work of the committee. I don't believe the amendment that you're making changes the intent, the meaning, or the impact of the motion as initially proposed. I'm going to rule it out of order.

Mr. Bob Dechert: Could I ask you a question?

Unfortunately, I don't have the earlier motion in front of me, because I wasn't a member of the 39th Parliament. I'm being asked to vote on this. I think you read it once earlier. Can you clarify for me whether it referred to one political party or to any public office-holder? I don't know. Perhaps the clerk has a copy of it.

The Chair: The motion in the last Parliament was adopted by the committee.

Mr. Bob Dechert: What did it say?

The Chair: Do you want me to read it again?

Mr. Bob Dechert: Yes, please.

The Chair: It reads as follows:

That the Standing Committee on Access to Information, Privacy and Ethics investigate the actions of the Conservative Party of Canada during the 2006 election, in relation to which Elections Canada has refused to reimburse Conservative candidates for certain election campaign expenses in order to determine if these actions meet the ethical standards expected of public office holders.

Mr. Bob Dechert: Thank you, Mr. Chair.

The Chair: All those in favour of Madam Freeman's main motion, please raise your hands. All those opposed?

As I did in the last Parliament—I believe this study is worth doing, and I believe it's in the public interest—I'll vote in favour of the motion.

(Motion agreed to)

The Chair: We're going to suspend.

[Proceedings continue in camera]

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