



House of Commons
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 006 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, March 30, 2010

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Chair

Mr. Joe Preston

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•(1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): We'll call the meeting to order, please.

This morning we are in public, pursuant to the order of reference of Monday, March 15, for a question of privilege relating to the mailings sent to the ridings of Mount Royal and Sackville—Eastern Shore.

Committee, if I can just share with you, from the start we have Mr. Walsh here for about the first hour of our meeting today to answer questions about the matter we're about to head into. Our second hour is committee business.

Mr. Walsh, it's very good to have you here today. We're going to let you give an opening statement and then we'll ask you a bunch of questions. I hope we can get all our answers in that hour.

Mr. Walsh, it's up to you.

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chair.

I don't have a prepared statement to make, as I was not sure what approach the committee was looking for in asking me to be here, but let me offer this as a framework in which committees might want to approach the question before the committee. It's a breach of privilege relating to a ten percenter handed out in member Cotler's riding. He objects to certain statements made in that ten percenter. In his point of privilege, he indicated that they were offensive to him and his community, and impaired his ability to carry on his duties as a member of Parliament. That's the critical consideration here.

As you know, the Speaker, in his ruling, said that based on what was presented to the Speaker in the interventions made in the House, the mailing constituted

interference with [the member's] ability to perform his parliamentary functions in that its content is damaging to his reputation and his credibility

Of course, we have to remember that the Speaker's ruling is *prima facie*; that is to say, as he himself pointed out, I believe, in that ruling, he cannot examine representations made before him. He must take every representation at face value and determine, on a *prima facie* basis, whether there are the makings here or the basis here for a point of privilege warranting further consideration, in particular by a committee if the House so directs. And of course, that is what happened.

I mention it only to say that, in my view, the committee is not bound by the Speaker's ruling. It is simply an indication of the *prima*

facie point that the Speaker, from what he heard in the House, thinks that *prima facie* there is a breach of privilege here.

The House, in due course, directed this matter to the committee. Now it's the committee's task to determine, on further inquiry, whether in fact a breach of privilege occurred here.

In that regard, I think members may be well served to read the O'Brien-Bosc text on breaches of privilege. In particular, you may recall that the Speaker quoted from page 111 of that text.

I would draw particular attention to that portion of the text at page 111 where the O'Brien-Bosc text points out that,

A Member may also be obstructed or interfered with...by non-physical means.

And it says,

If, in the Speaker's view, the Member was not obstructed in the performance of his or her parliamentary duties and functions, then a *prima facie* breach of privilege cannot be found.

Broadly speaking, at some point it would seem to me that the test for the committee is whether the member was obstructed in the performance of his duties as a member of Parliament by the ten percenter of which he complains.

So what constitutes obstruction? It would also appear from the material that establishing representations damaging to the member's reputation or providing misleading information would in and of itself constitute an impediment to a member performing his parliamentary functions. That, in my view, is a matter for the committee to consider. Do you need to hear evidence of the impairment or impediment to the member's function, or is it appropriate that you simply establish that there was a misrepresentation offensive to the reputation of the member and that, *ipso facto*, gives rise to an impairment to his ability to do his job as a member of Parliament?

There is a quote on page 111, not cited in the Speaker's ruling, from a ruling by Speaker Fraser. Speaker Fraser, in 1987, said the following—and I think it's worth reading this out for the record:

The privileges of a Member are violated by any action which might impede him or her in the fulfilment of his or her duties and functions. It is obvious that the unjust damaging of a reputation could constitute such an impediment. The normal course of a Member who felt himself or herself to be defamed would be the same as that available to any other citizen, recourse to the courts under the laws of defamation with the possibility of damages to substitute for the harm that might be done. However, should the alleged defamation take place on the floor of the House, this recourse is not available.

Well, this defamation, if it's that, did not take place on the floor of the House, so arguably there is an action in defamation available to the member relative to the misrepresentation of which he complains. However, it is also the case that this kind of communication can be the subject of a breach of privilege, so it has been brought forward by the member and accepted on a prima facie basis by the Speaker and the matter referred to this committee.

I read that citation from pages 111 and 112 to the committee because its reference to defamation gives rise to whether the committee wants to hear from me on the comparable situation between what you're looking at and what the courts do when they look at a defamation action and the kinds of requirements the courts need to see before they will find a defamation. I won't go into that now, because it may not be of any interest to committee members. If it is, I'm prepared to do that.

Let me summarize by saying there are two dimensions to a breach of privilege question. You might call it objective and subjective. The objective one is whether the facts are there to support the basis for a breach of privilege, and that's what I'm referring to here in Marleau and Montpetit, or O'Brien and Bosc as it's now called. The subjective one is along the lines of beauty is in the eye of the beholder. What is a breach of privilege at any time is what the House thinks is a breach of privilege in the circumstances of each case.

So while you're not bound by precedents, they can be persuasive. There's the case of Mr. Masse in 2005 that the committee may want to look at. The facts are sort of comparable to what you're dealing with here.

But really it's up to the committee, in a subjective sense. If the committee feels there was a breach of privilege, then that's the view of the committee and that's presumably how the committee will report to the House. If, on the other hand, the committee does not feel that, that's the end of the matter, I suppose. Objectively, some criteria that are available to you, as set out in O'Brien and Bosc, may offer some guidance to the committee.

I have no further statements at this time, Mr. Chair.

• (1110)

The Chair: Super. Thank you very much.

We'll go to questions from members.

Mr. Volpe, it's great to have you here today. We'll let you lead off.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you very much, Mr. Preston.

Having been one of those people who received one of those percenters—I think it was from you—I'm kind of wondering whether I'm speaking to you or speaking to Mr. Walsh.

The Chair: Give us both a shot.

Hon. Joseph Volpe: Well, no, but...I wanted to give you a different shot when I received the communication.

Mr. Walsh, I took a look at some of the definitions for breach of privilege, and I think that's what this committee is looking at. It really isn't looking at anything else.

The breach of privilege is an issue, in layman's terms, that impedes the ability of the member of Parliament to perform his or her duties in the context of the expectation of the public that there is an honourable and honest job being done. So when a communication comes out that says, or infers, or implies—I guess the word is “implies”—that this is not in fact the case with a particular member of Parliament, then the member's ability to address his or her duties is therefore impaired.

Is that the way you see this particular definition unfolding?

Mr. Rob Walsh: I'm afraid to say this, but typically, as you might expect a lawyer to say, it's a little more complicated than that.

Members of Parliament, as you well know better than I, are subject to comments challenging their fitness for their role as members of Parliament. It's part of the public debate.

Hon. Joseph Volpe: That's true, but as one member of Parliament to another in the House; we're talking about something that happens outside the House.

Mr. Rob Walsh: Correct, but even outside the House criticisms are made by one member of another about the person's suitability to perform his duties as a member of Parliament.

But I take your point seriously. I'll go to an example, which is purely hypothetical. If a...

I don't mean to make any comment on this particular householder, Mr. Chairman. It's not my place to comment on whether this householder is or is not a breach of privilege. This is a purely hypothetical examination.

Let's go to the question of inferences. The question of whether the facts stated are true or not you can look into and examine whether the statement is factually true or not. Even if it's factually true, you have the question of inference. Is there an inference by that statement of a kind that impairs the member's ability to do his duty?

Let's go to a different fact pattern. It's a silly example, I suppose, but it illustrates the point. You have a householder that says member so and so plays with little children. Well, hell, if he's a grandfather or a father, good for him. They're lucky to have grandchildren to play with. But if the next line is “Help stamp out child abuse”, clearly the inference from the earlier statement, which itself is quite true and rather innocuous, in my view would be that the member is part of the problem of child abuse.

The important consideration there, in my view, is that it's not a political statement about the member, it's a personal statement. It goes to the personal character of the member as a human being, whether he's a public office-holder or not. It goes to the personal character. And it may have the result that, if there's thought to be any truth to the inference, he's shunned by his colleagues in caucus, or he's shunned by fellow members of Parliament because he's a *persona non grata* in a moral sense, or, in an electoral sense, he's shunned by the constituents in his riding.

It seems to me there's an example of where a comment is made that is prima facie innocuous but context is not innocuous, and it reflects on the personal character of the member. That arguably, in some circumstance, could give rise to the inability of the member of Parliament to carry out his duty as a member of Parliament.

Hon. Joseph Volpe: So in your studied estimation, then, a householder that goes out, or a ten percenter that goes out, laden with the potential inferences, maybe perhaps specifically designed to raise inferences that are not partisan, per se, but really address the individual—the individual approach, from there, flowing back on a partisan issue—has crossed the line in terms of impacting on the member's ability to do the job.

There's no debate following it. I mean, once something is out there, it's out there in the public domain. One can't go out there and speak to another 10,000 households and say that this is wrong. There would appear to be a clear preponderance of fact and innuendo in one direction that obviously the individual cannot possibly fight back on in a debate environment. It's clearly impossible. So the intent would appear to be to cause the inference to explode beyond control.

• (1115)

Mr. Rob Walsh: There are number of issues in what you have said there.

I don't want to comment on intents here, because that's a matter of self-inference as to what was or was not the intent. But it shouldn't happen that, with or without intent, an inference is available from what is said of a kind that reflects unfavourably on the member.

The legal approach is to ask whether that lessens the reputation of the individual in the mind of the reasonable thinking person. That's what the courts say themselves relative to a defamation. Does it lessen the estimation of that person in the mind of a reasonable thinking person? Everyone, of course, is entitled to their reputation in the public sphere—and the private sphere as well.

It depends on what you're saying. It depends on the nature of what is said or what is inferred as to what the impact is upon the individual who is being referred to. Is it of a kind that will make everyone think less of the member to the point where he is impaired in doing his duty, or is it of a kind that might be seen as a criticism that may be unfavourable but is part of the political debate?

In this context, I think you have to think in terms that there could be a political criticism arising in the context of a political debate and be hurtful of the member's position politically, or it could be that plus a personal inference of a kind that causes the member to be seen as disreputable or dishonourable or in some manner not to be trusted or unworthy of consideration in his community or in the House or at committee. Is it a lessening of the regard people have for the member, whether it's other members, or constituents, or private citizens? In other words, whoever reads this, do they think less of the member as a person—not less of him as a Liberal member of Parliament, but less of him as a person—as a result?

Hon. Joseph Volpe: From a legal perspective, then, given that kind of a context, would a direct statement or an inference that someone would be—I don't know—anti-Semitic or anti a particular other group cause an individual to be cast in the light that you have just described as being unfavourable and therefore unsuitable for a particular activity?

The Chair: Your time is up on that one.

I'll let you answer the question.

Mr. Rob Walsh: I'll answer just briefly without commenting on the particular householder before the committee.

Let's go to a different label. Let's say that the statement was that member so and so is sympathetic to al Qaeda and the terrorist agenda of al Qaeda. Now, that might be something that is not merely a matter of political significance; it may have a personal impact on the standing of the member in his community and in the House, that he would be attributed to having this kind of sympathy toward terrorism.

Perhaps that helps, Mr. Chair.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair.

I appreciate that you got Mr. Volpe's and Mr. Walsh's answers in there, though they extended a little past seven minutes. I hope we'll have a bit of latitude as well.

• (1120)

Mr. Marcel Proulx (Hull—Aylmer, Lib.): No.

Some hon. members: Oh, oh!

Mr. Tom Lukiwski: I know we have lots of questions on this. Let's face it, the determination of breach of privilege is a serious matter.

I want to go back to an examination, Mr. Walsh, of what you were talking about concerning the objective versus the subjective.

In the case of Mr. Cotler, if we're looking at the veracity of statements in the ten percenters in question, I think without debate—although I'm sure there'll be an attempt at debate here—all of those statements were accurate, and they're a matter of public record.

In the ten percenter of Mr. Stoffer, on the other hand, the statements made were inaccurate. So I think, quite frankly, on an objective basis there can be a case of breach of privilege to Mr. Stoffer, because the ten percenter contained information that was simply not true.

In Mr. Cotler's case, even though the information would be upsetting to him, there is nothing in there that I would contend. I can certainly verify the veracity of all these statements with articles on the public record. So if the statements are objectively true, then it would come down to the subjective. The statements, although highly critical of the Liberal Party, did not name Mr. Cotler personally in any of that literature.

It's your contention that if the committee found on a subjective basis that Mr. Cotler's reputation was harmed, or he found it difficult or was impeded in his ability to do work, this committee could then still find a breach of privilege. Is that accurate?

Mr. Rob Walsh: Yes. The committee can do what it wants relative to whether there was or was not a breach of privilege.

Mr. Tom Lukiwski: And that is regardless of the veracity or accuracy of the statements.

Mr. Rob Walsh: That's correct.

Mr. Tom Lukiwski: My question is, then....

It's a pretty thin line, and in a committee structure such as this, where we have the opposition parties, for example, outnumbering the government, it may simply come down to the fact that the opposition will vote one way and the government will vote the other. But it should really go beyond the partisan nature of this committee, because it is an entirely serious matter.

Let me frame it this way. If this literature were put out in the middle of a campaign, I don't think—this is my own personal view—that Mr. Cotler or anyone else, if it were directed to Mr. Volpe or anyone else, would have a case to sue for defamation, because all the literature does is point out accurately the position and statements made by members of the Liberal Party. But since it was not in the middle of a campaign, Mr. Cotler seems to have suggested—not suggested, but he stated—that this was injurious to his reputation and impeded his ability to do his job as an MP.

How do you square that circle? If one of his political opponents during the next campaign, whenever that will be, were to put out a campaign piece of literature exactly like this, with accurate statements, what recourse would Mr. Cotler have?

Mr. Rob Walsh: You raise an interesting question here.

First of all, breach of privilege, as you're probably well aware, or the rules of privilege don't apply during an electoral period. After all, Parliament has been dissolved. There is no Parliament, and the electoral period is a different situation; however, you can still sue for defamation for something that's said during the course of an election campaign. Now, you run into different issues, to some extent, because then the defendant will invite the court to consider whether what was said was a matter of fair comment on a matter of public interest. I can explain to you what that means.

The defendant typically might say, in any defamation action, that what was said was true, or, if it's not a matter of whether the facts were true but is a matter of comment, that it was a fair comment. You have to remember the distinction between facts and comment: there are facts, and then there's comment about the facts. The question with fair comment is whether the fair comment was made honestly and in good faith on a matter of public interest.

Saying something publicly about something that relates to a person's private life would arguably, *prima facie*, not be a matter of public interest. But certainly, if it's a public debate—let's say the recent debate regarding reproductive services to women—and all of a sudden there was a charge made against a member regarding his support for one type of service over another, and the charge had implications for that individual, given his riding and his religious faith and all the rest of it, then maybe there would be a basis for an action for defamation by the member.

But it also is a matter of public interest; it's a large public debate. In a matter of fair comment, the law says basically that there are five things that have to be shown. One is that it's a comment, not a fact; secondly, that it was based upon facts that are true; thirdly, that the comment was made honestly and fairly; fourthly, that there was no malice; and finally, that it was on a matter of public interest. If you establish those, you have a defence of fair comment, and in the context of an election, that may be available.

However, let me point one thing out to you. Recently—I think it was in the last election, or the election before—a member of Parliament went to court during an election campaign and obtained an order of the court, an interim injunction, to stop the distribution of a certain householder that had false representations made in it. Now, as the earlier member was saying, in a sense that householder was distributed, may have had an impact on the riding, and so on, but the court did accept that, in that situation, it was false, and would cause damages that would be irreparable. So an injunction was granted to the member, ordering not the pulling back of what was distributed but no more distribution of the flyer.

So there is legal recourse available to a person in the course of an election campaign.

Mr. Tom Lukiwski: I appreciate the clarification of that. What I'm struggling with is simply this: the first step in any determination of a breach of privilege or a non-breach is the Speaker's ruling of its *prima facie* character, which just says, basically, that there is some indication that something might have happened; then it's up to the committee to determine after that.

My concern—I think it could happen to any one of us here—is that we are obviously in a profession that encourages partisan debate and partisan rhetoric at times. We're certainly all guilty of it, if you want to frame it as such. But the problem I have and the concern I have is that if any member of Parliament sends out a householder that is completely accurate in its content into another member's riding, and that member says, “Look, this has embarrassed me. My constituents are now asking what the heck my party is doing, and if this is true. It's hurt my ability to do my job.”

I mean, any one of us could make that argument, and in fact a committee could say, yes, right, there's a breach of privilege.

Then where's that line? It would never happen in a campaign. We have determined that. So how are we supposed to guide ourselves?

Frankly, I'd like to come back to you on this, Mr. Walsh, because I think this is something that the committee needs to take very seriously. If accurate comments are made, and yet you could still be found in breach of privilege—

• (1125)

Hon. Joseph Volpe: I have a point of order, Mr. Chair.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: If you don't mind, I'll speak before Mr. Walsh answers this.

That's three times that Mr. Lukiwski has used the word “accurate”.

What that householder said was “willingly participated in overtly anti-Semitic Durban I”.

Just because the ten percenter used those words does not make it accurate. So it's an accurate reflection of—

The Chair: We're really into debate here.

Hon. Joseph Volpe: The word “accurate” is what's being discussed, and I'm wondering whether Mr. Walsh will address that.

The Chair: Well, this committee, Mr. Volpe, is seized with determining the accuracy, and better witnesses, I assume, will be before us then. Mr. Walsh is here to give us information on defining breach of privilege and the steps the committee may have to take.

I'm certain that we'll get to where you're going, Mr. Volpe, but we're just not going to get there with this witness, I don't think.

Let's move forward.

Go ahead, Michel.

[*Translation*]

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): Thank you, Mr. Chair.

As my colleague Mr. Lukiwski just said, we need to recognize, on a prima facie basis, that the Speaker ruled on the question of privilege raised by the two members that there was a possible breach of privilege. The next step is to assess the evidence.

Mr. Walsh, I would like to hear your comments on this issue. Mr. Volpe's objection was along those lines. We have to separate the objective from the subjective. In politics, my truth and my beliefs may differ from those of my colleagues in the other parties. We are therefore going to have to review the wording of each sentence in the mailing, word by word, and look at whether, for example, the word *willingly* is accurate. We will never get through it.

I would like to hear your comments on the need to distinguish between what is objective and what is subjective.

Mr. Rob Walsh: That is a good question, Mr. Guimond. As you know, the courts usually consider the issue objectively, not subjectively. However, a person may really have difficulty accepting certain comments. Earlier, I gave you the example of a person's moral character. I am not talking about the mailing in question, but about how things happen in general. Certainly, there are comments from both sides. They go back and forth. Are they true or false? It is up to you to decide, not me.

As for the objective aspect, the approach, the procedure to take to reach a conclusion, you must consider the evidence. Will witnesses provide evidence proving that harm was done or not done to Mr. Cotler? If there is no evidence, all the members may still consider that a given comment infringes on the member's privileges and impedes his ability to function as a member. That is just a committee finding. That is all. It is subjective, but the committee has the right to make that decision.

● (1130)

Mr. Michel Guimond: Mr. Stoffer's case is slightly clearer. Mr. Vellacott's mailing said that Mr. Stoffer was in favour of gun control, whereas he was opposed to it. Is that accurate?

I would like to know whether an apology from a colleague who sent such a ten percenter changes anything. The ten percenter was sent, so the damage is done, but is an apology enough to put an end to the matter?

Mr. Rob Walsh: It can be, but an apology is generally related to the damage done. It has to be determined whether the damage is alleviated by the apology. Sometimes, the plaintiff tries to obtain a court ruling confirming that what was said was false. But often the

problem is that we are talking about comments made about the facts. The Stoffer case, though, is just a question of facts. The member apologized. But in this case, it is perhaps more a question of comments than facts. Is the comment justified under the circumstances? Does it affect the member's moral character to the point where he cannot face his constituents or his colleagues in the House or in committee? Is it a moral insult?

Mr. Michel Guimond: You know that redress for libel is one of the principles of law. A distinction needs to be made. In French, the media sometimes use the words incorrectly and say, "He committed defamatory libel." That is simply incorrect. Libel is written, and defamation is usually verbal.

Someone who commits libel is usually asked to correct it in the same way. That is why newspapers that have not investigated thoroughly enough and have received a formal demand from someone who felt that information about them was inaccurate regularly publish corrections on the same pages, in the same spot and for the same readership, if possible.

But I remember that when Mr. Cotler testified before this committee, he wanted more than an apology about this ten percenter. He felt that his parliamentary privileges had been breached and that this mailing had violated his privileges. He called for corrective action and for the printing costs to be reimbursed. But that is not the issue.

Suppose that I live in the Town of Mount Royal and I received this ten percenter from the Conservatives, signed by our Chair, Mr. Preston.

[*English*]

The Chair: You're running out of time.

[*Translation*]

Mr. Michel Guimond: How is that corrected? What is the remedy?

● (1135)

Mr. Rob Walsh: The remedy is another ten percenter in Mr. Cotler's riding to explain that the statement was false.

It is hard to say how what was done can be undone if the statement is false. That is why the courts sometimes award damages by way of compensation.

But this does not really make up for what was done, because a person's reputation was damaged and, in some cases, the damage remains even though compensation has been paid.

It is impossible to verify whether the situation has really been corrected after defamation has been committed and a false statement has been made. If someone has a national reputation, then an apology at the national level is necessary. If someone has a local reputation, then an apology at the local level is necessary.

The Chair: Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chair.

Let us say that a statement is false and damages a member's reputation. In that case, can the House require the offending member to pay for the ten percenter?

Mr. Rob Walsh: The House has the power to take disciplinary action against a member. In my opinion, there is a hypothetical limit to what the House can do. It can impose a fine. Is that a good idea? Will it correct the situation? I do not know, but it is possible.

Mr. Yvon Godin: My question was whether it was possible.

Mr. Rob Walsh: It is possible.

Mr. Yvon Godin: Peter Stoffer's case is said to be clear. Statements were made that contradicted what Mr. Stoffer had said or how he had voted in the past. In any case, that is clear.

In reality, in this case, we have to determine the same thing. That is what we must do. Are the comments true or false?

Mr. Rob Walsh: Not really, Mr. Godin.

In the case of a comment, the question is not whether the comment is true or false. When it comes to a comment, legally, what we are asking is whether it is fair and acceptable under the circumstances.

If it is a question of facts, are the stated facts true or false? But are we talking about facts or comments? That is an important question the committee has to ask itself. Are we talking about a comment or a statement of fact? The legal measures are different. It is up to the committee to consider these questions.

Mr. Yvon Godin: How is it different? If I make a comment that includes false information, the comment is false, it can—

Mr. Rob Walsh: In the case of a comment, the question is not whether the comment is true or false. The question is whether the comment is fair.

Mr. Yvon Godin: You said yourself that in politics, many comments are made.

Mr. Rob Walsh: Legally, the question is whether the comment on a matter of public interest is fair under the circumstances. Okay? I do not want to make any comments about this mailing in front of the committee; I want to provide you with the legal background about comments. It is not the same thing as determining whether a statement is true or false. That is a question of facts. One can request evidence and find that the statement is true or false. It is a simple matter.

Mr. Yvon Godin: Without referring specifically to this mailing in detail, are we talking about facts or comments at present?

Mr. Rob Walsh: It is up to you to decide after examining the mailing. Is this a statement of fact or a comment? Is it really a—

Mr. Yvon Godin: Both can constitute a breach of parliamentary privilege?

• (1140)

Mr. Rob Walsh: Pardon?

Mr. Yvon Godin: Both a comment and a fact can—

Mr. Rob Walsh: Yes, that is true. But the measures are different. The issues that come up are different, from a legal standpoint, between a comment and a statement of fact. Here, in committee, on a question of privilege, it is up to you to decide. The same rules do not apply. I am speaking as a lawyer, in a legal context. But here, where the committee is concerned—

Mr. Yvon Godin: Where the committee is concerned, everything is open.

Mr. Rob Walsh: Correct.

[English]

The Chair: We're going to go to five-minute rounds. We'll have time for everybody if we keep it to five minutes.

Go ahead, Mr. Volpe.

Hon. Joseph Volpe: Mr. Walsh, in terms of your expertise as an officer of Parliament and also as a lawyer who's trying to be objective, please correct me if I cross a line. This is done in the interests of trying to help everybody understand what the terminology associated with “accurate” means.

I think you have this front of you, or you've seen it. When one uses the word “willingly”, we have crossed the line from fact to intent, so one has to establish that there has been intent in order for somebody else to suggest that “willingly” is an accurate term to use.

Second, when one makes it an established fact that a conference is an “overtly anti-Semitic” conference, then surely it must have been advertised as that prior to participation in order for this to be accurate. When one reflects back on a conference and judges it to be anti-Semitic because of what developed once the conference began, that would be a different accuracy, would it not?

Mr. Rob Walsh: In a manner of speaking, yes.

Hon. Joseph Volpe: So I guess objectively, when I was asking Mr. Lukiwski to...because he reflected, three times, on using the word “accurate”, that this statement is not in the objective category of accuracy.

Mr. Rob Walsh: Mr. Chairman, perhaps I could respond in these terms. I don't like to repeat myself and take up the committee's time needlessly, but the question, I suppose, as suggested by the member's question, is this: Is what you're dealing with a statement of fact, or is what you're dealing with a comment about facts—or, God forbid, is it a mix of both?

Even when you go to a question of comment, the person pleading that it was a fair comment has to show that the facts on which it's based are true. If you characterize this as a comment, then you still have the question of whether the facts on which it is based are true. If you characterize it as facts, then—I hate to talk about the terms specifically, because we're getting into semantics—if we take the word “willingly”, which the member chose to identify, and you asked me to determine whether the use of the word “willingly” was true or not, my first reaction would be to ask if somebody was there under compulsion or force. You know they were there. We accept that they were there. I suppose we're able to accept that they were there, or that he was there. Was he there under compulsion or force? If not, then you might assume he was there willingly.

That's the way I would address the factual question. Now, that's not making any political comment; rather, are all of us here in this room willingly? Are we here under some compulsion?

Hon. Joseph Volpe: But you're here willingly on the issue of the question of privilege. And for someone afterwards to say that you willingly participated in a raucous debate with members of Parliament who had an absolutely no-holds-barred discussion, that's not really a reflection of your willingness to participate in the second part of what turned out to be the...because it wasn't your intention to be a part of that. Nor did anybody intend you to be a part of that kind of a discussion.

So in fairness—

Mr. Rob Walsh: What you're saying is there's a difference between presence and participation.

Hon. Joseph Volpe: That's right. You came here under legitimate, bona fide reasons, and it was to illuminate some of the discussion on a question of privilege for all members of Parliament. If this committee deteriorates into something else, it would not be a fair comment for anybody to make about you willingly participating in a raucous debate with members of Parliament. It would be absolutely inaccurate.

• (1145)

Mr. Rob Walsh: That may be a fair comment.

Hon. Joseph Volpe: Well, I like your play on words.

No one has yet established that there was an “overt” indication that something was going to be anti-Semitic. This is a post-factum observation.

So what is the accuracy in law in terms of what someone might have done prior to the comment post-factum?

The Chair: Can you give a 10-second answer?

Mr. Rob Walsh: I'm afraid I'm not capable of an intelligent response in 10 seconds.

Hon. Joseph Volpe: Eat into their time. They're not going to say anything worthwhile.

Some hon. members: Oh, oh!

Mr. Rob Walsh: I appreciate your point about post-factum. You're saying that the facts are only true after the fact—

Hon. Joseph Volpe: Oh, I'm sorry, was that comment then unfair?

The Chair: Excuse me. We are trying to listen to the witness.

An hon. member: Willingly.

Mr. Rob Walsh: Mr. Chairman, I understand that the member is saying that the statement of fact, if you call it that here, is only a factual situation appreciated after the fact at some time later. You know, if I'm at a wedding and I think it's a wonderful wedding, and then later on it's found out that one of the parties to the wedding, the bride or the groom, was already married and so it was a bigamous, fraudulent marriage, well, I didn't know that. I was just sitting there at the wedding and doing my thing. Am I going to be blamed for attending a bigamous, fraudulent marriage? No, and if anybody said that I supported a bigamous, fraudulent marriage, I'd say, wait a minute, I just went to a marriage; I went to a wedding.

So in that sense, yes, you could be wrongly accused of participating and consenting to something that later proves to have been something other than what you went to. I don't know if that's the case here, but I take your point.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, but I think....

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Yes, thanks.

I think we've gone down a path that's kind of sterile here in that I don't think Professor Cotler's defence of why he and the Liberals were at Durban has anything to do with whether or not they realized, post facto, that it had turned into an anti-Semitic hatefest. He's quite clear that he thinks it was an anti-Semitic hatefest. His defence is that he was asked to stay by the Israelis in order to help mediate that.

So the line that Mr. Volpe is going down I don't think is the defence that Professor Cotler is going down at all. It's actually in complete contradistinction to it, and a contradiction of it.

But this raises the question, to me, that if it is the case that what Professor Cotler has asserted is correct, and when he was here as a witness in this case he based his defence of his actions on the fact that he'd been asked to...and he drew attention to an article published by Rabbi Melchior from Israel, who asserted that he had asked the Canadians to stay there. That article was published on the very day that Professor Cotler was appearing. Therefore, that information could not have been available to the authors of the ten percenter at the time the ten percenter was put out, which suggests that it was put out as a good faith assertion of all the facts that could have been knowable to the MPs putting it out at the time.

Now, would that constitute, in a case before the courts as opposed to being a point of privilege, a legitimate defence, or would that be seen as not being relevant?

Mr. Rob Walsh: Well, if you're into a fair comment issue, if you characterize it as a comment as opposed to a declaration of facts, one of the considerations is whether in fact the comment was honestly and fairly made. So it may well be a germane consideration that the facts weren't fully known, or could not have been fully known, by the person making the statement until some later point after the allegedly defamatory statement was made.

Mr. Scott Reid: Separately from that, Professor Cotler in his presentation to the Speaker, in asking for the initial ruling the Speaker eventually gave, said this had “prejudicially affected my ability to function as a member”. I think he was drawing reference to the suggestion, which I think you cited, of a member being found to be “obstructed in the performance of his or her parliamentary duties and functions”.

He then stated:

I might add that some of the responses to the flyers in my riding called upon me to leave Parliament...as I had betrayed that community. There could not be a more pernicious and prejudicial fallout from this damaging flyer as that which I have quoted, and I can tender the evidence to you, Mr. Speaker, for the record.

I would assume that it would be incumbent upon him to provide some evidence not of having negative publicity but of being impaired in his ability to function as a member of Parliament.

That raises the question, what does being “obstructed in the performance” of your parliamentary duties actually mean? Is there a definition that has come from previous rulings as to when one is actually obstructed in one's capacity to perform one's duties? That, presumably, would be highly relevant here.

• (1150)

Mr. Rob Walsh: There are two parts to the question, Mr. Chairman. One is the link between the allegation of breach of privilege and the need to establish there was an impairment or impediment in the member's ability to do his function.

Certainly, if you look at O'Brien and Bosc, starting on page 108, where they talk about this matter, and you go to page 110, where they're talking about physical obstruction, assault or molestation, obviously the facts will speak for themselves, whether in fact what took place was of a kind that would impair the member's ability to do his function.

But then, as I mentioned earlier, they also allow that non-physical means could be used to cause an obstruction or interference. It would appear from reading the text and the rulings that I've seen—we don't have a lot in this regard—there's a presumption that a sufficient assault on the reputation of a member would impair their ability to do their duty as a member of Parliament.

As I said earlier, I suppose that's acceptable in a scenario where the allegation or the comment made about the member goes to the moral character or person of the member of a kind that he or she would find himself unable to carry on his or her duties, if shunned in their community, shunned in the House and committees, and so on. That's an obvious example where, clearly, the member is not able to communicate freely with their colleagues because of the declaration or comment made about him or her.

Is there something short of this that would be sufficient? Well, it's for the committee to decide what constitutes an impediment.

When you talk about something like defamation or, in this context, a misrepresentation or an assault on the character of a member, it's very hard, whether in a parliamentary context or the legal context, always to get hard evidence to show that in fact it really is causing an impediment to the member's ability to do his or her duty as a parliamentarian, or the individual plaintiff citizen's ability to carry on their life normally in the community. It's kind of hard to.... Sometimes the evidence is there, but sometimes it may not be. Yet what was said was defamatory, and a plaintiff will win the action. They may not get much in the way of damages, because, as I said earlier, part of the objective is to get the court to say that what was said was defamatory, and that's important.

Mr. Scott Reid: This is a court case, as opposed to a question of privilege, just to be clear.

Mr. Rob Walsh: Correct.

Mr. Scott Reid: Thank you very much.

The Chair: Thank you.

Monsieur Guimond, or Madam DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Thank you, Mr. Chair.

Mr. Walsh, I am a relatively new parliamentarian, so I may need some clarification from you.

If, for example, I send a ten percenter to Maurice Vellacott's riding—a ten percenter congratulating Mr. Vellacott for finally being enlightened and now considering abortion as a woman's right to control her own body—he would have the right to say his privilege had been breached, given that he has announced publicly and repeatedly that he has found that abortion is linked to a greater risk of breast cancer. It would be his right to state that. This is similar to the example involving Mr. Stoffer, who publicly stated his beliefs about abolishing the gun registry.

In the case before us, as a member of the Standing Committee on Procedure and House Affairs, I can say that this is the first time that I have actually seen the text. We are talking about it, but I am not in a position to determine if the privilege has been breached or not, because I do not know the Liberal Party agenda by heart, and I do not know if these positions are true or false.

Basically, I understand that in order to determine if the committee has the authority to decide whether a privilege has been breached, we would have to listen to many witnesses who would argue that one thing is part of the Liberals' opinions, and the other is not exactly, and so on.

I received a ten percenter last summer—I do not recall which Conservative member sent it to my riding—saying that I was against protecting children because we voted against a Conservative bill. The ten percenter was extremely demagogic in its wording and how it was done. It seemed similar to what I am reading here today, that is, using phrases that have been taken out of context, that are not explained or properly qualified to explain my party's position on a private member's bill.

So in order to prove that I do not oppose the protection of children—on the contrary, I have three children myself and I very much support protecting children and oppose the trafficking of children—I had to explain myself to my constituents. In any case, the mail out was so demagogic that it had no credibility. In fact, it allowed me to have some discussions that helped me understand how the Conservatives go about manipulating public opinion.

In this case, to the best of my knowledge, these phrases were taken out of context and were basically used to cause the public to question the viewpoint of a member who, as we all know, advocates for and is an ardent defender of the Jewish community.

Our role, if I understand correctly, is to gather information on this issue in order to determine whether the facts before us were taken out of context or if they show that Mr. Cotler was unable to carry out his duties as a member of Parliament, because he was harassed or he was pressured by the Jewish community, or if it affected his work. In my opinion, the only way we can fulfill our role is by hearing witnesses. Judging by the witness list we received, we will then be better equipped to reach a decision.

Ultimately, once this work is done and if we find that privilege has been breached, what will happen then? You said you were open to anything. Can you tell me what was the strictest sanction a member of Parliament has ever received for a breach of privilege?

Can you please explain this to me, especially since you have been here a lot longer than me?

• (1155)

Mr. Rob Walsh: I would like to make several comments, but basically, you asked what happens when a privilege is found to have been breached. Mr. Godin asked the same thing.

I imagine the individuals responsible could be asked to issue a public apology in the House of Commons, for example, or to distribute another ten percent in the riding indicating that the earlier claims were false.

These are some possible sanctions, but it is up to you to consider the matter.

Mrs. Claude DeBellefeuille: What was the most severe sanction a member of Parliament has ever received for a breach of privilege?

Mr. Rob Walsh: The most severe?

Mrs. Claude DeBellefeuille: Or the most serious or embarrassing.

Mr. Rob Walsh: Prohibiting the privilege of sending ten percenters anywhere in Canada for a period of six months, or something like that. I don't know. We can only imagine the possible sanctions.

Mrs. Claude DeBellefeuille: In the history of Parliament?

Mr. Rob Walsh: O'Brien and Bosc gives three or four examples. In one case, I believe the case of Mr. Masse, the committee issued a report indicating that his reputation really had been unjustly damaged or a false statement had been made. But the House of Commons rejected the report. A consensus could not be reached in the House of Commons. The matter ended there.

Debate, either before the Speaker in the House or here in committee, is perhaps the answer. That is the only way to correct the problem.

Mrs. Claude DeBellefeuille: The debates could be made public.

The Chair: Thank you.

Mrs. Claude DeBellefeuille: Perhaps then the facts could be set straight publicly.

[English]

The Chair: Very quickly.

[Translation]

Mr. Rob Walsh: I have a brief comment.

We need to separate the political debate from comments of a moral nature. Many things are said against one another in a political debate and sometimes it is difficult for politicians to draw the line between a debate or political comment, and a slanderous comment.

[English]

The Chair: Monsieur Godin, do you have a question?

[Translation]

Mr. Yvon Godin: I do not believe you answered the question.

Ms. Bellefeuille's question asked what was the strictest punishment in parliamentary history. Has there been any? Has the only punishment you have ever seen involved asking the member to rise in the House and apologize?

Mr. Rob Walsh: It depends on the circumstances. There are not many examples in O'Brien and Bosc to indicate what has been done in the past.

However, I think the issue is determining whether the member's reputation has been damaged. If we reach that conclusion, we could say that the situation has been corrected.

Mr. Yvon Godin: And it will be in all the newspapers in Quebec the next day.

Mr. Rob Walsh: That's right.

• (1200)

Mr. Yvon Godin: Everyone would know.

Mr. Rob Walsh: I guess so.

[English]

The Chair: Thank you.

That ends our discussion with Mr. Walsh.

We thank you for coming, and ask you to please remain available to the committee. If we come up with further questions we will certainly call on your guidance. That way we'll move forward with our witnesses on the factual and objective side of our study. Again, thank you for your comments today.

We will suspend for a moment while we move in camera to discuss committee business...

Mr. Volpe.

Hon. Joseph Volpe: Just before we suspend for committee business, I think there are two points that I think we would all consider before going in camera.

One was what the witness had just indicated, that is, the distinction between commentary that would be valid in a political forum and the facts.

Secondly...but Mr. Reid is not here. He'll be able to defend himself when he comes back in.

To finish off with Mr. Walsh, that the most serious thing would be that we would eliminate the privilege of going into ten percenters, well, I think the House has already dealt with that. So the only issue left is whether there would be an apology directed towards Mr. Cotler or others.

The second thing is that Mr. Reid, in his questioning, would appear to have admitted that there was an error, because he said that Rabbi Melchior's statement, if it had been available to those researchers and supported by the caucus, would clearly have had a different impact on the statement, thereby acknowledging the inaccuracy of the statement.

So I think perhaps it would save the committee a lot of time to simply move towards filing a report to the House. You've already dealt with the maximum penalty available, because the House has already said no more ten percenters in somebody else's riding—

The Chair: We're getting into a really good debate here. That will be great at this committee when we're actually debating facts and objectivity with our witnesses.

So if you don't mind, I'm going to stop you there. There are a couple of other people who want to talk. You have, so—

Hon. Joseph Volpe: Well, let me talk.

The Chair: I'm going to...*[Inaudible—Editor]*...that way.

Hon. Joseph Volpe: Good. So you'll let me after.

The Chair: Well, you got a good message in.

Mr. Guimond.

[Translation]

Mr. Michel Guimond: Mr. Volpe had a few moments to explain, so I would simply like to say that we need to look beyond the simple facts and consider the malicious intent of the ten percenter.

Why was it sent to Mr. Cotler's riding and not mine? I am not sure if there are even 10 people of the Jewish faith in my riding. So the ten percenter was sent to Mr. Cotler's riding because he is Jewish. He is recognized as a world leader in human rights.

[English]

The Chair: I'm going to stop you there, the same as I stopped Mr. Volpe.

This is all great discussion and great debate, and we will get there when we have witnesses who will be here to establish that objectivity and those facts.

I'll go to Mr. Hoback, and then let's stop on this one and wait until we are actually into that.

Mr. Marcel Proulx: I have a point of order after Mr. Hoback.

The Chair: Okay, after Mr. Hoback.

I'm going to cut you off, too, Randy, so go ahead.

Mr. Randy Hoback (Prince Albert, CPC): I'll be very quick, Chair. I just don't want to let Mr. Volpe interpret Mr. Reid's words as if that's what he said; he was using a lot of hypothetical situations in a lot of his questions and stuff.

I think you were taking some liberties with some of Mr. Reid's questions. To assume that this is what he was saying, or to assume anything else, I don't think is appropriate.

In terms of malicious intent, if we're going to look at that, well, then every ten percenter that went into somebody else's riding would have to be looked at, I would think. You could argue...and I could probably make an argument, when a ten percenter came into my riding from the Liberal Party, that there was malicious intent.

So I think we have to get back to the facts. As Mr. Walsh stated, there are very strict rules on what it is.

The Chair: Thank you.

Thank you again, Mr. Walsh, for your guidance. It will help us be there when we get there.

Mr. Proulx, quickly.

Mr. Marcel Proulx: On a point of order, Mr. Chair, you mentioned that you wanted to go in camera.

The Chair: Yes.

Mr. Marcel Proulx: I think we have dealt with potential happenings of this committee at the steering committee and in this committee in camera.

I don't think we need to go back in camera to discuss witnesses, so if you agree, I would suggest that you see—

The Chair: Of course it's never up the chair to agree. It's the committee's choice.

Mr. Marcel Proulx: No, but if you agree, I think you should poll.

The Chair: There are some financial matters in here, which we would always do in camera, the budget piece.

Mr. Marcel Proulx: We could do the witnesses and then, for the finance part, we could go in camera.

The Chair: All right.

On that point, Mr. Reid, quickly.

Mr. Scott Reid: Sir, I was out of the room when, I'm told, Mr. Volpe made the assertion that what I had said in my questions indicates some sort of admission that the comments were inaccurate. I was merely asserting that certain facts could not have been known by the authors of these things.

As to the accuracy of Rabbi Melchior's comments, that's actually something I don't know about. I only know that he's made an assertion that the former ambassador to Canada, Mr. Baker, who was also involved in the Israeli allegation at the time, made contrary assertions. We haven't yet established that information.

That's just for clarification.

• (1205)

The Chair: That's the point I attempted to make after Mr...that we'll get to the establishment of facts. That will be the role of this committee, the establishment of facts, but it's not today's role. I'm trying to keep down that debate and get us into how we will do the study more than what the study is at the moment, so let's move to that.

Mr. Proulx has asked that we stay in public. It's the will of the committee as to which way we go with this. We'll need to deal with some budgeting matters.

Is it the will of the committee?

Mr. Volpe.

Hon. Joseph Volpe: I prefer to stay as we are. We don't need to go in camera.

Since you just said we're going to establish the way that the accuracy has been established in the past, and will be, on this issue, is it not appropriate for you, with all due deference, to recuse yourself from the chair on this? You're the one who said exactly the same thing in my riding. Are we talking about the facts that you want to establish according to your will or according to the will of the committee?

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Mr. Chair, was your name on the ten percenter that went into Mr. Cotler's riding?

The Chair: No, it was not.

Mr. Tom Lukiwski: Then I don't know why you should recuse yourself.

The Chair: I've not been named in this privilege.

Mr. Tom Lukiwski: I see no reason for you to recuse yourself if you aren't the one who sent it into Mr. Cotler's riding.

The Chair: I will consider that the chair has made a ruling he will be the chair. The committee obviously has the right to overrule.

Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): If that is factual, then our briefing notes need to be corrected for today, because they clearly indicate that you were the one.

The Chair: Ah. Well, it was stated incorrectly in the House. So that may well need to be repaired, then.

Mr. Harold Albrecht: That's unless I've misinterpreted the briefing notes.

The Chair: Thank you.

I'm back to the willingness of this committee to stay in public.

Mr. Harold Albrecht: Mr. Chair, I can go either way. It just seems strange to me that when we're establishing a witness list, which obviously will have financial implications for each of those witnesses, how to separate those and come back and revisit it for the financial part doesn't make a lot of sense. I think we're going to double our time.

The Chair: Okay. Could I have the...?

Tom.

Mr. Tom Lukiwski: I agree with Harold in one sense, that when we finally determine the witness list—everyone submitted them—those witnesses that are available will be coming here. I assume that all those meetings will be in public.

I mean, we've always gone by the protocol that committee business is in camera, have we not?

The Chair: Right. That's been our protocol at this committee, but of course I don't rule that. It's up to the committee.

Mr. Volpe again.

Hon. Joseph Volpe: I understand the procedures of committees, but it's also very important to understand how some of the factors—in this case, witnesses—have been put on the table in order to establish accuracy.

To my understanding, the people who are listed for us to consider came from two basic sources. I'm prepared to hear what you have to say on whether I'm right or wrong on this, but I count one, two, three, four, five, six—

The Chair: Mr. Volpe, let's not start the business of the committee until we've determined whether we're going to do that business in public or in camera.

Hon. Joseph Volpe: But it's important to know what we're doing.

The Chair: Well, if we start doing it, then the decision has made by you rather than by the committee. I'd like it to be made by the committee, sir.

An hon. member: Hear, hear.

Hon. Joseph Volpe: Then go ahead and call it—

The Chair: Great. Let's finish that.

Hon. Joseph Volpe: —but I think if we want to know where these things came from—

The Chair: That was the question I asked. Your answer to me was to start doing committee business. I would like, if we ask a question about where we're going to do committee business, to deal with that first.

Hon. Joseph Volpe: Open.

The Chair: Okay.

Is it the will of the committee to stay in public?

Can I have a show of hands?

We have a majority right there, so I guess we are staying in public.

Mr. Lukiwski.

Mr. Tom Lukiwski: Mr. Chair, as a point of clarification on what Marcel was saying, are we going to be discussing the financial implications in public as well? We've never done that before.

An hon. member: We won't.

Mr. Tom Lukiwski: Then let's amend whatever motion you're trying to make here.

Mr. Scott Reid: Can I speak on a point of order here?

The Chair: Sure, let's just have them all.

Mr. Scott Reid: I think the rule here is simply this. You can go in camera or out of camera; all someone has to do is move a motion. You then immediately have a vote. There is no debate. You either go in or out.

So if we need to, when we get on to discussing the finances, we can just go in camera at that time.

● (1210)

The Chair: Super.

As committee business, we have a proposed witness list in front of us. I would like the clerk to distribute it and then have her discuss, if we could, where she's at in trying to put it together.

I will share with you at this time that I will not be here on Thursday. A friend has passed away and I have a funeral to attend on Thursday. I've asked Monsieur Proulx, as the vice-chair, to sit in the chair on Thursday if we have witnesses available for that day. The clerk will share with us what we have available for Thursday.

Mr. Marcel Proulx: If we decide to sit.

The Chair: Of course, that's at the will of the committee also. I just cannot be here.

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: I wish to raise a point of order. The party whips have all agreed that when the Chair is not able to fulfill his duties and is replaced by a member of the opposition, in this case Mr. Proulx, the latter should be replaced by another Liberal member, or a Conservative member should sit out. The whips agreed on this so that the opposition would not be in a minority.

[*English*]

The Chair: Mr. Lukiwski, on that point...because I think we agree with that.

Mr. Tom Lukiwski: I just want to verify what Michel was saying is quite correct. All of the whips agreed that if, in any event, the vice-chair—in this case, Marcel—has to take the chair, we would not use that opportunity to gain a majority on the committee.

So I agree with what Michel was saying.

The Chair: All right. So we're okay on that issue? Let's see if we're there....

Would you like to share with us where you are at? I know you have been trying to contact people on both sides of the witness list, or the whole witness list. Let's see what you've been able to discover so far.

The Clerk of the Committee (Ms. Angela Crandall): I have now been able to get contact information for most people. There are still a few from whom I haven't been able to get a response.

These are possible panels for the committee to consider in doing their business this way, but it will depend on availability. Some of them, such as Anne Bayefsky and Judy Rebick, are available the week that the House comes back from the break, and some of them have other dates of availability.

I spoke this morning with Mr. Landy. He won't be available until April 20. It seems for most people it will be mid-April or May. Some of them are out of the country.

Some people have said their professional commitments don't allow them the time to appear before the committee. I have listed them at the bottom of the second page.

For Thursday, the only person who potentially could be available is Ms. Fry. She is on House duty, though.

The Chair: We'd have to ask her whip's permission.

The Clerk: To have her appear for an hour.

An hon. member: We'd have to ask her staff.

Voices: Oh, oh!

The Chair: First of all, in general, the clerk and I have looked at these lists and tried to group together what we can. We also—I hesitate to say—tried to look at costs on some of this, because that's part of what we're looking at.

All I'm looking for at this moment is some thought from the committee on whether we are heading in the right direction. Is this about what you are looking for in some of our groupings?

We know that we'll never get it down to absolute cement, because some people at the last moment will not be able to be there and we'll have to see them at a later date or move them around in the area. So let's talk about that first.

Mr. Reid.

Mr. Scott Reid: I wonder if the clerk could just guide us through. We have the list of names here.

What names have you not been able to schedule at this point? Could you just run through those for us?

The Clerk: All the people who were on the list are here. If they were contacted and said they weren't available, I put them at the end.

Just let me double-check.

Mr. Scott Reid: I see at the very back that you have three names.

Why then, if I can ask—

Mr. Marcel Proulx: Excuse me, Mr. Chair, I have a point of order.

Do we all have the same lists?

Mr. Scott Reid: There are two pages, apparently.

[*Translation*]

Mr. Marcel Proulx: The other way around.

The Clerk: Yes.

[*English*]

Mr. Marcel Proulx: And all the witnesses on the original list that was given to us, the two pages of witnesses, have been somehow placed on this—

The Chair: That's my assumption, Mr. Proulx—

• (1215)

Mr. Marcel Proulx: Thank you.

The Chair: —but we're just checking that.

The Clerk: There are four missing.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: I'm just wondering, in light of what Mr. Walsh.... Some of his comments today referenced extensively O'Brien and Bosc, formerly Marleau and Montpetit. I know we've already submitted the witness list, but would it be wise to add them to the witness list?

The Chair: To discuss definition?

Mr. Tom Lukiwski: Yes.

The Chair: In my opinion, it would be fine, but I'd like the committee's opinion.

I'd hate to rule on your behalf.

Mr. Reid.

Mr. Scott Reid: Just in favour of that point, there are significant changes between O'Brien and Bosc text and the former Marleau and Montpetit. In particular—this is very relevant—in the definitions of privilege in Marleau and Montpetit, there are only four privileges cited: freedom of speech; freedom from arrest in civil actions; exemption from jury duty, and thank goodness for that one; and exemption from being subpoenaed to attend court as a witness. But then O'Brien and Bosc add in freedom from obstruction, interference, intimidation, and molestation, which is the basis upon which Professor Cotler is making his assertion.

Their addition means they've presumably thought a great deal about this. They aren't simply passing on the wisdom of those who wrote before them, they're actually adding this in. Therefore, I think they would have a fair bit to say about the definition of these terms that might be helpful in an area where Mr. Walsh was unable to provide us with guidance, because we were going into parliamentary matters as opposed to legal matters.

The Chair: I understand and find it clear.

Does the committee agree that we can add Madam O'Brien and Monsieur Bosc to the witness list?

Mr. Marcel Proulx: Could we keep that aside until we see what's happening with these different witnesses here, please?

The Chair: Sure. We'll add that to the end of the list of votes.

Mr. Reid, I understand this is a point of clarification.

Mr. Scott Reid: I'm just saying, I think if we were going to have them, it would make sense to have them at the front end in order to actually define what we're talking about. It'd be a shame to get the other witnesses in and then learn afterwards that we didn't ask any of them the right questions because we didn't understand what—

The Chair: I agree. That was the intent of having Mr. Walsh here today.

Mr. Proulx, and then Randy.

Mr. Marcel Proulx: As a clarification on intent, I wasn't saying to hold them until we had heard all these other witnesses. I'm saying to keep it aside just so we can clear up the difference between these two lists of witnesses, and then we can tackle it.

Mr. Scott Reid: I stand corrected. My apologies.

Mr. Marcel Proulx: Thank you.

The Chair: Mr. Hoback.

Mr. Randy Hoback: Thank you, Chair.

Perhaps we could have the analysts check into which definition we should be using, and based on time. I believe this new binder came out in the middle of all this, so should we be using the new interpretation or the old interpretation? I'd like to have some information on what that should be.

The Chair: Mr. Reid.

Mr. Scott Reid: With respect, I don't think my colleague's point is quite right. These are not new rules; this is a new gloss of the rules. The rules were already in existence, to take the form of the precedents established by the Speaker. This is a more contemporary, and hence better, summary of them.

So the rules upon which this is based presumably were already in place, unless some rulings from the Speaker occurred between when—

Mr. Randy Hoback: But you have different interpretations between the two binders.

Mr. Scott Reid: No, we just got additional material—

Mr. Randy Hoback: Different interpretations.

Mr. Scott Reid: Yes.

The Chair: Let's try to settle that one first.

Is there an objection to having Madam O'Brien and Monsieur Bosc here?

I see none.

I think clarifying the interpretation of "breach of privilege" won't hurt this committee in any way, so that's good.

Mr. Volpe is next.

Hon. Joseph Volpe: Thank you, Mr. Chairman.

I guess the issue is really whether we're going to proceed much further than where we already find ourselves, given that, as Mr. Walsh has indicated, the most serious remedy would be the elimination of a member's right to present these ten percenters in someone else's riding and that this remedy has already been addressed by the House.

The only other issue that would be present would be how this committee takes instruction from the Speaker about dealing with what has come down to a relationship amongst members, in their either impeding each other's ability to do their jobs, or their at least trying to be objective.

As I look at this list, I would want to do one thing, and that is address the issue of accuracy. I didn't want to characterize Mr. Reid's views in a way in which he did not intend; however, he did say that the information from Rabbi Melchior wasn't available to his caucus's research group, and therefore it would have had an impact on whatever statements were made.

Taking that as a point of departure, one would look at this list and ask which of these individuals can do the objective part. If we want to be professional, which of these individuals will make a contribution?

If you'll bear with me a moment, I divided this into a group of people who were actually there, or who had a direct impact on Durban I. As I go down further, I look at the list. All of page two, by the way—I've divided them into two pages, and just so that you know them, I'm looking at Anne Bayefsky, Khaled Mouammar, Mohamed, and so on. I ask myself, what could they possibly contribute to the facts—objective—of the matter at Durban I?

• (1220)

The Chair: Mr. Volpe, I'm going to probably stop you here. At this moment, I don't think we're trying to determine whether they are witnesses: they've been submitted.

Hon. Joseph Volpe: But that doesn't necessarily mean they've been accepted.

The Chair: I think we're trying to determine whether they're coming or not.

Hon. Joseph Volpe: No, but this is a strange way for a committee.... The fact that it receives suggestions doesn't mean that they have been accepted by the committee as valid witnesses. What do they have to contribute? Who asked for them?

Mr. Randy Hoback: You aren't going to sanction witnesses, are you?

Hon. Joseph Volpe: No, I'm not going to sanction witnesses. I'm going to ask you what the purpose is of having people who weren't there and who can't contribute to the accuracy of the statements. What will their contribution be to a debate on the question of privilege?

I mean, I didn't suggest any of these.

Mr. Randy Hoback: That's the very question to ask the witnesses.

Hon. Joseph Volpe: No, no, I'm asking the people who made this presentation. Who made the suggestion of these people? Obviously they must have thought that these individuals can contribute to the question of accuracy and the question of privilege.

They didn't come, as I know, from our caucus. Did they come from somebody else's caucus?

The Chair: Obviously, all the witnesses on the list came from somebody at this table. They came through the chair and the clerk. The clerk and I have looked at the list and tried to put it together in reasonable panels.

At this moment I'm not trying to determine what testimony we'll get from any witness. Obviously when a witness gives testimony, through questions from members of this panel, we'll have the ability to say that we can't go in that direction, that it's not proving our point on privilege.

Mr. Walsh has given us the diagram, if you will, on looking at factualness and looking at objectivity. At some point, if those were found to be right, then we would move into the injurious part of the breach of privilege.

I'm just going to suggest that if a witness is giving us testimony that doesn't head us that way, then the testimony will stop. But at this moment, witnesses have been asked by members of this panel to be here. I think they have as much right as anyone to ask for those people to be here.

If the testimony goes south, well certainly, as I've done today a couple of times with you, I will cut them off and say that's not heading in the direction we need it to go, on the breach of privilege.

Hon. Joseph Volpe: I don't know whether I'm going south. I just want to understand—

The Chair: I didn't mean to accuse.

Hon. Joseph Volpe: —what the president of the Canadian Arab Federation, Mr. Khaled Mouammar, would have to contribute to the accuracy of the statement or the question of privilege, or, more importantly, what the individual or party that proposed him, the executive director, and the vice-president from the same organization

thought they would contribute to this discussion. It's a discussion on the question of privilege, not a discussion on any larger issues.

The Chair: Mr. Volpe, you weren't here last week when this group saw a full witness list, said, yes, looks good, go away, and try to come back with thoughts to it. You are now trying to redo that work as a new member sitting in this committee. I'm not trying to take away your ability to do so; I'm just trying to say that the rest of this committee accepted this total list and sent us away to work on it.

If indeed you'd like to redo the work of the committee—

• (1225)

Hon. Joseph Volpe: No, no, Mr. Chairman, it's not my intention to redo anybody's work. I'm going on the basis of what I heard today, and what I heard today was, as I said a few moments ago—forgive me for being repetitious—that the greatest remedy is one that says they will no longer be able to send those ten percenters into members' ridings, and it's been—

The Chair: You're at remedies long before we've established facts.

Hon. Joseph Volpe: —done already. So the only thing we can do here, in my humble estimation, for the interest of parliamentary debate and for the interest of this committee's time and expense, is address the issues that have already been dealt with and move immediately to getting to a report.

There is no need for us to go as far away—

The Chair: That would certainly be up to the committee to decide.

An hon. member: Good idea.

The Chair: Mr. Proulx.

Mr. Marcel Proulx: I think Mr. Volpe has hit a point that is an excellent idea, in the sense that unless some of these witnesses would be absolutely relevant, why do we go to witnesses? We've heard Mr. Walsh this morning. I have no objection to hearing Mr. Bosc and Ms. O'Brien, but let's go to the report now and never mind these other witnesses.

The Chair: As your chair, I'm not trying to anticipate what testimony may come from witnesses. That's truly up to those who have asked those witnesses to attend. Obviously the names have been given with some intent of getting some testimony from them that's germane to the discussion we're having here.

As to moving immediately to the end, we haven't gotten to the middle yet. But it's whatever the committee wants to do.

Mr. Lukiwski.

Mr. Tom Lukiwski: I have three quick points. One, on Mr. Volpe's contention that the remedy is already there because the ten percenters won't be sent out into the other MPs' ridings, my understanding is that the Board of Internal Economy has yet to determine that. Am I not correct in that?

The Chair: Yes.

Mr. Tom Lukiwski: So there is no remedy yet.

Two, on the question about the appropriateness of some of these witnesses, most of the witnesses whom I see listed would, I believe, be able to speak to the Durban I conference and whether or not its tone and content were anti-Semitic. I think that's relevant. Mr. Volpe is questioning the accuracy of that statement. I think this would be testimony that could help us determine whether those statements were accurate or not.

As to the suggestion that we go immediately to a report, I would ask, based on what? We haven't heard testimony. It may be Joe's opinion, and that he wants to write a report based on his opinion. I think we should get some facts before we write a report.

Thank you, Chair.

The Chair: Mr. Guimond.

[*Translation*]

Mr. Michel Guimond: Thank you, Mr. Chair.

Regarding the notion of prevention, I believe that the Board of Internal Economy's decision yesterday to end the practice of MPs sending ten percenters outside our own ridings resolves the issue and prevents things like this from ever happening again. However, this does not mean we should not look at what happened in a specific case. That is my first comment.

Secondly, when considering a list of witnesses, we must look at whether, in Mr. Cotler's case, his privilege was breached. In his testimony before this committee Parliament was prorogued—and he may need to appear before us again—Mr. Cotler came to talk about the damages he suffered. He was forced to talk about it at his synagogue, on the street, at the supermarket, and it seriously hurt him. We must also consider that. That is why he raised a question of privilege.

We must also confirm whether the act was committed. Was the act committed? The answer is clearly “yes”. A ten percenter was sent, but no one is accepting responsibility. I am confused. Some say it was signed by Mr. Preston. Apparently it was signed by Mr. Toews, unless his entire riding was covered by 10 ten percenters. Perhaps that is the explanation.

I repeat what I said earlier: we must consider the malicious intent. Why was it sent specifically to Irwin Cotler's riding? First of all, because he is Jewish and secondly, because within his riding there is a strong—

• (1230)

[*English*]

The Chair: We're getting dangerously from committee business here into testimony. We're really trying to establish the witness list, sir.

[*Translation*]

Mr. Michel Guimond: You do not want—I do not know what you have against this comment. That is the second time you have prevented me from finishing my thought. That's it; you do not want me to finish.

I think this witness list looks like a fantastic fishing expedition. Fishing lines have been cast out all around the boat and people are just waiting to see which little fish come and nibble. I am not

interested in undertaking a word for word examination of the expression “willingly participated in the overtly anti-Semitic Durban I”. He can say he went, but not as an anti-Semitic. Not to mention that he is Jewish. I could personally be accused of being anti-Semitic if I behaved incorrectly, be he himself is Jewish. I have no interest in inviting 150 witnesses or even 15 witnesses who will come and say — We must examine the core of the issue and what was actually done. We need to bring it back to the basics.

[*English*]

The Chair: Okay.

Mr. Albrecht.

Mr. Harold Albrecht: Thank you, Mr. Chair.

I just want to respond briefly about the question of malicious intent. I think we all recognize that these ten percenters are called “targeted” ten percenters, and it would be foolish for me to target a Liberal when there wasn't a Liberal in the riding, or to target an NDP when there wasn't an NDP in that riding, as their sitting member.

But as it relates to the list of witnesses, I think we have to remember that we're dealing with this ten percenter. This ten percenter has factual information on it—

An hon. member: No.

Mr. Harold Albrecht: —I'm not finished—and it has information about the Conservative stand as well. I think these witnesses can confirm or deny whether those statements are factual.

For instance, “Led the world in refusing participation in Durban II”, “Insisted on banning Hezbollah and led the world in defunding Hamas-led Palestinian Authority”—these are statements that I think we can verify—

The Chair: When we have had it from both sides.

Mr. Harold Albrecht: —when witnesses come.

The Chair: I understand, you're justifying witnesses.

Mr. Hoback.

Mr. Randy Hoback: Thank you, Chair.

I guess, Chair, I'm just kind of curious here. I'm maybe a little confused—I'm new to the committee and everything—but is it the nature of the committee to predetermine what the witnesses are going to say or not say?

The Chair: I hope that's never the case, sir.

Mr. Randy Hoback: Yes. Well, then, obviously we agreed last week what the witnesses could consist of. We looked at it before we came here. We said, “Here's a list”, and it looked good. You've done your job in trying to schedule those witnesses. And now to come in here today and say that we're going to change this all over because Mr. Volpe decided to show up today, I don't think is fair.

In regard to my colleague Mr. Guimond on the malicious intent, if he wants to go down that road then we need to bring somebody in to define what “malicious intent” is. Because, as I said before, there are ten percenters that have come into my riding that I would say then have malicious intent. What other intent would they have?

So, Chair, they're raising a whole pile of more issues. As far as I'm concerned, this has all been solved. They're all moot points.

The Chair: Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: I am looking at the list. I know you discussed it last week when I was absent. I think the main witness should be invited and that would be Mr. Vic Toews. He is the one who wrote it; it is his ten percenter.

The name of the main witness was not indicated on the list. I have a document from a member that says that the Liberals participated willingly— We are told that this is accurate information. The main witness I would like to hear from, the only one in fact, would be him. He could then tell us where he got his information. It is his signature. Calling in the entire Jewish community will not change much; they would simply be a throng of witnesses.

[*English*]

The Chair: I don't disagree. All parties were asked to submit witness lists by a certain time. We've even offered certain extensions after that or given more time. We discussed the witness list last week. I can only do what I'm asked to do. We were asked to go away and try to put it into a schedule.

• (1235)

[*Translation*]

Mr. Yvon Godin: I agree with you.

[*English*]

The Chair: Now today we're not wanting to schedule... [*Inaudible—Editor*]...on the quality of the list.

[*Translation*]

Mr. Yvon Godin: We heard a witness today. Afterwards we will see the government's stance, given that it says that the facts in the document are accurate. I do not think the main witness has been invited. I would suggest that the individual who signed the document should be invited to come and explain where he got his information. This is important. The other witnesses cannot help us determine whether the facts are accurate; it is up to him to prove it to us.

[*English*]

The Chair: Mr. Proulx.

Mr. Marcel Proulx: Thank you, Mr. Chair.

I want to come back to a statement that was made regarding this committee accepting the list of witnesses at the last meeting. I didn't hear it that way. What I recall hearing, and we can check the record, is that we had agreed that you and the clerk should examine the list to find out who might be available and when.

We had also discussed, and I don't want to get into the financial part of this, our hesitation in regard to a certain budget that had been presented.

Regarding Mr. Godin's call for Mr. Toews to be a witness, we all know, or at least I presume, that it was not Mr. Toews who sat down and wrote the ten percenter. But that's why, on the list of witnesses, if you'll recall, I insisted that we call Mr. Garry Keller, the executive director of the Conservative Resource Group, because these ten percenters originate out of the resource group of the Conservative

Party. My understanding is that this gentleman should be in a position to tell us where he got the information.

The Chair: I believe he's on the list.

Mr. Marcel Proulx: Okay.

So the main witness that Mr. Godin was talking about, being Mr. Toews, I think it's... Seeing you don't want to add names to the list of witnesses unless they come from Mr. Reid, then maybe we should call on Mr. Keller.

The Chair: Excuse me, sir, I have not said that I don't want to add names to the list. I don't know where you took that information from.

Mr. Marcel Proulx: That was the impression I got.

The Chair: I'd be happy if the committee would like to add names.

Mr. Marcel Proulx: I apologize if I'm wrong, Mr. Chair, because you're a fair man.

Thank you.

The Chair: Mr. Volpe.

Hon. Joseph Volpe: Mr. Chairman, I'm now in a position where I've tried to calculate all of the information that's coming from the other side of the table, and indeed from the chair on some occasions. That has to do with whether the witness list is now open or closed—as a start. From Mr. Hoback's comments, my understanding is that the government side is open to opening up the list.

The Chair: Committees are always masters of their own destinies. If someone wants to move something forward, we work with a fairly good consensus in this committee and we'd be happy to do whatever the will of the committee is.

Hon. Joseph Volpe: So if the list is actually open, then the discussion regarding the merits of the individuals who are placed on the list is therefore still open.

The Chair: Well, I can't argue against that logic, I guess. We're all still awake, so I guess, you know....

Hon. Joseph Volpe: I think the third issue is whether the facts are predetermined or not. The facts that we're dealing with were that whoever put the ten percenter together decided were the ultimate facts. Now the committee is being tasked with the enviable task of trying to determine whether facts that were not facts became facts the moment they were put on paper.

The Chair: Do you think you're giving us your interpretation?

Hon. Joseph Volpe: Well, just a moment, because that's exactly what the committee is going to do. If the committee is going to do that, then it behooves everybody to understand what everybody's intent is.

So I asked—I think rather innocently, perhaps naively—about what some of these people would have to offer. In order for me to understand that best...and I don't want to put a finger on anybody, but it wasn't our group. From what I gather, there wasn't anybody on this side of the table who suggested that these witnesses, from Anne Bayefsky on, have anything to offer to the issue of accuracy and intent by virtue of their absence at a particular conference, which is one of the issues at debate in this ten percenter.

•(1240)

The Chair: I have others on the list, but I understand, as it has already been shared here, why members were asked to put witnesses forward and why these witnesses were put forward. You can argue your opinion of that, Mr. Volpe, and that's fine, but—

Hon. Joseph Volpe: I don't have an opinion, I have a question.

The Chair: Fine.

Hon. Joseph Volpe: The question is just simply, what is it that someone who presented these names—as you say, obviously it was one of the government members—thought they could contribute to the accuracy of these statements? We're still talking about the issue of privilege, and the issue of privilege based on objective fact and accuracy, to use Mr. Lukiwski's terminology.

If we are truly interested in those things, let's have a debate or a discussion as to what makes these people contributors to an understanding of the facts; I don't even want to say the “truth”.

The Chair: I think what needs to happen is that we may have a discussion with those people as witnesses to determine what they are offering to the case. I don't think—

Hon. Joseph Volpe: No, they would only come, Mr. Chairman, if you asked them. They didn't volunteer.

The Chair: Right.

Hon. Joseph Volpe: So those who volunteered them are the ones who have an intention of debate in their mind. That's why I said, listen, if facts don't matter, then let's simply move on to what the committee was tasked to do, which is to submit a report.

The Chair: Well, I'm not sure anybody has said that facts don't matter. We have a number of people now on the witness list because this has turned into the testimony and debate at committee rather than the arrangement of a witness list.

We have to vacate this room at 12:50 for the other people to come in. Let's see if we can get quick, short comments. I'll take them all if we can, and we'll let the committee decide at the end of the day.

Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): At the risk of causing any divisions in the Liberal Party, the official opposition here, I get two messages. I have Mr. Proulx saying that we should have more witnesses, and I have Mr. Volpe I think suggesting—

Mr. Marcel Proulx: No, I didn't.

Mr. Guy Lauzon: I thought you wanted to add a witness.

Mr. Marcel Proulx: No, I didn't.

Mr. Guy Lauzon: Okay, I'm sorry.

Well, Mr. Volpe doesn't want any witnesses.

Anyway, the reason we're calling witnesses, as I understand it, is that Mr. Cotler sat here and suggested that some of these statements were inaccurate. In order to determine whether they are inaccurate, we decided collectively, as a committee, that we would call some witnesses to this committee and get some testimony on the veracity of these statements. So I don't see how we can go right to a report if we don't listen to the comments of the witnesses.

In most committees, we usually cooperate, relatively, when it comes to witnesses. Maybe there is somebody who is very controversial, but by and large, if somebody wants to add a witness—and Mr. Godin wants to add a witness—if it makes sense to the committee, I think we should do that. Do we want to solve the problem or do we just want to sweep it under the rug? If we want to solve the problem, let's get it and then we'll have a decision once and for all.

At any rate, I think we're doing this almost at Mr. Cotler's suggestion, actually.

Thank you.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Just quickly, Chair—

The Chair: Please.

Mr. Tom Lukiwski: —Joe is suggesting here that we vet witnesses. We've never done that before. He's saying we determine whether they're appropriate and that's why they should come. Joe may not want to see some of these witnesses appear, for whatever his reasons, but the witness lists have been submitted.

We have never, at least in my memory, submitted witness lists and denied the Bloc, the NDP, or anybody the right to call the people they want to speak to. So I think we should do as you had suggested and get the witnesses here. If their testimony is not relevant, then you as chair, or others on a point of order, can get them out of here. But I think we have to hear these people.

My real question, though, is that there were apparently four names on the original witness list that don't appear here. I'm still waiting to hear who they are and what the plans are to—

The Chair: I'll read those out, if you like.

Mr. Walsh, who appeared here today, was on our witness list; he therefore didn't make it onto the next one.

David Matas, representing B'nai Brith—

The Clerk: He's on it, but they asked for representatives of B'nai Brith. He's—

•(1245)

The Chair: So we're working off that.

There's Mohamed Boudjenane, with the Canadian Arab Federation, and Grace-Edward Galabuzi, from...we're not sure where.

The Clerk: He's on sabbatical.

The Chair: He's on sabbatical, and we're trying to find him.

They're on there.

Mr. Tom Lukiwski: I just want clarification that the four witnesses who were on the proposed witness list and who are not on this one are not included because they're unable to make it. Or were they just left out in error?

The Clerk: Some of them are unable to make it. Some of them I haven't been able to contact yet.

Mr. Tom Lukiwski: Okay. So there's the potential to have more witnesses than those we have here?

The Clerk: Yes.

The Chair: Mr. Reid.

Mr. Scott Reid: No doubt the purpose of the witnesses is to establish the points that are in contention and which, by Professor Cotler's testimony, have had the effect of impairing his privileges. What he says in his testimony before us, when he attended—it would be around 11:30 to 11:35, just so that people can find it—was the “grievous and false accusations”—in the plural—in these targeted mailings.

So he's presumably not referring simply to the statement “willingly participated in overtly anti-Semitic Durban I”; I assume he's also referring to—

The Chair: Mr. Reid, I did cut others off who tried to give testimony.

Mr. Scott Reid: No, no, I know, but my point is simply that there's a second statement that he clearly regards as being problematic, and therefore witnesses who relate to that testimony, the de-funding of Hamas and Hezbollah.... I think this may be where some of the witnesses come from, because they expressed opinions —

The Chair: So you assume that some of the witnesses will be able to do that. I can't pre-assume that—

Mr. Scott Reid: That's right: these are not purely people dealing with the Durban conference. I'm simply basing it on that assumption, yes.

The Chair: Mr. Godin.

[*Translation*]

Mr. Yvon Godin: Yes, Mr. Chair.

I really had the impression earlier that I had missed a meeting. You said that we had received the list, that we had accepted it and returned it to you, as though we had discussed witnesses. I just realized that I did not miss a meeting—

[*English*]

and we have never discussed the witnesses.

The Chair: I have to correct you there. A witness list was in front of all of us at the last meeting—

Mr. Yvon Godin: Yes, we did have one, but as I said, we did not “discuss”.

The Chair: Okay.

Mr. Yvon Godin: I went to—

The Chair: I'm going to suggest that it was discussed and that it was said that this is a fairly extensive list, and could the clerk and the chair go away and come back with a layout of how these would go.

Mr. Yves Godin: No, Mr. Chair—

The Chair: I'm sorry; go ahead.

Mr. Yvon Godin: —my statement is that we did not discuss each witness.

The Chair: Oh, no.

Mr. Yvon Godin: Do you agree? That's a fair statement from me?

The Chair: It's a fair statement.

Mr. Yvon Godin: And what I'm saying is that normally when we bring witnesses, we more or less know from the people putting forward the witnesses to the committee, in any committee I've been at.... The way it goes is that they say, this witness is so and so, and I'd like to have him here because he could contribute to the case.

I'm saying that this was not discussed. I think that's why now, today, we have questions like, who are all those people? Where are they coming from?

The Chair: Although I agree with your statements to this point, there certainly was opportunity for that discussion—

Mr. Yvon Godin: Oh, yes, but—

The Chair: We ended the meeting probably 50 minutes early last week. When I said here is the witness list and asked, do you want to sit here and do this and work it out together, or will you take the chair's and the clerk's ability to try to group witnesses together, the committee all nodded and said, yes, let's go do that.

An hon. member: That's exactly right.

Mr. Marcel Proulx: Was it not more on the availability of...?

The Chair: Well, we were going to check all of that, because you can't just lump them together and then hope that they'll come. We had to call and get availability for them all, and that was the discussion. And then we broke.

Mr. Yvon Godin: Okay. We broke and we're back and we're living in a Parliament in which, week after week, things could change—

The Chair: Sure it might.

Mr. Yvon Godin: —and it's changing right now.

For those reasons, I'm putting a motion to adjourn the meeting and we can come back to it another time.

The Chair: Okay.

I'll take that motion, and that's fine. I'll remind you that I'm not here Thursday.

Would the meeting then be the following Tuesday—

● (1250)

Mr. Yvon Godin: The following Tuesday is all right.

The Chair: —to finish the scheduling of the witness list and do the budgeting for it?

Mr. Yvon Godin: Yes.

The Chair: I have that motion.

On the motion, Mr. Guimond.

Mr. Michel Guimond: On the motion, okay.

[*Translation*]

I do not know if Mr. Godin would—

[*English*]

The Chair: The motion to adjourn is not debatable.

You know I love a good debate as much as the next guy.

I call the vote on....

Mr. Godin, would you like to say something?

Mr. Yvon Godin: I think we still could talk on that if you don't cut it off.

But maybe what I'm looking at is to send it to the steering committee, and we'll have a discussion at the steering committee to try to help this committee.

Would you agree to that?

Mr. Tom Lukiwski: Do you want to amend the motion then? Because your motion was just to adjourn.

Mr. Yvon Godin: Yes, I'll amend my motion saying I'm putting a motion to adjourn and then to have the steering committee meet on this issue.

The Chair: I think you've got to do it the other way. You've got to move to send it to the steering committee and leave the adjourn part off.

Mr. Yvon Godin: I'll take your advice, Mr. Chair.

The Chair: All right.

That said, if you send it to the steering committee on Thursday, I'm also a member of that committee, and I'm not here. Someone can—

Mr. Yvon Godin: No, we'll wait until you come back.

Mr. Marcel Proulx: We'll wait until you come back after the break.

The Chair: There's no meeting on Thursday. On the Tuesday we're back from the break, the steering committee will meet during this time.

There's also been a request for private members' business to meet on April 22. I think that's after that, though, so we're okay.

So we're okay? All right?

Some hon. members: Agreed.

The Chair: Okay. I'm all right with that.

Is there a motion to adjourn?

An hon. member: Yes.

The Chair: All agreed?

Some hon. members: Agreed.

The Chair: We're out of here.

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