



House of Commons
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 038 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, December 9, 2010

—
Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

Thursday, December 9, 2010

•(1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I'll call our meeting to order. Good morning, all.

We are here pursuant to the order of reference regarding a question of privilege relating to the premature disclosure on November 18, 2010, of the confidential draft report on the pre-budget consultations of the Standing Committee on Finance.

We will have the Speaker and the Clerk of the House here for the first bit of our meeting today, Mr. Walsh for a piece of our meeting, and we have Louis Bard from IT here today. We're going to try to do quick rounds with each of them.

I have a quick question for the group, which we forgot to deal with at the last meeting. The chair had asked you all to give him input on a certain survey that you were handed so that we can distribute it. I've heard nothing from anyone. If I've heard nothing by the end of the day, I'll take it that the survey is okay to release.

Ms. Yasmin Ratansi (Don Valley East, Lib.): Yes, you had given us a survey, but we've been so busy with other things.

The Chair: I know you were so busy with other things.

I'll just leave that with you, and if you haven't seen it, we'll make sure that you do get it. But we would like to get it out before we recess.

Mr. Speaker, with that little bit of business done, we'll go to you, please. You have a few opening comments, and then we'll ask you some questions.

Hon. Peter Milliken (Speaker of the House of Commons): Thank you, Mr. Chairman.

I want to thank the committee for inviting me to appear today as it undertakes consideration of the question of privilege referred to it by the House on November 29, 2010, regarding the premature disclosure of the draft pre-budget consultation report of the Standing Committee on Finance.

As I indicated in my ruling on this matter, it is unusual for the chair to involve itself in committee proceedings. However, the Standing Committee on Finance felt so strongly about the leak of its draft report that it took the rare step of reporting it to the House as a possible breach of privilege, unanimously believing that it merited further investigation.

As honourable members of the committee will know, the role of the Speaker when questions of privilege are raised is narrowly

defined. As *House of Commons Procedure and Practice*, second edition, states at page 141:

The function of the Speaker is limited to deciding whether the matter is of such a character as to entitle the Member who has raised the question to move a motion which will have priority over Orders of the Day; that is, in the Speaker's opinion, there is a *prima facie* question of privilege. If there is, the House must take the matter into immediate consideration. Ultimately, it is the House which decides whether a breach of privilege or a contempt has been committed.

[Translation]

This is precisely what has happened in this case. The Member for Outremont raised the question, I made a ruling, the House debated and agreed with the motion that was moved, and here we are with this committee seized of the matter.

[English]

I referred in my ruling to *House of Commons Procedure and Practice*, second edition, which is very clear about the confidential nature of committee reports. On page 1073 it states:

Committee reports must be presented to the House before they can be released to the public. Even when a report is concurred in at a public meeting, the report itself is considered confidential until it has actually been presented to the House. In addition, any disclosure of the contents of a report prior to presentation, either by Members or non-Members, may be judged to be a breach of privilege.

I went on to state on page 6560 of the *House of Commons Debates* that:

It is with good reason that draft committee reports are treated as confidential. To do otherwise might well prejudice the ability of committee members to engage in candid deliberations free from outside interference. Violation of this principle of confidentiality can thus be seen as direct interference with the ability of members to discharge their duties.

[Translation]

Confidentiality was clearly the overarching, institutional issue and its infringement was the primary reason for finding the matter *prima facie*.

[English]

Not so long ago, many committees had strict processes in place to protect the confidential nature of committee reports. For example, access to the draft reports was limited, copies were numbered and distributed at meetings only, and no copies were allowed to leave the room. Today, however, we've come to rely heavily on technological tools to distribute information. And while on the one hand they can facilitate our work and make us more efficient, on the other hand, they give us the ability to disseminate confidential information quickly and widely with the mere push of a button.

I do not believe it is realistic to think that it's possible to turn back the clock and return to past practices that do not harness the power of the tools that are at our disposal. As such, the real challenge for this committee, in my view, lies in developing recommendations that will facilitate the consideration of confidential documents within the context of the evolving technological environment. Whether this could be achieved through changes to the Standing Orders or whether it requires other changes in order to achieve this remains for this committee to decide.

The order of reference now before you offers the committee an excellent opportunity to investigate the larger issue of confidentiality and perhaps to recommend changes to our rules and our practices with a view to preventing this from happening again.

[Translation]

I would like to commend the Committee for its prompt attention to this matter, and would be pleased to answer any questions the Committee may have.

Thank you.

[English]

The Chair: Thank you so much.

We will start with Ms. Ratansi. We're doing five-minute rounds, and we'll be fairly strict because we have a lot of things to cover today.

Ms. Yasmin Ratansi: Thank you.

I agree that confidentiality was indeed an issue, and we're very concerned, because that material that was released, the confidential material, was pre-budget consultation material. We were wondering whether they could have provided undue advantage to those lobbyists. It may be possible that we may find evidence that Mr. Ulyyat was either induced or directed by someone to make this unauthorized disclosure, and we may even find that this may not be a one-off or a continuous, long stream of unauthorized disclosure.

So in terms of penalties, the staff in question, if it happens again, or whatever, resigned or were fired. Do you think that's enough? Is there anything that can be done or could be done or in the future, or should be done?

• (1110)

Hon. Peter Milliken: The committee is master of its own procedure. In that respect, the committee can decide if it wants to recommend that more be done. The committee can look into the affair. It can decide whether more happened than what has been revealed or less than what has been revealed. It can decide if there's something else that should be done in respect of a possible contempt of the House in this case and make recommendations accordingly.

Ms. Yasmin Ratansi: Fair enough.

At the moment, Mr. Speaker, there's no prohibition of the member or any other member hiring Mr. Ulyyat. There's no rule in place that would prohibit Mr. Ulyyat from taking advantage of his leaks or being hired by any lobby firms. If it is found that one of the lobby firms induced Mr. Ulyyat's action, and there seem to be no sanctions that could be applied, do you have any thoughts on how these aspects could be addressed?

Hon. Peter Milliken: You can certainly approach the lobbying commissioner, who is somewhat expert in this and is aware of the rules that govern lobbyists in our country, which are enacted by law. I think your question might be better directed at someone like that, if you're looking at what else to do in terms of sanctions or "punishment", if I can use that expression.

Ms. Yasmin Ratansi: I know you have to manoeuvre around a lot of things. When secret documents are leaked, for example, like the one that was the Afghan ambassador's cable leak to Ivison at the *National Post*, and the 2007 leak of the climate change documents, the RCMP were called. In the latter case, the employee was removed with handcuffs. What happens when secret documents are leaked? How should Parliament treat it? Should it treat it less seriously than what happened with the climate change documents and the Afghan documents? What happens? How do we do that?

Hon. Peter Milliken: I don't pretend to be an expert on the various ways these things have been enforced in the past. Certainly when I was first elected there were prison cells down the hall there that they could use to lock people up who weren't connected to the House. I don't know that they were ever used for any length of time. They were there. Now they're full of files and things, I think. They're used as a space for that purpose.

Imprisonment has become a little less popular until more recently in this country. Maybe that's the reason. There are lots of prisons in my constituency. I always recommend sending somebody there if necessary, I guess. That's up to the committee, not to me.

Ms. Yasmin Ratansi: Fair enough.

The committee was debating whether the scope should be institutional, limited, etc., and I don't think the scope, from what you're telling us, should be limited to anything. Yes, we are the master of our own destiny and we are the master of how this study should go. As we move along, I guess we can expand the scope so that we can ensure that these things probably don't happen. I guess we've also asked the analysts to tell us.... The analysts may be taking a long time to find it, but have you any idea whether other jurisdictions have had a similar experience and have had problems?

Hon. Peter Milliken: I haven't inquired into that myself. No, I'm unaware, I'm sorry. I haven't looked at it, but certainly again you would be free to examine what other parliaments are doing as part of your inquiry, and the clerk could get some information from other clerks too.

Ms. Yasmin Ratansi: Thank you.

The Chair: Mr. Lukiwski.

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

And thank you, Mr. Speaker, and Ms. O'Brien, for being here.

My first question is more to satisfy my curiosity from a procedural standpoint than anything else, Speaker. In looking at definitions of privilege versus contempt, it appeared to me that this issue leans a little closer to the contempt side of things than privilege. I wanted to get your opinion on that and whether one could have both and be found in violation of privilege and contempt at the same time.

Hon. Peter Milliken: Well, I think so, because if you're in contempt of Parliament, you're breaching its privileges. That's my...

Mr. Tom Lukiwski: Why is there the distinction, though, between the two in procedure and practices?

Hon. Peter Milliken: I don't know how much of a distinction there is in practice. If someone is found in contempt of Parliament, they can be treated as though they had breached the privileges of Parliament. I don't think there's a huge difference.

•(1115)

Mr. Tom Lukiwski: All right. Well, that's good.

Hon. Peter Milliken: Do you know what I mean?

Mr. Tom Lukiwski: Sure.

I didn't know if there were different sanctions or different ways of dealing with contempt versus privilege. Apparently there are not.

Hon. Peter Milliken: I don't think so, but most of the questions of privilege we deal with are ones that arise in the House because of something that happened in the chamber, or something that's happened to some member dealing with their ability to act in the chamber. So we don't normally have a contempt issue mixed in with it.

This case had nothing to do with the chamber itself. It had to do with a committee.

Mr. Tom Lukiwski: Okay, thank you for that.

I just have another question. There have been cases in the past where there have been leaks of committee documents. In those cases, some were found to be issues of privilege and some were not.

You mentioned in your ruling a couple of things. Number one, the committee itself had unanimously passed a report asking the House to look at this as perhaps being a potential breach of privilege. Also, you paid some attention to what you called, I think, the "institutional dimension". And that factored into your decision.

On the institutional side of things, I wonder if you could clarify a little bit for the committee why you felt it would be more of an issue of privilege dealing with the institution, as opposed to perhaps individual members.

Hon. Peter Milliken: Because of the leak of the draft report, I felt that it affected the institution more if we were unable to maintain confidentiality of documents in our committees. I think it's important that committees be able to function. Let's say a committee has an in camera hearing, for example, and certain things are said in camera: it's for the committee to decide what is made public, not for someone who was sitting in there listening to it to trot it out.

Mr. Tom Lukiwski: Then why do you think, Speaker, that in past cases where there have been leaks, privilege was not found to have been breached? Where is the distinction between this case and previous cases?

Hon. Peter Milliken: The fact that the committee came to the House and asked for it I thought was the thing that determined it, from my perspective. The committee members felt their privileges had been breached by this, and they reported it to the House. I agreed that they appeared to have a valid question of privilege as a committee, from that perspective. Rather than have them do the

study on it, because it's not technically their jurisdiction, it was sent here via the motion that was adopted by the House.

Mr. Tom Lukiwski: In other words, if I'm hearing you correctly, you are saying that if there's been a leak of a report from a committee, but the committee itself does not ask the House to deal with it, the probable ruling would be that there's been no breach of privilege.

What would happen if a member of the committee stood up, as Mr. Mulcair did—obviously quite within his rights—and called upon the chair to rule on privilege, but the committee itself had not written a report?

Hon. Peter Milliken: Oh, I don't know. I haven't thought that through. I guess it would depend on what he had to say in his argument and what the arguments against him were. I didn't consider it from that perspective, so I don't know what I would do.

Mr. Tom Lukiwski: Okay.

Lastly, Speaker, one of the things we will be charged with, as you noted in your opening comments, is trying to come up with, at the end of the day, some procedural protocols to ensure that this type of thing doesn't happen again. Would you, in your position as Speaker, be able to offer advice if we asked for it on that protocol side of things?

Hon. Peter Milliken: You might get it from the clerk or some of her officials. I think they're probably more technically knowledgeable than I am on this stuff. I'm not a computer whiz at all.

Mr. Tom Lukiwski: No, but you've been in the institution for many years. You might have some observations, at least.

Hon. Peter Milliken: Well, I might be able to pass on observations on what they recommend.

If we're going to have rules governing transmission of computer stuff, or storage, and that sort of thing, I'm not a technical expert in this. So I don't think my opinion would be worth much on that subject. But from hearing what they say, I might be able to say "Well, I don't think that will work, because somebody like me wouldn't understand it and wouldn't get it right".

Mr. Tom Lukiwski: Thank you, Speaker.

The Chair: Thank you, Mr. Lukiwski.

Monsieur Paquette, welcome today.

[*Translation*]

Mr. Pierre Paquette (Joliette, BQ): Thank you for your presentation, Mr. Speaker.

A little earlier, my Liberal colleague asked a crucial question. It is important to know exactly what direction the committee will organize its work in. When I read what you presented, I sense that, in your opinion, the committee's mandate, in response to the question of privilege, should be to find ways to prevent leaks like the one we have seen from happening again. Everyone sees that the leak happened. So there was a breach of privilege. The question it raised is therefore important.

You said that the committee is master of its own procedure, but should the committee spend more time on this particular case of the leak from Ms. Block's office, when she has admitted there was a leak, the employee responsible has been dismissed and she has apologized to the House? Do you think the committee might go further in its recommendations to the House, to sanction the member in question?

• (1120)

Hon. Peter Milliken: I have no opinion on what the committee may recommend. It is up to the committee to decide, after the questions and the testimony of all the witnesses. That is really the committee's decision, not the Speaker's. The committee is master of its own procedure.

Mr. Pierre Paquette: I am not closed to the idea of finding ways to collectively express that what happened is extremely serious, but I find it hard to see how we could go further in this situation, since the member has apologized. However, if there are other avenues, I am prepared to explore them.

You made an extremely serious decision by recognizing the question of privilege, which has rarely happened. It has happened only twice in the last year. That is certainly a Guinness record. To your knowledge, are there precedents where members have been sanctioned more severely after apologizing?

Hon. Peter Milliken: The committee will make its own recommendations. It may make recommendations relating to the actions of certain persons, it may suggest changes to the Standing Orders of the House, and so on. It is up to the committee to decide. I referred the question to this committee, but I did not express my opinion on what the committee should do. You have the power to decide and you must do it as a group, as a committee. Your report will be presented to the House, it will undoubtedly be acceptable and the House could adopt it. You will decide.

Mr. Pierre Paquette: You have suggested only one concrete avenue, looking at it in light of the new technologies and seeing how we could make sure that confidentiality is maintained.

Might there be other areas that you think should be considered by the committee, in response to this incident?

Hon. Peter Milliken: There were comments made earlier, this morning. There may be some investigations into what is happening. As I said already, it will be up to the committee to decide that.

Mr. Pierre Paquette: Thank you.

[*English*]

The Chair: Thank you.

[*Translation*]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Is there any time left, Mr. Chair?

[*English*]

The Chair: You have one minute, if you'd like to take it.

[*Translation*]

Mrs. Claude DeBellefeuille: I am going to take over for Mr. Paquette, who has to leave us temporarily.

Mr. Speaker, you say this is an excellent opportunity, if we can put it that way. This event may give us an opportunity to prevent this from happening again. In your document, it says that some committees have already adopted rules to prevent this kind of event. Do you think the committee should propose a rule that would apply to every committee? It would be a new, mandatory rule for every committee, and would deal with the management of confidential information, particularly consideration of reports in camera.

Hon. Peter Milliken: I simply suggested that consideration be given to a way of preparing and distributing reports, because there have been changes in this practice with the advent of computers.

That may not be the only question that should be considered. It is up to the committee to decide, not me. I said there was another method before and things no longer worked that way.

Is it difficult to do it as before? Probably not, but what should be done to protect the confidentiality of reports and draft reports? It is up to the committee to make that decision.

I hope that after considering this question you will have recommendations, or at least ideas that the other committees should consider when they are preparing something important like the report of the Standing Committee on Finance.

• (1125)

[*English*]

The Chair: Thank you.

Mr. Mulcair, welcome today.

[*Translation*]

Mr. Thomas Mulcair (Outremont, NDP): Thank you, Mr. Chair.

Mr. Speaker, Ms. O'Brien, I am pleased to have you here with us.

This is a somewhat unusual situation for everyone. It is rather like winning a judgment and being able to ask the judge to clarify their thinking a little. It is a very good thing for us.

If I may, I would like to draw an analogy. We are considering two very different things. First, as you put it so well, if what was done was the result of an order or the conduct was repeated, it could lead to a question of contempt. That is where the aspect of a sanction arises, of a punishment or penalty. We have to consider another approach, however, that being the remedy.

I would make this analogy. If someone breaks into my house, it may be because my lock isn't strong enough. But it isn't the lock's fault, it's the fault of the person who broke in, right?

We can certainly also consider the question of the remedy and think about what we could do in future to prevent this. But part of the committee's job is to get to the bottom of the problem to find out what really happened. Was Mr. Ulyatt, whom we will have the opportunity to meet with next week, told never to do this? Did he do it anyway? Had this happened before? This kind of information will help the committee decide whether to go in another direction. As you say, there is the possibility of contempt.

When we consider this aspect of things, we are considering it in relation to the member; that is an internal matter. But can we impose sanctions on people on the outside? Can the charges we might make against the member be made against lobbyists too?

Let me explain. If, for example, we were to learn that a lobbyist had asked Mr. Ulyatt to send it to them as soon as he received it, could there also be a sanction against the lobbyist? Is it limited to members? Can a person on the outside breach privilege? Is that limited to members?

Hon. Peter Milliken: That is a difficult question, we never know. The House can decide what constitutes contempt of the House. It is possible to decide that a person who asks for something by telephone has committed contempt. I think it is also possible that a decision of the House on a subject like that could be appealed to the courts. We never know. There may then be a decision by a judge calling on the House to do something it can't actually do. It's possible. I don't know. There are not a lot of...

Mr. Thomas Mulcair: ...of precedents. The only thing I know of is the Radwanski case, if I am not mistaken.

I believe that in the Radwanski case, a person who was not an elected representative was convicted of contempt for giving false information under oath at a hearing of a commission.

Hon. Peter Milliken: The other case the clerk mentioned involves the Standing Committee on Public Accounts and a member of the Royal Canadian Mounted Police.

Ms. Audrey O'Brien (Clerk of the House of Commons, House of Commons): Someone appeared before the Standing Committee on Public Accounts and testified, and their sincerity was in doubt. I can give the committee the details of the precedent in question.

Mr. Thomas Mulcair: That would be very helpful. That kind of precedent can really guide us in our work and kind of set the parameters, the ins and outs of what we will be doing.

That's all for me for now, Mr. Chair.

• (1130)

[*English*]

The Chair: Thank you.

That's great, we've had one round. I would entertain some short, one-off questions.

Ms. Judy Foote (Random—Burin—St. George's, Lib.): Thank you, Mr. Speaker, for being with us this morning.

I read over your ruling again. It says that of particular concern to the Speaker in this case was the amount of time that had elapsed, reportedly four days, before the lobbyists had been requested to destroy their copies.

I'm wondering how strong that factor was, how much that played into your decision. Within four days, a lot could have happened—material being photocopied, faxed far and wide. So it may not just be the lobbyist we know of at this point who had access to this information.

Hon. Peter Milliken: I don't think this was an important aspect of it. To my mind, the important item was the request from the

committee that the matter be referred. That was the deciding thing, in my view.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: I've been on record saying this from the outset: the biggest service this committee could do Parliament would be to come up with some protocols at the conclusion of these hearings that would prevent this type of thing from ever happening again.

You mentioned in your opening remarks about a time in the not-too-distant past when committees had a completely different set of circumstances to deal with. We didn't have the technological advantages of today. A lot of the time there were hard copies distributed, and the copies were numbered, and there were oaths of secrecy. You've been around here for a number of years and you know the history of this place better than most. In years past, did you find a preponderance of leaks happening when we had the old—what some would consider archaic—system in place, as opposed to what's happening today? Or is this a relatively rare occurrence?

Hon. Peter Milliken: In my experience, it's a relatively rare occurrence, but then I haven't been on a committee for quite a number of years.

I used to sit on this committee. I chaired it at one time, but that was a long time ago. I don't remember any leaks occurring from the procedure and House affairs committee, as it then was. It's not a subject on which I'm expert by any means. As for leaks, I've heard of them occasionally, but not very often.

And of course even if the pages are numbered, people can repeat what they remember off the pages. People who have seen material in the committee room can repeat it, and I assume there could be a leak for that reason. It's not something that's easy for committees to control. They rely on people to keep their mouths shut, and usually that works, I think.

The Chair: I'd like to point out to the committee that this proves our committee was once well chaired.

Voices: Oh, oh!

The Chair: Are there any further questions?

Monsieur Mulcair.

[*Translation*]

Mr. Thomas Mulcair: I would like to come back very quickly to what Mr. Lukiwski just said. Finding a remedy for the future is indeed part of what we are doing.

But we are also all concerned about what has happened. I was a member of this committee. When I got a call from a journalist and the journalist knew very clearly what my position had been on a particular recommendation, that interfered with my ability to do my job, individually and, as the Speaker said, collectively. One of the things I admire in the parliamentary system here is that it is relatively nonpartisan; we are able to work as a group. We would no longer be able to do it then.

When I got the call from a lobbyist who knew very well that their request was not part of the NDP's recommendations, but I might have been able to work with the others and let myself be persuaded, that interfered with my ability to do my job.

Part of our function is to change things for the future, but punishing misconduct must also be part of it, if we want to defend our institution's ability to function.

That's all. Thank you, Mr. Chair.

[English]

The Chair: Are there any comments?

We thank you for coming this morning. We'd be happy to excuse you and put a couple of other witnesses down at that end. Thank you very much for helping us with our work here today.

I will suspend for one minute.

- _____ (Pause) _____
-

The Chair: I will call the meeting back to order, please.

Mr. Walsh, we welcome you today. We hope you can help us again. You were here to observe what the Speaker had to say. I think we'll have some similar questions for you.

Mr. Walsh, if you have an opening statement, we'd be happy to hear it. If not, we'll go right to questions, or we'll have a little of both.

• (1135)

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chairman. I don't have a prepared opening statement, as I didn't know exactly what it was the committee wanted to hear from me. But I should say a few things, perhaps.

I read the debates, and I got a sense of what it is that concerns members. I think the member for Outremont, in his point of privilege, pointed out that there was an internal aspect and an external aspect to this matter. I wouldn't define those terms the same way he might. Nonetheless, I think it's a fair analogy.

There is an internal aspect to this, and that's the committee dealing with a matter of privilege and reporting it to the House. The external aspect, of course, relates to the persons—the lobbyists—who received the draft committee reports, the confidential reports, how they obtained those reports, and what they may or may not have done with them.

In that regard, I suppose the question for the committee and me is where the committee goes from here. Well, the road map on privilege is pretty well defined for members of the committee. I don't need to go into that. As to whether it's a privilege that's been breached and what the difference between privilege and contempt is, I'll offer my opinion here. I think you'll find this in O'Brien and Bosc as well.

Privilege, generally, is with reference to a particular privilege and whether it's been breached, whereas contempt may arise from a breach of a particular privilege. It could also be a general, contemptuous action toward the House, an outrage, or an insult to the House or the dignity of the institution. As in any court, they can

defend themselves against that kind of assault, if you can call it that, through the contempt process.

So while contempt may arise from a breach of privilege, contempt may also not arise from a particular privilege.

Nonetheless, contempt is contempt. What is contempt? Well, I've said before to committees that it's much like the adage that beauty is in the eye of the beholder. Contempt is in the eyes of the members of Parliament. Contempt is what you think is contemptuous. There is no legal standard of a kind you are held to. If you think something is contemptuous, that's your judgment, you meaning the House of Commons. It's the one that determines whether actions are contemptuous.

That's the internal aspect. We can talk more about that if you wish.

On the external aspect and what can be done there—this was mentioned earlier by a member during questions—you can look to the Lobbying Act. If you were to do that, it might be a disappointing experience for you. Nonetheless, the act is there. And the commissioner of lobbying has a role to play relative to lobbyists. It may well be that the committee might develop thoughts about what should be happening in that direction. Without saying more, if the committee wants to discuss that further, we can do that.

That's how I see the external and internal aspects. Beyond that, I'm in your hands.

• (1140)

The Chair: Thank you very much.

We'll use the same five-minute rounds, with quick and succinct questions and answers, if we can. If we have a little bit of time at the end, we'll do some other one-offs.

Ms. Foote, you're up first.

Ms. Judy Foote: Thank you.

Thank you, Mr. Walsh, for being with us this morning.

I've read some rulings by previous speakers with respect to breaches of privilege. In some instances when it was determined that there was no breach of privilege—in this case, there has been—the Speaker didn't find a *prima facie* case of privilege because there was no specific allegation of misconduct directed against particular individuals.

Can you elaborate for me the distinction between the two in terms of finding a *prima facie* case of privilege versus not?

Mr. Rob Walsh: I've always taken that distinction to be based on the rather straightforward proposition that it's one thing to say that someone's been shot, but it's not very meaningful unless you can say who did it. To say that there's been a breach of privilege may be of interest in passing, but unless you have someone identified, for the benefit of the Speaker, to address the point, it's hard to find a breach of privilege.

If I understood your question correctly, and I may not have done, you need to know who it is that the allegation of breach of privilege is made against so that the ruling, *prima facie* or by the committee, can address the conduct of that person and whether what the person did in fact constituted a breach of privilege.

Ms. Judy Foote: Where would Mr. Ulyatt fit into this in terms of the breach of privilege?

Mr. Rob Walsh: Mr. Ulyatt, like any member of the public, could well engage in conduct of a kind that breaches the privileges of the committee. To take a totally unrelated example, if an individual were to accost any one of you on your way to Parliament and prevent you from getting there, they've breached the privileges of the House. You are entitled to have direct access to the House and to be unimpeded in your attempts to get to the House or a committee for the purposes of assisting or attending those proceedings. In that sense, a private citizen could well be guilty of conduct of a kind that causes a breach of privilege.

In the circumstances of this case, Mr. Ulyatt, as an employee of the member—as all employees—arguably is *prima facie* acting under the direction of his employer. That may not always be the case, but one might, as a starter, assume that. The employer is responsible for the behaviour of the employee, as arguably there's a vicarious responsibility on the part of the member for the conduct of the employee where that conduct gives rise to a breach of privilege.

Having said that, if the employee were acting without the authority of the member, the employee could well be found to be guilty, if I can use that term, of breach of privilege, in the judgment of this committee or the House, where his conduct is of a kind that frustrates the ability of the House and the committee to do its business.

The usual considerations that might apply to a member could well be applied to an individual employee, that what he or she has done frustrates the ability of members of this committee and the House to do their parliamentary business. That's a breach of privilege.

Ms. Judy Foote: What kinds of sanctions, then, can be imposed? Right now we're told that Mr. Ulyatt is no longer an employee of the member in question. What kinds of sanctions can be imposed by this committee with respect to how we deal with Mr. Ulyatt?

Mr. Rob Walsh: Legally speaking, there's no limit on the sanctions the House could arguably choose to impose, but that doesn't really answer your question. You're really asking what kinds of sanctions are appropriate in the circumstance of this case. That is a matter of judgment for the House ultimately to decide, although the committee may have thoughts on that.

My understanding of circumstances like these is that if the individual is found to have breached privilege or to have acted in a manner that's contemptuous of the House, the individual is given an opportunity to purge the contempt, as it were. That's usually done by an apology. If the apology is found to be genuine and complete, and there are no other lingering *mala fides* at issue, the House or the committee might be happy with that.

Now, do you want to go further and have a whipping, as it were, or whatever? What do you want to do? How much blood does the House need from any offending party before the matter has been adequately addressed? Your question is that open. It's not that the House can act irresponsibly; I don't mean to suggest that. I'm speaking rather carelessly here, but I'm speaking in this manner to illustrate the point that it's a very open question as to what is the appropriate action—very open. As public office holders, which you are, your judgment is better than mine as to what would be

appropriate for an individual the House finds to have breached privileges of the House.

Typically, my view is usually some kind of an apology, maybe calling the person in front of the bar of the House to publicly do that apology, or maybe some other way. I think the judgment is generally that as long as the offence is redressed in some manner, adequately to indicate that the individual acknowledges what he or she did was not appropriate, then that probably is taken as a sufficient answer to the issue in most cases.

• (1145)

The Chair: Thank you.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

And thank you, Mr. Walsh.

Picking up on what you just mentioned, Mr. Walsh, are you saying that a private individual could be called before the bar to apologize to the House, or are you talking about the member?

Mr. Rob Walsh: Well, you perhaps get into different considerations for the member. An individual, by order of the House, could be summoned to appear at the bar. With respect to a member, I understand the tradition is that a member is called upon to rise in his place.

It did happen once that a member was called upon to stand behind the bar, but I believe that in hindsight it was thought to have been inappropriate. I think that generally members are called upon to rise in their place, and the Speaker will then speak on behalf of the House to the member.

Mr. Tom Lukiwski: Again, I go back to the point that I've mentioned a number of times before. I think one of the primary functions of this committee and its examination is to try to hopefully develop some procedural protocols to ensure that this type of event does not happen again. There's no question that in the opinion of the committee members their privileges were breached, and that's why we're here today. Yes, we can talk about sanctions, and that may be appropriate. It may be a direction that this committee wants to pursue. But I also think we want to ensure that future incidents like this do not occur, so that in other committees members do not have their privileges breached.

You've been in your current capacity for a while. You're obviously intimately aware of some of the procedures that have gone on in past years. Do you have any advice primarily? We'll be getting into this with IT people and other security experts later on in our examinations, but just off the top of your head, do you have any observations you might be able to share with this committee from the security side of things as to what avenues we should perhaps be looking at in terms of trying to prevent this course of action from occurring in the future?

Mr. Rob Walsh: Mr. Chairman, Mr. Lukiwski talks in terms of preventive action, and I think there's something fundamentally problematic with that notion in this context. It arises from the fact that members of Parliament are here and to a large extent operate independently of each other and have rights as members, if you like, such that the House cannot set rules down. It would constrain them in carrying out their duty as members of Parliament. For example, you should copy every letter you send to your whip or you should copy every phone call you make—these sorts of things I think would be inconsistent with the independence of a member of Parliament in carrying out his or her parliamentary duties.

In terms of introducing some regime to prevent that, it's kind of hard to imagine what that might be. It's a policing regime of a kind that might be—

Mr. Tom Lukiwski: I'm speaking more about the employee side of things, rather than the individual member.

Mr. Rob Walsh: On the employee side of things, again, the independence of the member comes in here, because the employee operates under the direction of the employer, the member. So whatever rules you might want to impose on employees of members generally you are indirectly imposing on members as well in how they conduct their business in their offices and how they carry out their duties. That can be problematic as well.

I'd like to add a further consideration here, which may come up. You mentioned you're going to be talking to IT people of the House later this morning. Again, the independence of the member comes in here too. Documents, e-mails, and whatever a member sends out or receives are the property of the member, in my view. It's not open, in my view, to a committee to call upon House employees to produce a member's documents without the member's consent. That's not to say the House itself couldn't order such a thing, but it's problematic if it is contemplating opening a regime that would impose upon the chief information officer, let's say, on demand of a committee to produce all the e-mails of a member of Parliament. That would present problems for the independence of the member. I'm not saying the House, by order, couldn't do that, but it would be a departure that would be difficult to reconcile with the independence of members and the carrying out of their parliamentary functions.

The Chair: Thank you.

Monsieur Paquette.

[Translation]

Mr. Pierre Paquette: Thank you for coming before the Standing Committee on Procedure and House Affairs to give us the benefit of your knowledge again, Mr. Walsh.

At the beginning, when you defined what a privilege is, I understood that privilege and breach of privilege are not so much defined by a legal standard as by how the House looks at something. That would mean it is virtually a political matter. But there is still a standard. For example, in this case, *House of Commons Procedure and Practice* says that committee reports must be confidential until they are tabled in the House.

Here, a standard for breach of privilege is set out in documents. Do you think there are other components of the standard for privilege and breach of privilege?

•(1150)

Mr. Rob Walsh: The question that arises here, before the committee, is another example of the interface between politics and law, both of them together. It's a problem because here, we have the Standing Orders of the House of Commons relating to confidentiality, but it is not a legal rule. I'm speaking as parliamentary counsel concerning the legal principles that apply to parliamentary matters, for example contempt or privilege.

But when it comes to the practice or actions of this committee and the decision of the House of Commons, that is a judgment call on the part of the committee, the members present and the House of Commons. There is no court that will consider this question, that will make a rule or take action against the House of Commons. That will never happen, because it is independent of the court. In that sense, it is not a legal question that can be considered by the court.

Mr. Pierre Paquette: Everyone acknowledges that there was a breach of privilege. That helps to give us a better idea of what a privilege is. It is often invoked in our debates.

Let's talk about sanctions for breach of privilege. On that point, the only consequence has been that the member apologized to the House. In the past, to your knowledge, what kinds of sanctions have resulted from a breach of privilege?

Mr. Rob Walsh: It depends on the privilege. Often, an apology is sufficient to resolve a situation. There has been no imprisonment since 1913. There are not many examples we can use to answer the question.

In terms of the question of privilege, the public debate is sufficient to let the people involved know that bad things have been done and that all other punishments have been ruled out. There is no very effective penalty that can be imposed on people.

For example, there are lobbyists. The Office of the Commissioner of Lobbying is responsible for lobbyists, not the House of Commons or the committee. What are we going to do with the lobbyists: are we going to talk about contempt and demand apologies to the House of Commons? It isn't up to you to impose punishment on lobbyists.

Mr. Pierre Paquette: We are starting our work, and I think we have to dig into the circumstances in which it all happened. We have to know exactly what responsibility Ms. Block bears. That is the point I see in it, but for a sanction, I don't see that.

Let's assume, and this would be quite serious, that she was aware and even encouraged her employee to act as he did. Could the committee recommend to the House that the member resign? Can it go that far? Is that a line that can't be overstepped?

Mr. Rob Walsh: In theory, you can recommend what you like. It's possible, but will it have the desired effect, without an order of the House of Commons? I think that in theory, the House of Commons has the power to declare a member's seat vacant for any reason whatsoever. But there are others who think not, because a member is elected by the citizens in a riding. In my opinion, it is not appropriate for the House of Commons to expel a member, in the sense of declaring that the person is no longer a member of Parliament. The House of Commons has the power to expel a member from the House, that is, to limit a member's privileges. That is a form of discipline. The House of Commons has the power to discipline members, certainly, but I don't think it has the power to oust a member from office. There are people who think it does, however.

• (1155)

[English]

The Chair: Mr. Mulcair.

[Translation]

Mr. Thomas Mulcair: You have heard the Speaker and the Clerk of the House, and the IT people. You will understand that the committee is trying to organize its work this morning in such a way as to deal with the institutional aspect upstream and look at the various possibilities with you.

Have I understood correctly? Do you think we should perhaps consider meeting with the Commissioner of Lobbying?

Mr. Rob Walsh: I think so. In my opinion, having the Commissioner appear before the committee to talk about her powers and her options for resolving the situation is a good idea.

Mr. Thomas Mulcair: I will adopt that suggestion, perhaps later, when we have met with the lobbyists and have more information. I think the idea is starting to take shape for me too.

Mr. Walsh, you said that

[English]

the employee operates under the employer member.

[Translation]

So that is a somewhat classic example of the idea of employer-employee responsibility. Do you make a distinction between an intentional act—Mr. Paquette stated the hypothesis and I would point out that it is purely hypothetical in my case as well—and a case where someone was simply negligent by not impressing it strongly enough on the employee? Is there a distinction between that possibility and telling an employee that as soon as they receive the report they should send it to a list of specific people?

Mr. Rob Walsh: Yes, there is a distinction. That's true. It's a matter of the degree of culpability. But the member is still responsible, as an employer. Whether it is negligence or an express directive from the employer, they are still responsible for the results and consequences for other people. It is the member's responsibility, as an employer, as it is for other employers in general.

Mr. Thomas Mulcair: You have raised a subject that I would like to use the rest of my time for, because it is a very important question. You are here in an important role: you are our legal counsel.

Later, we will be meeting the IT people.

You kind of put a damper on what we are and are not entitled to examine, and explained that we do have to respect the independence of every member. That is another principle we have to stand up for, I completely agree with you on that. Do you have any techniques to propose to us that would allow us to lift the veil on this situation without violating that right?

We are going to assume, for the purposes of this discussion, that there are only these five lobbyists. On that assumption, first, is there a way to determine what other communications there were between that employee and the five lobbyists in question, without examining the content? Do you think it is a breach of the member's independence to want to know at least whether there were other communications, without asking to know the content? Can we at least know that, without asking the member to tell us the content of those communications?

Mr. Rob Walsh: I think it is difficult to separate the unauthorized emails from the others. If the emails were sent to the member's email account, they become the property of the member. In my opinion, the response of a committee like this one to that kind of situation is comparable to a court's response. You ask the member to provide the documents and they have the right to refuse, but the committee may draw negative inferences against a member who didn't want to provide it with the documents. The member may still keep the documents, but there is a risk in that, because the committee may draw negative inferences against the member.

• (1200)

Mr. Thomas Mulcair: So when we meet the IT people later this morning, it will be a good idea, first, to ask them what it is possible to know, what they can examine, what is left on the hard disks, the backup systems. We can ask them that. We can also look at what happened on the morning itself, to determine whether other emails exchanged with the five lobbyists were sent at the same time or not. We can ask them those questions.

Then, when we meet with the member in question, it will be a good idea to tell her that we have some information, but it is up to her to tell us whether she wants to cooperate. We have to get her permission; otherwise we will be on a dead-end street.

Mr. Rob Walsh: Yes, but the committee has the option of drawing negative inferences regarding the member.

Mr. Thomas Mulcair: Of course. We can have a negative inference regarding her, if that is the case.

Mr. Rob Walsh: That is the risk for the member.

Mr. Thomas Mulcair: Yes, that's right. It would have a negative effect on our perception of whether there was *scienter* in that regard.

Mr. Rob Walsh: The important thing, to me, as an employee of the House of Commons, is to make a distinction between employees like Mr. Bard, the Chief Information Officer, and the others, the clerk and you. We don't have the authority to disclose things that are the property of the member.

Mr. Thomas Mulcair: No. We must not breach one privilege while trying to restore another. That's well said.

Thank you, Mr. Chair.

[English]

The Chair: We have finished that round. Now we'll do some one-offs, the same as we did the last time, until we use up a couple more minutes. We'll then move on to Mr. Bard.

Madame Ratansi, do you have a 30-minute question—sorry, I mean a 30-second question.

Some hon. members: Oh, oh!

Ms. Yasmin Ratansi: Thank you.

Everybody has been talking about the breach of privilege and the information, and you mentioned lobbyists. If you look at what the information was, it could have economic implications if it possibly ended up in businesses and businesses took advantage of that economic information because it was pre-budget.

They do not come under the Lobbying Act, so how would you suggest that we deal with information that's been leaked to businesses?

Mr. Rob Walsh: Are you concerned about how you could deal with the businesses that get the information?

Ms. Yasmin Ratansi: Yes, what happens? If Mr. Ulyatt may have given it directly to certain businesses for their advantage, how do you deal with it?

Mr. Rob Walsh: Leaving aside the Lobbying Act for a moment, whether it's a lobbyist who receives the information or a business person who receives the information, in both cases, in my view, they are responsible for governing themselves according to the circumstances in which they received the information.

As an example, a businessman cannot just say, "This brown envelope has landed on my desk. It contains all this confidential information. How very interesting. Off I go to the market and use this information."

Ms. Yasmin Ratansi: Is that coded the same thing?

Mr. Rob Walsh: The fact that it's marked "confidential" from the start imposes an obligation on them to address that question. They would say to themselves, "I didn't ask for this information. It may have been accidentally dropped here. It doesn't belong to me. I didn't ask for it. I'm not really privy to what all this is about, but it sure is interesting, and it's marked secret/confidential."

I would say the first obligation on the businessman is to find out who it does belong to, and to return it. But if he chooses not to do that and he chooses to use it for his own commercial benefit, then you get into the trouble of how do you police that. How are you going to actually bring back that commercial action by that businessman to that document? The fingerprints just aren't there. Do you know what I mean?

In the case of a lobbyist, you have the Lobbying Act. And don't forget, members are public office holders, as are their staff. So there may be avenues where the former employee, as a public office holder, could be subject to some action for his conduct here if it's outside the authority of the employer member. If he was acting without the authority of the employer member in what he did, he may have problems as a public office holder.

And the lobbyists themselves.... The problem is, if you go to the code—and that's what she's responsible for enforcing.... I'm not a lobbyist, I can assure you, and I must not understand lobbyists very well, but one of the provisions of the code—and it may not surprise you that it's not a very long code, it only has eight articles, and each of them is very short—the fifth one, is called "insider information". And it reads as follows:

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

Then under "confidential information" it says:

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

This is the code now. It's a creation of the commissioner of lobbying; it's not a statute. But she is charged with looking into breaches of the code as well as the act itself. So if a lobbyist gets this information somehow.... If the lobbyist pursued this information and got it, that's a little more culpable. If the lobbyist was just having his lunch one day and it landed in front of him, okay, he has not done anything wrong so far. But then you look at what he's doing with that information. So maybe there is something here that has to be examined by the commissioner of lobbying as to what these lobbyists did relative to this code.

The problem here, of course, is that it's like the whistleblower commissioner, and there is not a great track record of effective policing of lobbyists that I am aware of by the commissioner of lobbying. But this committee might meet with the commissioner of lobbying and might call upon the commissioner to examine this matter and express an interest in receiving a report delivered to the House by her on this matter, and in due course take up the matter at that point.

● (1205)

The Chair: Great.

Mr. Albrecht, next. And Mr. Mulcair, I'll put you on the list.

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

We're dealing with two aspects of this: one dealing with sanctions in a specific case, and in the other we're trying to find out how we can implement some procedures to minimize the likelihood of this sort of thing reoccurring.

I just want to clarify something I think I heard you say earlier. You said that it would be difficult for the committee or the House to direct the actions of its members in regard to something like this. And yet all of us here have a thick binder that directs our actions. We have the code. We have multiple layers of things that indicate what we can and can't do. So I'm having difficulty understanding where you were coming from with that statement. If you could clarify that for me it would help.

Mr. Rob Walsh: That's a fair question. Perhaps I wasn't clear enough earlier.

Yes, you do have a thick manual of directions. They emanate from the Board of Internal Economy, which has statutory responsibility under the Parliament of Canada Act for the financial and administrative affairs of the House.

This is not a matter within that domain. This is a matter of procedure, parliamentary practice. It's a matter with respect to which the House, not the board, could discipline a member, but typically it's a discipline that's imposed after the fact.

Earlier, Mr. Lukiwski was asking what preventive action could be taken, so that contemplates a set of rules being put in place as to how members shall carry out their parliamentary functions. I was having difficulty anticipating how that could be done effectively. But after the fact the House could decide that was contrary to best practices and impose some discipline on the member if the House thought that was appropriate.

Mr. Harold Albrecht: I understand that it may not be able to be incorporated into the current manual, but similarly in the way that the code has been adopted, setting a number of guidelines, you don't think it would be possible for us to set procedural guidelines as to how we can or cannot deal with information?

The Speaker was saying that not long ago committees had numbered copies and so on. What would keep us from indicating to committees that this is what they may do with those copies, this is what they may not do with those copies, whether that's in electronic form or in written form?

Mr. Rob Walsh: Nothing. The House could set that down in its procedural rules, or in its code attached to the Standing Orders, that with regard to committee reports, draft reports, they shall be this or they shall be that. You're right, this could be regulated in that fashion. Then, if this is infringed, it's not treated so much as a breach of privilege, it's treated as a procedural irregularity, and the House could then choose to impose some discipline on members who don't respect that rule. It's the House that has control of its procedure.

I'm just saying that in the absence of a procedural rule, put into the Standing Orders that you can't mess around with members as freely as you might like in a given case. For example, you couldn't take this case and go after the member without having the support of some well-established rule that the member would have.... I mean, privilege is well established, but it's not of a nature of a procedural rule that, if breached, could give rise to discipline.

Mr. Harold Albrecht: Thank you.

The Chair: Thank you, Mr. Albrecht.

Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Thank you, Mr. Chair.

Mr. Walsh, earlier, you encouraged us to invite the Commissioner of Lobbying so we could get a better understanding of the connections, the sanctions, and so on, relating to lobbyists. I am not perfectly familiar with the Lobbying Act, but I know that a registered lobbyist has to file a report every three months and declare the names of the public office holders they have met with. Ministers and members, among others, are considered to be public office holders.

If the Commissioner wanted to ask the member in question whether she met with the lobbyists who received the document, would she be entitled to demand evidence from the member, to review her emails or determine whether there had been a lobbying relationship between her office, her assistant, herself and the lobbyist in question? Would the Act allow that?

• (1210)

Mr. Rob Walsh: I think it would, but the Act is not completely clear as to the methods available to the Commissioner of Lobbying. In any event, she conducts an investigation, and then submits a report to the House of Commons. If the House thinks that the report was not sufficient, it can ask the Commissioner to submit a supplementary report. In general, she is able to conduct an investigation.

Mrs. Claude DeBellefeuille: Into members?

Mr. Rob Walsh: No, into lobbyists.

Mrs. Claude DeBellefeuille: Right.

Mr. Rob Walsh: With respect to this case, it is possible that the Commissioner would be facing a roadblock. The question of privilege might be one. That is a legal question. However, I imagine that the member is going to cooperate with the Commissioner and disclose everything necessary to help her..

Mrs. Claude DeBellefeuille: ...conduct her investigation.

Mr. Rob Walsh: That's right.

With respect to the lobbyists, that is another matter. There may be a problem in that regard.

[*English*]

The Chair: Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chair.

Mr. Walsh, you referred to what I would call the ordinary confidentiality of any communication by email or fax. There is always a short statement about confidentiality. That is the norm today. It says, for example, that a particular fax or email contains confidential information and that if you are not the intended recipient, and so on. But here, this is a higher level, if I may put it that way. The document said this: "This draft report is confidential. Disclosure could be considered a potential breach of the House of Commons privilege." That is there in black and white on the first page. We aren't talking about the same level in this case. There is a higher level of responsibility.

Unfortunately, when you nod your head it won't appear in the transcript. So I would ask you to confirm that orally.

Mr. Rob Walsh: You're right. There might be another level there.

Mr. Thomas Mulcair: No, there actually is one. The document represented a second warning.

Mr. Rob Walsh: It represents another level for the lobbyist or the person who received the document. It tells them that there are legal or quasi-legal provisions associated with the document.

Mr. Thomas Mulcair: We are starting to come back somewhat to what you said.

Mr. Rob Walsh: It is a warning for the lobbyist. They know then that there are restrictions associated with the document, that they must take those rules into account, and that it is risky for them to send it to just anyone, for example.

Mr. Thomas Mulcair: It would be up to us to verify it.

I am going to suggest that the same thing applies to the employee, who was perfectly aware of this himself. It is there in black and white. Certainly that would ultimately apply to the employee's employer, in this instance the member.

Thank you. That answers all my questions.

Mr. Rob Walsh: Mr. Chair, have we finished covering this question?

[English]

The Chair: I had one more from Mr. Lukiwski and then we're finished.

Mr. Tom Lukiwski: Thank you, Chair, and I'll be brief.

Just a point of clarification, Mr. Walsh. You mentioned the term "public office holders" a number of times, referring to Ms. Block and her employee. The definition I work under is public office holders are cabinet ministers and parliamentary secretaries but not individual members of Parliament. Am I wrong here, or are you going from a different definition?

Mr. Rob Walsh: Look at the definition in the Lobbying Act. "Public office holders" includes members of Parliament and—

Mr. Tom Lukiwski: In the conflict of interest guide, public office holders are to the act, and members are of the code, so we've got a little....

Mr. Rob Walsh: That's correct.

The Conflict of Interest Act applies to ministers and parliamentary secretaries too, I believe; they're the public office holders, not members. But under the Lobbying Act a public office holder is defined to include members.

•(1215)

Mr. Tom Lukiwski: Okay.

Mr. Rob Walsh: The only thing I wanted to add, Mr. Chairman, is regarding Ms. Block. She consulted our office with regard to this employee, got advice on how to terminate the employment, and acted accordingly. Rather than do it by letter to her, I got her authorization to state here to the committee that she if fact did that. She consulted our office, she got the usual advice, and she effected a termination according to our advice.

The Chair: Thank you very much.

Mr. Walsh, thank you for joining us. Your advice is always good for this committee, and we use it often. Thank you.

We'll suspend again for just a minute.

• _____ (Pause) _____
•

The Chair: We'll call the meeting back to order.

Monsieur Bard, it's great to have you here today. If you have a quick opening statement we'll take it, and then a round of questions.

We have Madam O'Brien sitting with you. I know she is a great help to all of us on all these issues.

Ms. Audrey O'Brien: And I'm ubiquitous.

Mr. Chairman, I was very pleased to see that in the course of the discussion with the Law Clerk and Parliamentary Counsel the whole relationship between the administration of the House and individual members was very nicely exposed. That is to say, we regard each member of Parliament as an individual client and that the relationship of trust that we build up with the individual members and with the individual parties is one we absolutely rely on. It's an absolute cornerstone of our approach.

[Translation]

It's really a good thing for legal counsel to explain this process, because it also applies to information and information technologies. I think the Chief Information Officer, Louis Bard, will be able to answer your questions relating to technologies and what can be found in the information systems.

So without further delay, I will let you move on to questions.

[English]

The Chair: Monsieur Proulx, go for a five-minute round, please.

[Translation]

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Thank you, Mr. Chair.

Thank you for being with us this morning, Ms. O'Brien. Thank you for being with us too, Mr. Bard.

Mr. Bard, I believe that Ms. Block asked you to check the emails that may have been sent from her office. Could you tell me what period of time the checking you were asked to do covered?

Mr. Louis Bard (Chief Information Officer, House of Commons): That's right, the member called us. We offer that service if a member is looking for an email or a document that may have been deleted or damaged. The member can call us and ask us whether we can help find the document.

That is in fact what happened. The member asked our call centre to find documents for particular dates, and we responded to that request. I don't think this is confidential. The dates of the two requests were November 18 and 19, 2010.

•(1220)

Mr. Marcel Proulx: Mr. Bard, did you get Ms. Block's permission to give the committee the information that you may have given her, or the information you were able to find in relation to messages sent electronically?

Mr. Louis Bard: In all honesty, I'm talking today about a service request she made to the ISD. To respond to that call, the file was...

Mr. Marcel Proulx: Excuse me, we don't have a lot of time.

Do you have permission?

Mr. Louis Bard: No.

Mr. Marcel Proulx: Did you ask for permission?

Mr. Louis Bard: No.

Mr. Marcel Proulx: Ms. Block did not offer you permission. Since you don't have it, you can't act.

Mr. Louis Bard: No, my staff and I were not involved in that discussion.

Mr. Marcel Proulx: Mr. Bard, imagine that Ms. Block gave you permission to provide the committee with the information you were able to give her after doing the search, immediately or before the end of the day today. What would it be, exactly? What would you be able to provide?

Mr. Louis Bard: We would be able to give you what we have already given the member: the list of emails sent externally on that day.

Mr. Marcel Proulx: Is it possible to get the actual emails?

Mr. Louis Bard: Absolutely.

Mr. Marcel Proulx: Did you give them to Ms. Block?

Mr. Louis Bard: Absolutely.

Mr. Marcel Proulx: So the list and the emails.

Mr. Louis Bard: Absolutely.

Mr. Marcel Proulx: I am familiar with your systems because I had the privilege of visiting some gigantic and very impressive facilities. Is it possible to trace the emails sent from an employee's BlackBerry, as in this case? This is an employee of Ms. Block. We're talking about emails sent using a BlackBerry in the conventional way or by what is commonly and intelligently called BlackBerry PINing. Do you have the capacity to trace those messages?

Mr. Louis Bard: If a BlackBerry is used in conventional mode, it's the same as sending an email from an office, whether you're sitting in the House or in an office. But we don't keep any record of it, there is no log in the case of origin and destination.

Mr. Marcel Proulx: You don't have access.

Mr. Louis Bard: No.

Mr. Marcel Proulx: Do you have access to faxes sent? If something was sent from the member's office by fax, do you have access...

Mr. Louis Bard: No, it isn't recorded, we have no log of that kind of activity.

Mr. Marcel Proulx: Would you have a log of the numbers to which her fax machine sent faxes?

Mr. Louis Bard: No, but we could look at what happened on the local machine. There is no central system that manages the faxes on machines individually.

Mr. Marcel Proulx: The phone lines that are used to send faxes are managed by Bell, Rogers or Telus?

Mr. Louis Bard: It's mainly Bell.

Mr. Marcel Proulx: How long do you keep the records, if you like, of electronic messages, emails that were sent by BlackBerry or computer?

Mr. Louis Bard: Every night, we take what is called a snapshot. We take a "photograph" every night, between 8:00 p.m. and 1:00 a.m., of what is in the system at that time. That is kept for a year.

We also do what is called a journal of what happened during the day. That is what is received from the outside and what is sent to the outside. That is kept for 30 days.

Mr. Marcel Proulx: So if I send an email and delete it 30 seconds later, you still keep it.

[English]

The Chair: You're well past time. I'll allow the answer to that one, but you're past time.

[Translation]

Mr. Louis Bard: If they are emails that are within the internal House of Commons network and you delete those emails during the day, we are very probably going to lose them completely.

Mr. Marcel Proulx: But you keep those that came from outside.
[English]

On a point of order, Mr. Chair.

The Chair: Certainly. We haven't had one today, so let's go.

Mr. Marcel Proulx: Maybe I should call it a point of information, for you and for me.

Given the fact that Ms. Block is not authorized—and I don't think it's been asked of her—could maybe the chair, or maybe through the clerk could we ask Ms. Block to release all these different e-mails that were probably issued or received on November 18 and November 19 with the list? The IT services have given her a list and have given her copies of these e-mails. Could we ask her to give us copies?

•(1225)

The Chair: Ms. Block will be testifying before this committee. I would think it would be more appropriate for you to ask her—

Mr. Marcel Proulx: Will that be today?

The Chair: —at a date in the future, as determined by the scheduling of this committee.

On a point of order, go ahead.

Mr. Thomas Mulcair: I'll make a friendly suggestion. It might be opportune for the chair to ask that, and I'll tell you why. We're going to be meeting next Tuesday with the lobbyists. So we're going to be getting a certain amount of information from them. It might be useful for our time to be able to know what was sent. Some work has already been done by the finance committee, but most of that's been in camera, so I'm not going to compound the problem.

The Chair: Be careful here.

I'll ask Ms. Block. I think the best I can do is get it—

Mr. Thomas Mulcair: I think that would be the most helpful thing you could do. It's very simple.

The Chair: From a technology point of view, she may call on Monsieur Bard to help her with it, if that's the case. But I'll ask.

Mr. Marcel Proulx: The witness said that she already has them. They supplied them to her, so there's no reason for her not to let us have it.

The Chair: I'll ask.

Mr. Marcel Proulx: Thank you.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

Thank you, Mr. Bard, for being here.

You mentioned, Mr. Bard, if I heard you correctly, that Ms. Block asked you to search her computer for e-mails that might have been sent on two specific days.

Mr. Louis Bard: That's correct.

Mr. Tom Lukiwski: Did she tell you why those two days?

Mr. Louis Bard: We don't really question members' requests.

Mr. Tom Lukiwski: I wondered whether she volunteered the information.

Mr. Louis Bard: It was a simple request to the service centre—we do that all the time—“Could you please restore or try to help me find those e-mails?” We did that. We called her back and gave her the information.

Mr. Tom Lukiwski: I want to make sure I'm clear here. I think it's important to the committee to know this as well.

So the two dates I think you mentioned were November 18 and November 19. And it was just those two dates that she asked you to examine her computer for?

Mr. Louis Bard: Absolutely.

Mr. Tom Lukiwski: Thank you.

I agree with Mr. Proulx and Mr. Mulcair. I think it would be highly appropriate to ask Ms. Block. I don't think she would have any difficulty—at least I hope she doesn't have any difficulty—with providing us that information. If we could get that in advance and distribute it to the committee before next Tuesday, I think that would be very helpful.

Mr. Bard, I believe we have you scheduled to reappear before the committee towards the end of our examination. One of the questions I'm sure many of the members would be asking you is whether you have any advice for the committee on security protocol, to try to, if possible, prevent this type of thing from happening again.

Quite frankly, after hearing some of the early testimony I'm not sure if we could ever come up with a fail-safe program to prevent information from being leaked. But is there anything right now that you might be able to suggest, for our consideration, would be an effective protocol on security matters with respect to unauthorized release of documents via e-mail?

Ms. Audrey O'Brien: Mr. Chair, perhaps I could just say something before Monsieur Bard goes into the more technical aspect, if he has anything to suggest. He certainly, as the CIO, and I are extremely preoccupied at all times with security and we have a lot of discussions about technological security, especially given the proliferation of devices, and so forth. But as the WikiLeaks business indicates to everybody, regardless of the level of security attached to particular documents, ultimately it comes down to the integrity and the trust of people who are using the system.

One of the things we are always trying to balance is to have security of the system but at the same time to leave it sufficiently flexible so that members are not impeded by many protocols to get

through to do their daily business. You can go overboard where you have so many protocols in place that it impedes business but it doesn't actually make that much difference to the security.

We think we have a secure network. Perhaps Louis, as the CIO, and his officials could come up with some suggestions for the committee in terms of better approaching these confidential documents, but it becomes a question of how far we can go without locking down the whole system.

As Monsieur Mulcair has been pointing out, the fact is that for the distribution of this document, on the very first page it says in black and white to everybody that this is a confidential document and any kind of distribution might leave you open to a charge of contempt or a question of privilege. That is a big warning right there. As I see it, the value of this committee and of its eventual report is really to sensitize both the members and the staff of members and staff at the House to how seriously we have to take this business of secure information and the confidentiality thereof.

• (1230)

Mr. Tom Lukiwski: I agree totally. As I mentioned, I don't know if there is any kind of fail-safe protocol that we could put in place that would prevent this from happening again. Quite frankly, it may be something where we have to spend more time on the mentoring aspect of things. When I first came to Parliament, we had a brief orientation session on a number of things. This wasn't one of them.

One might argue that it's common sense, and sure, a lot of it is common sense. If you see a confidential stamp on a document, I don't think there are too many stupid people working on this Hill in members' offices, and you should know right away that this isn't something you can distribute. By the same token, it might be wise for us as an institution to engage in a better mentoring program or a more vigorous mentoring program for all of our members when they come in, and talk about things such as security.

I'll leave it at that. I think the time has expired anyway.

The Chair: Two seconds and you're done.

Madame DeBellefeuille.

[*Translation*]

Mrs. Claude DeBellefeuille: Thank you, Mr. Bard. Your appearance at our committee always gives us a better understanding of computers.

If I am not mistaken, you told Mr. Proulx earlier that you didn't keep a record of everything sent on the Hill from the fax machines in our offices. That applies to photocopiers too, I imagine.

Mr. Louis Bard: Absolutely.

Mrs. Claude DeBellefeuille: And telephones?

Mr. Louis Bard: Certainly all calls are recorded, but that is done by the service provider. We don't really have access to that information.

Mrs. Claude DeBellefeuille: Right.

I am not very familiar with the PIN to PIN system. I think it doesn't allow for sending files as attachments.

Yes, you can do that?

Mr. Louis Bard: You can't attach a document, but you can do a copy and paste and send virtually the entire document.

Mrs. Claude DeBellefeuille: Right.

I think the memory capacity we have on the Hill for storing data on our computers is not very high. We often have to delete documents so our BlackBerrys don't get full, for example. If we want those files to be truly deleted, we delete them once, and then permanently.

When we check the "delete", "empty trash" and "delete permanently" options, do the files disappear from your sight? You no longer have access to them? If I call you less than a month later and ask you to recover what I permanently deleted, will you be able to do that?

Mr. Louis Bard: As I explained earlier, given that we take the equivalent of a snapshot every evening, somewhere in time, that information will be available.

Mrs. Claude DeBellefeuille: Even if I have removed it.

Mr. Louis Bard: Even if it has been completely removed, we can go back to try to recover that item. However, it is a lot of work. When we receive millions and millions of emails and documents, it isn't easy to do, but there is always a way of searching and doing searches to try to help a member.

Mrs. Claude DeBellefeuille: But your success isn't guaranteed, if I have deleted everything once and for all before your snapshot. Is that right?

Mr. Louis Bard: That is very probable.

A voice: What is very probable?

Mr. Louis Bard: It is very probable that the document has been lost. And if I sent it out externally, I will at least be able to have a log as proof it was sent.

Mrs. Claude DeBellefeuille: I'm not sure I understand. My knowledge is not very extensive. If I'm not mistaken, I can send a file, for instance, to a lobby outside the Hill, and even if, right after I send it, I delete it once and for all...

Mr. Louis Bard: I will have at least a log that will tell me you sent something externally and the title of the document.

Mrs. Claude DeBellefeuille: There will be the title of the document even if I deleted it permanently.

Mr. Louis Bard: When I talk about the title, you have to be careful. I can send something externally and I may have changed the title, I may have changed the name, I may have passed myself off as someone else.

When we analyze the data and we think there has been malicious intent, there is an investigation. The data can be observed in a thousand and one ways. Someone may have sent an email several times with the same document title, but that doesn't mean the document is still attached.

This involves communications, correspondence. It takes a much more in-depth analysis. If we wanted to know whether something malicious happened, would we want to investigate all committee members? Would we want to search in the text or just the title? There

are all sorts of ways to examine and analyze information. It becomes an enormous exercise that has to be done by qualified people.

• (1235)

Mrs. Claude DeBellefeuille: I would like to be sure I have understood properly. If we wanted to get access to a member's emails, we would absolutely have to have permission from the member in question.

Mr. Louis Bard: Under the protocol, whether with the caucuses or with the whips, the house leaders or members, I always have great respect for confidentiality. I work for every member. If a member asks me to help search through their drawers, I am going to help them.

However, once we get outside that situation and someone else—it may be the whip, the Speaker—asks me, it is enough to clarify the situation for me. Personally, in 18 years, I have never had to respond to a committee asking me to go and search the office of a member to see what's there.

Mrs. Claude DeBellefeuille: Thank you.

[English]

The Chair: Thank you.

Mr. Mulcair.

[Translation]

Mr. Thomas Mulcair: Thank you, Mr. Chair.

Thank you for being here today, Mr. Bard.

I want to come back to some of the items because this is extremely important.

To copy and paste a document and send it, you often start with "forward". There is the "forward as" heading and I can forward as email, as PIN, and depending on the document, as SMS.

Mr. Louis Bard: Yes.

Mr. Thomas Mulcair: According to your testimony, there is no way of knowing whether things have been copied and pasted and sent PIN to PIN. You have no trace of that.

Mr. Louis Bard: No, we didn't put that process in place because we wanted to respect...

Mr. Thomas Mulcair: ...confidentiality.

But still, in terms of our work, it becomes relevant to know whether what was extracted for the 18th or the 19th, for example, covers everything. According to your testimony, it is possible that this is not the case because you don't have that record.

Mr. Louis Bard: That's right.

Mr. Thomas Mulcair: Second, I would like you to repeat—forgive me, it must be me who didn't understand—what you keep for 30 days and what you keep for one year.

Mr. Louis Bard: Each day, we take a picture of what is in all the emails. The English word is "snapshot"; I don't know the right French word. As well, we keep a log every day of what goes out externally and what is received from outside, to know that those emails were received and that they were sent to the outside.

Mr. Thomas Mulcair: Does that include the title and the content?

Mr. Louis Bard: Yes, in some cases there is the content, and in others there is only the title.

Mr. Thomas Mulcair: Right.

What distinguishes whether it has the content?

Mr. Louis Bard: It may be that the document wasn't attached.

Mr. Thomas Mulcair: Right. So we agree on that point.

I'm going to come back to Ms. DeBellefeuille's question.

Let's talk about BlackBerrys. In my case, my BlackBerry and my computer have the same account.

Mr. Louis Bard: It's the same email account.

Mr. Thomas Mulcair: That's right.

There are "assistant 1", "assistant 2" and "assistant 3". If the member is "5" here, they are "5" on their computer in their office. The hard disk in their office keeps everything.

Mr. Louis Bard: No. Everything relating to email is kept in a central storage environment.

Mr. Thomas Mulcair: So there would be no trace left of an email that I sent a year and a half ago.

Mr. Louis Bard: There would be no trace left.

Mr. Thomas Mulcair: So it isn't on mine and it isn't on yours.

Mr. Louis Bard: It's in the backups I make. However, if you keep your email for an unlimited time, it is always part of your environment.

Mr. Thomas Mulcair: Yes, we agree on that. That's good. That gives us some hope.

That is the most important aspect, to me. The Speaker has recognized that we are going to ask... Ms. O'Brien and Mr. Walsh remind us that we have privileges here. This is all a question of protecting privileges. We do not want to breach one privilege to protect another. Our actions have to be consistent.

However, you have just given us an excellent explanation. We will eventually have questions for Mr. Ulliyatt's account holder. Ordinarily, we will be able to learn everything that happened, at least during those days. Perhaps our meeting with Ms. Block will raise other questions. At that point, we will be able to see whether we might be interested in other days or whether there was other correspondence with those people.

I would like to summarize by addressing one final point. We are approaching the 30 days after those fateful dates. Nothing of what exists today will be in danger of being lost, when we get to December 18 and 19?

• (1240)

Mr. Louis Bard: With all the questions I am being asked, I will make sure that it is kept longer.

Voices: Oh, oh!

Mr. Thomas Mulcair: That was what I was hoping to hear, Mr. Bard.

Thank you again for being here.

[English]

The Chair: Great.

Monsieur Proulx.

[Translation]

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

I have a few quick questions for Mr. Bard.

Your answer to Ms. DeBellefeuille was that telephone calls were recorded. You mean there is a record of calls that are made, but they aren't recorded.

Mr. Louis Bard: It's a log.

Mr. Marcel Proulx: It's a log, right. It isn't the calls.

Voices: Oh, oh!

Mr. Marcel Proulx: I'm glad to hear you say that, because I know that elsewhere it's the opposite. I would not have wanted you to be getting the conversations where I criticized you, Mr. Bard. In any event, there wouldn't have been many.

In addition, can RIM get the PINs?

Mr. Louis Bard: No, I don't think so. In reality, the PIN is a function in itself that is used, like a cell phone. It is really a matter of using the environment that is there for there to be a transmission between two people who have the same units.

Mr. Marcel Proulx: It doesn't go in any way through...

Mr. Louis Bard: No, it doesn't go through... In the House of Commons, security management, for BlackBerrys, is done internally. So the entire environment is inside the House of Commons.

Mr. Marcel Proulx: I understand what relates to the House.

For PINs, that doesn't belong to RIM?

Mr. Louis Bard: No.

Mr. Marcel Proulx: You are convinced and convincing.

Mr. Louis Bard: No, it can't go through the server. There is absolutely nothing recorded.

Mr. Marcel Proulx: Ms. Block's request to get the lists, the logs and the copies, did it apply to all the accounts in her office, in her operation, or only to his?

Mr. Louis Bard: It applied only to "assistant 1".

Mr. Marcel Proulx: So if "assistant 1" used the computer belonging to "assistant 2", for example, you would not have known. That means you would have recorded the documents, but you would not have given them to Ms. Block.

Mr. Louis Bard: Absolutely not, we didn't do that kind of thing.

Mr. Marcel Proulx: So it was strictly on that employee's account.

Mr. Louis Bard: Absolutely.

Mr. Marcel Proulx: If Ms. Block asked you for the log or copies for dates other than the 18th and 19th, for example a week before or after, how much time would it take you to be able to produce that, Mr. Bard?

Mr. Louis Bard: It's always a few days' work. It's a matter of searching, exploring, gathering information. Ordinarily, we do it in two or three or four days.

Mr. Marcel Proulx: Even if she told you she wanted to limit the search to emails that went out to the same recipient as those that were discovered on the 18th and 19th?

Mr. Louis Bard: The narrower the request is, the easier it is. If she wanted us to look further, we would have to adopt a strategy, to look at what we could do.

Mr. Marcel Proulx: So it could be done within a few days.

Mr. Louis Bard: Yes, that's what we did for Ms. Block. She called in the evening and it was ready at 8:30 a.m. the next day.

Mr. Marcel Proulx: From your logs, do you know where the emails came from that were then forwarded? In other words, the employee's computer or account has this email with the attachment. Can you tell Ms. Block where the document came from?

Mr. Louis Bard: It is in the member's account. So I assume that Ms. Block had access to the document through...

Mr. Marcel Proulx: If you assume, that means that...

Mr. Louis Bard: I didn't ask her.

Mr. Marcel Proulx: So that email was given to the employee by a person in her office.

Mr. Louis Bard: Each member organizes things as they choose. Some delegate everything to their employees, give them access to everything, while others allow them limited access. It depends on the member, how they manage their office, who they give the keys to and don't give the keys to.

Mr. Marcel Proulx: Right. So that means that this email did not get to the employee directly from the clerk of the Standing Committee on Finance, is that right?

Mr. Louis Bard: I can't answer that question. I really don't know the answer. I haven't analyzed the data. We replied to a request.

Mr. Marcel Proulx: Thank you, Mr. Bard. I appreciate your testimony.

[*English*]

The Chair: Thank you.

Mr. Albrecht.

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

And thank you, Mr. Bard, for being here.

In his testimony earlier today the Speaker indicated that in the distant past we had this mechanism with sheets of paper with numbers and so on.

Is there no way that a clerk of a committee could put some kind of a lock on a specific e-mail that would prevent that e-mail from being forwarded? I know we could still have the cutting and pasting and those kinds of things. It seems to me that the ease with which e-mails are sent has created a lot of problems. In fact, MPs around this table get much more communication today from their constituents because it's easy to hit "send". We get a lot more volume.

Do you know if there are any studies being done in the technological world as to how we could make some of these

documents more secure, similar to what we did with the numbering system with paper, so that it would be impossible to go forward?

• (1245)

Mr. Louis Bard: From the questions, I think all of you have touched on part of the answer today. There are three elements to moving documents around. It's always the technology, but a protocol and a process are the most important ones. Technology will try to adapt to that, not the other way. The critical portion, the weak link of any systems are the people—the users.

We've been helping members. We've seen behaviours where members are sending stuff all over the place. Members are sending stuff to their homes.

The objective is to allow members to communicate, not to restrict members from communicating. You can go from a very simple approach like locking a document, not an e-mail. You can decide not to send dotmail e-mail and use maybe a collaborative approach, where you go to a site to access a document, to look at a document—

Mr. Harold Albrecht: And you have to have a password to get into it?

Mr. Louis Bard: That's correct. But if the member gives the password to all the staff, or the member decides to copy that document to their BlackBerry and send that out, or decides to take a copy and bring that with him on a USB key or something else, those are all the weak links. I forget my USB key in my car or at a restaurant...it's all those weak links.

And then you can go to very complex solutions. I mean, PKIs and digital right management, so if a document is classified secret, we won't allow it to get out of the precinct. But then you're adding a lot of sophistication and a lot of burden on the MPs. The process becomes very, very complex.

I think in between there is a balance of good process and good protocol, and then technology can add to that very quickly, as opposed to very, very expensive and tedious solutions you have to deal with every day. I mean, that's part of the equation.

The other aspect is the people side of things. For House employees, we have an information management policy. We have a policy on information access and security, how to classify documents, how to give access to those documents. These policies do not apply to members or their staff, and that's something you may wish to consider.

We also have an acceptable use policy on the responsibilities when you use technology resources of the House, which is also not extended to employees of the honourable members.

Mr. Harold Albrecht: Ms. O'Brien may want to...

Ms. Audrey O'Brien: Yes, Mr. Chairman, if I may just pick up on what Mr. Lukiwski was suggesting earlier, one of the things we've been doing over the course of this Parliament is gathering information about the restructuring of the orientation for new members and for new staff in the next Parliament.

I realize that's like the horse is gone and the barn door is closed, but nonetheless the idea is that it's the people portion of this that's the weakest link. The idea that confidentiality, especially in an era of Facebook, when privacy counts for nothing, you have to sort of.... I almost had to spell the word "confidential" when I briefed the pages this year because it was so foreign to them. So perhaps it becomes the kind of thing that all of a sudden you have to pay extra attention to, because it's just not part of people's mindset. So we will definitely be addressing that.

And it's the kind of thing where the protocols that members themselves decide to put in place in their offices, how they delegate the authority to.... Well, Mr. Albrecht was suggesting and Monsieur Bard was saying you might have a password-protected site or something like that. Well, who you trust with the password and what the understanding is between you and the employee to whom you're giving this special access of working in your name, in a sense.... But at the same time, as Monsieur Bard was saying, we don't want to get into a situation where we have so cumbersome a process that it just impedes people from doing their work and doing it well and quickly.

• (1250)

The Chair: Thank you.

Monsieur Paquette.

[Translation]

Mr. Pierre Paquette: I just want to be sure about one thing. The request you received for the 18th and the 19th related to the "assistant 1" account, and not the member's account or the "assistant 2" account. Is that right?

Mr. Louis Bard: That's right.

Mr. Pierre Paquette: I'm not a specialist. In fact, I am more of Mr. Milliken's school. My computer is steam powered. From what I've been told, the photocopiers in our offices have a memory function, and even if you haven't centralized the information, the information relating to the photocopies we make is stored in the computer.

Mr. Louis Bard: Absolutely. I'm sure of that.

Mr. Pierre Paquette: Our photocopiers contain a hard disk.

Thank you.

[English]

The Chair: Mr. Mulcair.

[Translation]

Mr. Thomas Mulcair: Mr. Chair, it's important that we all get the message list. As a member of the committee, I have it, but because it's part of the entire process that has been put under a microscope, I can't repeat the mistake. So you should get our committee the complete list of who received the text sent on the 18th. Then we will be able to ask the questions that are needed, to find out what was sent by one assistant to another or in the member's account. We are going to have to have that list.

Ms. Audrey O'Brien: Mr. Chair, I could send the list of messages to the committee and let it know how the clerk of the committee proceeded for the distribution of the draft report.

[English]

The Chair: Excellent. We were discussing whether that was possible. It wouldn't be confidential who was on the list. It's just the stuff that was in the report that's confidential.

Ms. Audrey O'Brien: That's my understanding.

The Chair: That's tabled now anyway, so we can get the distribution list, and we'll get that for Tuesday also, please.

Mr. Proulx, you had a small question.

Mr. Marcel Proulx: Yes, thank you.

[Translation]

Mr. Bard, since you're convinced that PINs are not recorded either by you or by RIM, would you be so kind as to check with the people at RIM that they don't have copies? That way, it will be very clear for everyone, not only in relation to this situation, but forever after.

Mr. Louis Bard: Mr. Proulx, your questions always intrigue me. I will do the research, certainly.

Mr. Marcel Proulx: Thank you.

Regarding the question Mr. Paquette asked you about the hard disk in the photocopiers, there was a television program not long ago. I contacted your photocopying services, and I was told there was no hard disk in the brand of photocopiers used at present, there was one in the past, but a particular program was used to delete or eliminate that data. Are you telling us that...

Mr. Louis Bard: That's right, after your call, we did our due diligence. We found a few of them, in various locations. Certain things were done. I could document that.

Mr. Marcel Proulx: Could you come back...

Mr. Louis Bard: We eliminated those functions from members' photocopiers.

Mr. Marcel Proulx: Could you follow up on that question and let us know the results of your work, Mr. Bard?

Mr. Pierre Paquette: I would like to point out that when they were thrown out, the disk was not erased. So you may have done something in that regard. In any event, you will get back to us on that question.

Mr. Louis Bard: That wasn't the case in the riding offices.

Mr. Marcel Proulx: It might be more practical for the committee, because if Ms. Block wanted to know whether copies of those documents were made on her photocopier, it would be possible if there were a hard desk that kept that in memory.

Mr. Louis Bard: That's a very good observation. I think you are perfectly correct, Mr. Proulx. I think everything was removed.

Mr. Marcel Proulx: In any event, you will keep us informed.

Mr. Louis Bard: Yes.

Mr. Marcel Proulx: Thank you.

[English]

The Chair: You'll let us know?

Thank you.

Are there further questions from committee members?

Seeing none, thank you very much for coming today. It's been a great meeting. I thank you all. We'll see you Tuesday. The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

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

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

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

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>