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# **Standing Committee on Procedure and House Affairs**

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**EVIDENCE**

**Thursday, March 24, 2011**

**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

Thursday, March 24, 2011

• (1140)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** We are now in public session for consideration of the draft report on this matter of privilege.

I'm going to suggest that we move in a fashion that's similar to how we've moved on other reports: that we start at the beginning and look at clauses maybe not one by one but page by page, wherever it's appropriate, and we vote on them.

First of all, I'd like to thank the analysts for a very detailed report and a good review of what evidence there was, the testimony from witnesses. Thank you very, very much.

**An hon. member:** Hear, hear.

**The Chair:** With lack of guidance, they did a good job.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Mr. Chair, just one clarification, if there is such a thing—

**The Chair:** Let's try that one out, because a point of information is allowed.

**Mr. Tom Lukiwski:** Well, Marcel got away with a point of information, so I thought a point of clarification—

**Mr. Marcel Proulx (Hull—Aylmer, Lib.):** No, I agree with you, Tom, it does exist.

**Mr. Tom Lukiwski:** Yes. I'm just trying to find—

**Mr. Marcel Proulx:** We just have to find it.

**Mr. Tom Lukiwski:** At the last meeting we were discussing a motion by Mr. McKay.

**The Chair:** Right.

**Mr. Tom Lukiwski:** Is that—

**The Chair:** Gone.

**Mr. Tom Lukiwski:** It's gone now...? We're just discussing this?

**The Chair:** It could of course be brought back, but it is right now off the table—

**Mr. Tom Lukiwski:** All right. Thank you.

**An hon. member:** You never know...

**The Chair:** —and the amendments to it.

All right, let's take a stab at this. We'll take pages 1 through 4.

Mr. Reid, on any of those. Please identify which one.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Paragraph 2 is the one I'm thinking of. This explains how the internal document came to light. This is a document that is, by definition, a cabinet confidence. Advice to ministers is specifically excluded under the access to information legislation. It's one of the grounds on which information is not revealed.

The material came forward by means of, as I understand it, either an access to information request that had been filed by Mr. McKay or someone giving the material to Mr. McKay, someone who passed it on to him, or else through an order paper question, which is, as I understand it, treated as using the same criteria that are used for access to information. Either way, it was sent to Mr. McKay's office by means of a process that.... Well, first of all, it was an item that would not under normal circumstances have been revealed. It was revealed as a matter of administrative error within the department, as Mr. Cappe noted in his testimony. He stated that this should never have been revealed.

That's point one, which I would like this paragraph to reflect, because that makes the very important point, which will be relevant to us later on as we're coming to our conclusions, that in adding in the word “not”, the minister had every reason to believe that this would never become public.... I should correct myself. It wouldn't become public for 20 years or 30 years or whatever it is that applies to documents that are considered cabinet confidences, thereby demonstrating that it could not have been altered by her or by her staff in a way designed to deceive either the public or Parliament.

That's a very, very important point, which isn't captured in this paragraph, but this is—

**The Chair:** Can you suggest wording, Mr. Reid?

**Mr. Scott Reid:** I just have one more point to make.

**The Chair:** Quickly, sure.

**Mr. Scott Reid:** The wording would have to deal with this.

The second thing that has to be reflected here is that the nature of access to information requests—this is done with very good reason—is that when they are brought forward the minister doesn't have any access to the fact that this is going on. This is to prevent ministers and ministers' staff from interfering, and I think we all understand why the law was written that way quite a long time ago. So she would have been unaware that this document potentially was going to be made public, even by administrative error.

So there are two different bases, neither of which is reflected in the report, which demonstrate that this document could not have been altered by the minister or her staff for the purpose of deceiving either the public or Parliament, and it is that alleged deception that is the entire basis of the argument that she is somehow in contempt of Parliament. I simply want to have a paragraph that reflects that, and I can't think of where else to put it. Paragraph 2 is where the discussion occurs as to how this came to light.

For those who have the contextual information, it speaks for itself, but because the world doesn't have that contextual information, I think that should be added to the paragraph, Mr. Chair.

**An hon. member:** It could be in two or three.

**Mr. Scott Reid:** Well, it could be.... Frankly, it probably should be a 2.1 or a 2(a), and we'd renumber or something like that. But I would suggest that this be incorporated before we go on and get into the discussion of what's actually contained in the document itself, which is done in paragraphs 3 and 4.

**The Chair:** Thank you.

Go ahead on that same point, Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you.

I'm glad, frankly, that Scott brought that up, because I was going to talk about what I think is a glaring omission in this report. I think it's a factual report that the analysts have put together, but there are some omissions. The one I think is most glaring is that there's no reference to testimony from Mr. Cappe whatsoever, and he was one of our witnesses. I think that's very important to this, because he was, as Mr. Reid pointed out, the one who mentioned that he, as a former clerk of the Privy Council, was of the opinion that this document that had really caused all of the confusion should not have been—

**Mr. David McGuinty (Ottawa South, Lib.):** Point of order, Mr. Chair.

**The Chair:** I haven't had many of these today.

**Mr. David McGuinty:** It's only because I don't recall Mr. Cappe testifying on this issue at all. Did I miss something? Did I miss hearing it somewhere?

**Mr. Scott Reid:** Actually, Chair, could I comment?

**The Chair:** You can if it's on the same point of order.

**Mr. David McGuinty:** Yes, I'm just wondering if I missed the testimony.

**Mr. Scott Reid:** I can't remember whether Mr. McGuinty was in the room when the testimony was given, but what happened was that Mr. Cappe was brought in to deal with the other subject this committee had been seized with but while there he expanded his testimony to cover a number of the topics, including this one.

**The Chair:** Thank you.

Did I see your hand up?

[Translation]

**Mr. Pierre Paquette (Joliette, BQ):** Mr. Chairman, Mr. Cappe never provided testimony to the committee on that subject. This is totally out of order.

[English]

**The Chair:** I do remember Mr. Cappe being asked questions about cabinet confidentiality and the release of documents from bureaucrats. You're right, last week is a bit of blur as to what study we were doing.

• (1145)

[Translation]

**Mr. Pierre Paquette:** It was as a result Mr. Brison's motion that Mr. Cappe appeared before the committee. So, that is not relevant in the context of this report.

[English]

**The Chair:** I was in the middle of saying that. Mr. Cappe was here on the issue brought forward by Mr. Brison, but I believe at the time—and I'm sorry I can't remember which member was asking questions about cabinet confidentiality and the affair from CIDA—Mr. Cappe did share his views. Whether he was asked to by the member or he shared them in his statement I don't remember, but I do remember it being at least testified to.

Mr. Lukiwski, you still have the floor.

**Mr. Tom Lukiwski:** Thank you.

Again, I'm not trying to say that he was the witness who came to speak specifically on the Oda thing, but he referenced the Oda case in his testimony. I think it's very relevant, whether or not he was a witness in favour, if anyone speaks who was a witness, because we're talking about points of privilege on potential contempt motions. I think it's very relevant that a former clerk of the Privy Council, who referenced the Oda case, gave his opinion. And it supports what Mr. Reid was suggesting, which was that in his opinion that document shouldn't have been released to begin with.

I can live without having a direct reference to his testimony, because opposition members might argue that you shouldn't include it because he wasn't a witness called in the Oda case. That's fine. The point Mr. Reid made, however, is very important. That is, because Minister Oda did not think that document would be made public—and Mr. Cappe verified that in his opinion it shouldn't have been, and that if he had been the Clerk of the Privy Council at the time, it wouldn't have been—then she had no expectation that the document was going to be made public. If in her estimation the document would never have been made public, how in the world could she be considered in contempt for trying to mislead anyone, because no one would have known about it to begin with?

That, I think, is an extremely relevant point, and that isn't referenced here. I would suggest that if you're actually trying to be fair about this whole issue—and the question is whether she was deliberately trying to mislead—then how can you not put that in?

**The Chair:** Certainly.

Point of order.

[Translation]

**Mr. Yvon Godin (Acadie—Bathurst, NDP):** Mr. Chairman, Mr. Mel Cappe did not appear before the committee as a witness with respect to this affair, so why should we refer to him? If we do that, we may as well refer to judges and anyone else in the country who might have said something. These people are making a federal case of this. Mr. Lukiwski himself said that Mr. Cappe had not appeared before the committee to discuss that specific issue. If witnesses did not appear before the committee, we cannot refer to them in the report. If they were anxious to have a specific witness appear before the committee to discuss the case of Ms. Oda, they could certainly have done that. But they did not. I see no reason why this is relevant here. Otherwise, we can refer to just about anyone. We're talking about the report here.

[English]

**The Chair:** Thank you.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** I know the opposition doesn't think it's relevant because they want to find Minister Oda in contempt, just as they did with the documents. They made up their minds before they heard the first witness.

With all due respect to Mr. Godin, I don't disagree for a moment that he doesn't consider it to be relevant. I do. If you're trying to be fair and balanced in this—and I've yet to see any demonstration from the members of the opposition that they actually do want to be fair and balanced—then you should put into the report the fact that if Minister Oda did not have expectations that this internal document was to be made public, how could she possibly have intended to mislead anyone, because if it was not made public no one would have known.

**Mr. David McGuinty:** Point of order, Mr. Chair.

For the record, I'd like to ask unanimous consent from the committee, through you, Mr. Chair, to table the document released by the Canadian International Development Agency in which you would clearly see the word “not” inserted. In the top right-hand corner of the document there is a file number. I believe it's 1402. Under that number, in bold letters, for the information of Mr. Lukiwski and Mr. Reid, who are arguing that this should never have been made public, is the word **UNCLASSIFIED** in bold letters and capitals. That is unclassified, which means this is a document that should be disclosed to the public. The decision had been made by CIDA officials, presumably with the minister's authorization, to unclassify the document.

Mr. Chair, through you, I'd like to table that for all Canadians to see as an unclassified document.

• (1150)

**The Chair:** Mr. McGuinty, if we're moving back into the portion of this committee where we would accept evidence, I'm happy to do so if it's the will of the committee. I thought and hoped we had finished that on Friday.

Mr. Reid, on the same point of order.

**Mr. Scott Reid:** Would you deem Mr. McGuinty's item a point of order?

**The Chair:** I see no other reason for him to have come forward with it if it wasn't under a point of order.

**Mr. Scott Reid:** Okay. I thought he was seeking unanimous consent.

**The Chair:** Which I hear in my sleep now, by the way.

**Mr. Scott Reid:** I was going to speak in favour of his motion. I think it's a good idea, because what I was going to try to get at is that these items are added after the fact, right? The point is it was unclassified as a result of a decision made reviewing the document by some officer—I don't know who—who decides that it should be moved to that: something starts off being classified and it becomes unclassified.

By the same token—

**The Chair:** Could I stop you for a second and ask, are we on a motion from Mr. McGuinty to table the document? Is that where the committee would like to be? If we are, then we'll take speakers on that motion.

Okay? So that's where we are.

Speaking to the motion, Mr. Reid.

**Mr. Scott Reid:** Thank you.

Yes, what happens is that the decision to unclassify it appears to be taken in error by someone within the department. Actually, it would have been a useful exercise to figure out exactly how this went wrong, how it was turned into an unclassified document.

I support Mr. McGuinty's motion, and I would add that I would like to amend his motion to add two additional documents, which were submitted by Margaret Biggs in conformity with the request made by this committee, which had asked whether “not” or “do not” was added in as a matter of course. The minister promised we'd get back with some additional documents. That was done on March 18.

And two additional documents were tabled, one dated March 5, 2010, and one dated March 8, 2010, which also have recommendation advice to the minister with the word “not” inserted in one of them and the words “do not” in another. The only reason these have become unclassified, therefore made public, is the fact that the minister was responding to a request from a committee, which of course has further rights with regard to demanding the publication of normally confidential information than would be authorized under a mere access to information request.

So, Mr. Chair, I'd like to ask to have these two documents tabled as well, as part of the motion. I'm sure Mr. McGuinty would be willing to support that, as would every other member of the committee. This gives further context and demonstrates that this was something done as a matter of course in that department and further adds to the strength of the argument that indeed, far from trying to manipulate the committee....

Unless Mr. McGuinty wants to argue that she's forged these documents and had Margaret Biggs' active cooperation in so doing—which I think would put them very seriously in contempt of Parliament—unless he's willing to argue that, this actually is the knock-out punch that demonstrates that this was the normal course of doing things, that the entire argument that the minister was trying to pretend to mislead us is entirely imaginary, entirely mendacious, and entirely without foundation.

On that basis, Mr. Chair, I would very much like to add these by way of amending Mr. McGuinty's motion.

I believe, Mr. Chair, the way it works is that you go back and find out whether Mr. McGuinty is willing to accept that amendment to his motion.

**The Chair:** Thank you. I will chair, thank you.

Do you want to speak on that point of order, or are you creating a new one?

**Mr. Marcel Proulx:** No, I want to speak on that point of order.

**The Chair:** I have other speakers on the list, though.

All right.

**Mr. Marcel Proulx:** Didn't CIDA supply the committee with these documents? We've already got these documents, don't we? They did come—

**Mr. Scott Reid:** Well, I'm assuming you've already got the document. You've got it running in an ad, for crying out loud, which says not to vote for the corrupt Conservatives because of this imaginary thing. So if we've already tabled those, why not table these as well?

**The Chair:** Mr. Reid, the two documents you're speaking of were asked for at this committee. The chair hasn't seen them yet, and since my regular clerk is not here today, I don't know if they were given to the committee and distributed to members. I can only ask you. Were they distributed to members?

• (1155)

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** No, I do not have them.

**The Chair:** Then I would have to assume that they were not yet in evidence.

The amendment is to Mr. McGuinty's motion to table this document, amended by Mr. Reid.

Mr. McGuinty.

**Mr. David McGuinty:** Sorry, Mr. Chair, I've just confirmed with your clerk. The committee has already received this document.

**The Chair:** That one?

**Mr. David McGuinty:** Correct.

**The Chair:** Okay.

**Mr. David McGuinty:** The unclassified document that I sought permission to deposit here—my apologies—is already on record here. It was sent by e-mail to the clerk and confirmed by your clerk here this afternoon. So there's no need. I just wanted to raise that it speaks to the issue Mr. Reid was—

**The Chair:** We can say it got to the clerk. I'm asking members of the committee. Did it get to you?

**Mr. Marcel Proulx:** Which one?

**The Chair:** First of all, the one you have in your hand.

**Mr. David McGuinty:** Every member of committee, I'm told, has received this and this was also deposited on the floor of the House of Commons.

**Mr. Scott Reid:** Mr. Chair, if I understand correctly, what Mr. McGuinty is saying is that the document he wanted tabled has already been submitted and he was only submitting it to make a rhetorical point and he was not actually trying to inform the committee.

**The Chair:** Since that is no longer a motion by Mr. McGuinty, Mr. Reid, are you moving a motion to table your documents?

**Mr. Scott Reid:** I guess I am, thank you.

**The Chair:** We're trying to get there in some way today, so thank you.

On the motion by Mr. Reid to table his two documents that have not been received by the committee....

Mr. Lukiwski, I have you.

I'm going to try to clean up something here. Mr. Young, you were on one of the original lists, are you...? You'll defer?

**Mr. Terence Young (Oakville, CPC):** Yes.

**The Chair:** Mr. Lukiwski, and then Mr. Albrecht.

**Mr. Tom Lukiwski:** I was actually on Mr. McGuinty's point of order.

**The Chair:** I'm sorry. I will move you ahead of Mr. Albrecht.

Sorry, Mr. Albrecht.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Chair.

I have one quick clarification for Mr. McGuinty before I speak to his original point of order. Mr. McGuinty said that both Mr. Reid and I were suggesting that the document in question should not have been made public. I've never said that. That was Mr. Cappe's contention.

My point—supported by Mr. Reid, or vice versa—is that Minister Oda had no expectations that this document would be made public. And that's the key point here.

But on the document, I just have a simple question. Is that in both official languages? Has it been tabled in both official languages? Well, every other document that's in here—

**The Chair:** The clerk shares with me that our regular clerk submitted it by e-mail and would not have done so if it was not, it's safe to say. So I have no factual evidence either way.

**Mr. Tom Lukiwski:** And the second point: I haven't received it. I know Mr. McGuinty says that every member has it. I haven't seen it.

**The Chair:** Obviously we've seen a few documents in this. We'll make sure it's distributed now to make sure it gets to all members of the committee as a verification.

Mr. Lukiwski, on Mr. Reid's motion, was that it?

**Mr. Tom Lukiwski:** I'm just supportive of it. Obviously it will have to be submitted in both official languages, but I'm quite supportive of that, yes.

**The Chair:** Sure.

Mr. Rae, on Mr. Reid's motion of the tabled documents. I'm sorry, I'm in the restaurant business, so I'm used to asking people questions right after they've taken a bite of something. I'll keep talking and give you a moment to....

**Hon. Bob Rae (Toronto Centre, Lib.):** Mr. Chair, that's fine, thank you.

The actual relevant documents are not just a single page. The relevant document is all the background information that was part of the ATIP request that provides a full assessment by CIDA of the Kairos application, which is the reason that the Kairos application was signed and approved by Margaret Biggs and by Mr. Singh.

Mr. Lukiwski's argument seems to be that because the minister didn't know or didn't think that these documents would ever be released, therefore it was okay to tell people that the decision not to fund Kairos was made after careful assessment by CIDA and the government, and it was based on a thorough examination of the facts.

What the documents clearly show is that the careful assessment on the facts pointed to an approval of Kairos funding. There is not a single document in place that points to a reason that Kairos would not be funded. There isn't a single recommendation to the minister. There isn't a single document—

• (1200)

**Mr. Harold Albrecht:** What does that prove?

**Hon. Bob Rae:** What it proves—

**Mr. Harold Albrecht:** The minister is in charge.

**Hon. Bob Rae:** That's right.

**The Chair:** Not across the table, gentlemen. We just don't want to go there today.

**Hon. Bob Rae:** Obviously Mr. Abbott has admitted to making a misleading statement. It also means that the answer to the order paper question was misleading, because the order paper question answer, which was signed by the minister, which should also be part of the documentary trail in this discussion, clearly indicates that the minister was arguing that this was somehow a collective decision of CIDA and the government that was based on full documentation, when that's not the case at all.

I think that's as important an element of the argument about misleading as anything else. And I think if you're going to have a documentary trail, that has to be part of the documentary trial. That's the material that was discussed at the foreign affairs committee. That's the material that was before us when we cross-examined the minister in the foreign affairs committee in December. That's the material that was before the House when we had a series of questions

to the minister. So that's the material, if you want to get at it. That's the issue here we're trying to deal with, in my view.

**The Chair:** Thank you.

On Mr. Reid's amendment, I'll go to Mr. Albrecht.

I've added your name, Mr. Reid.

**Mr. Harold Albrecht:** Well, it's unfortunate, Mr. Chair, that Mr. Rae has come in here to this meeting at this point, not having read paragraphs 30, 32, or 33, in which the minister and Ms. Biggs clearly talk about the fact that a CIDA decision is a CIDA official and ministerial decision. It's not just one or the other. And the final decision that Minister Oda made is in fact a CIDA decision. That's the point that we have to keep clear here.

Mr. Chair, the other thing that Mr. Rae raises is all of this background document he is referring to. I haven't seen it. I have to accept his word that all this background material is there. It hasn't been tabled with this committee, so I have difficulty in just proceeding on that.

**Hon. Bob Rae:** I can't understand how you could have proceeded without that material in front of you.

**The Chair:** Again, the chair will ask. I'm happy to return to the evidentiary portion of this committee, on this point of order on this question of privilege.

I've heard now three or four pieces today saying we need evidence we don't have in hand. I'd be happy to suspend and move back into where we'd get other witnesses before us and get other documents before us.

[Translation]

**Mr. Pierre Paquette:** Mr. Chairman, Mr. McGuinty raised this point because Mr. Reid stated that, under the Access to Information Act, the documents should never have been made public, and that it was an error.

[English]

**The Chair:** I know how we got there.

[Translation]

**Mr. Pierre Paquette:** If we dropped Mr. Reid's point... There is no doubt in my mind that Mr. McGuinty is not interested in starting a fight. In any case, this was the headline in every newspaper in December, including *The Globe and Mail*. That is not the issue. Mr. Chairman, I have a feeling that Conservative members of this committee are using stalling tactics to prevent us from reaching a decision. We have to determine whether Ms. Oda did or did not mislead the House. That is the fundamental issue here. Does she deserve to be accused of contempt of Parliament? Should the House not withdraw its confidence in the government? That is the fundamental issue. At this point, they are simply trying to sidestep the question.

[English]

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

Committees usually get to that by accepting or not accepting a report written by the committee. We're up to clause 2.

Mr. Lukiwski, you're next on the motion by Mr. Reid to submit his documents.

**Mr. Tom Lukiwski:** Again, I support it, but since Mr. Rae spoke before me about the need for the committee to have had the entire document....

**Hon. Bob Rae:** It's all on the public record. You don't have to get precious about this. It's all a matter of public knowledge.

**Mr. Tom Lukiwski:** Thank you for interjecting, Mr. Rae.

**Hon. Bob Rae:** Well, it is.

**Mr. Tom Lukiwski:** I thought we were doing this one at a time, but perhaps you have a better grasp of how a committee works than I do.

There's one clarification I would point out, however, in Mr. Rae's earlier intervention. He said that the ATIP document that was before the foreign affairs committee demonstrated that CIDA had approved funding. They did not; they recommended funding. Let's make sure we have precise words here. CIDA has never approved funding of Kairos. The CIDA officials, including Ms. Biggs, recommended funding. After the minister disapproved of the funding, the CIDA decision then became that they did not.

There was only one decision that CIDA made on this one, and it was not to fund Kairos. I do not want Mr. Rae or anyone else to try to put into testimony here that something was other than that.

[Translation]

**Mr. Pierre Paquette:** On a point of order, Mr. Chairman.

If what Mr. Lukiwski says were true, the Minister would not have apologized to the House on February 14 for creating that confusion. They are simply playing with words here. That does not in any way reflect the perception of most parliamentarians or the public, and in that respect, once again, they are just wasting our time.

• (1205)

[English]

**The Chair:** I think I'll start ruling pretty quickly on these points of order that turn into points of testimony or points of argument. It's getting ridiculous. Whenever you don't like what someone else says, you raise a point of order and get your point in. That's not the procedure. That's not how it works. When you're raising a point of order, talk about the procedure that just went wrong, not the testimony that just went wrong.

And please don't speak over top of me. I'm in just a good enough mood today to put up with this.

**A voice:** Me too.

**The Chair:** Okay, then let's all hold hands and sing *Kumbaya* and get through this. But we're not getting through it at this pace or with this method.

**Hon. Bob Rae:** I know the words, Mr. Chair.

**The Chair:** Good. Mr. Rae says he can help us with the words. That's great.

I have Mr. Reid next on this issue.

**Mr. Scott Reid:** I think Mr. Rae made two points, one of which is valid, and he answered a question.... I confess, I did not realize that I did say that it was either an order paper question or an access to information request. It was an order paper question. I then said that the minister doesn't have control over how the material is collected for that, with good reason. He pointed out that the minister's signature is on the response. I take his point on that. It's a good point.

That doesn't change the point that when the document was actually put together, originally typed up, the signatures added, including the one added by autopen, and the word "not" inserted—those are actually several different stages—all of that happened before the order paper question was submitted. The documents were then transferred in a manner that involved no further alteration. No one has argued that any further alteration happened. As far as I know, no one has argued that. If someone had argued that, that would actually make their case in a very devastating way, but no one has made that claim.

The original document was dealt with in a manner by a minister who had every expectation that it would not become public for 20 years. That's the stage it's at when it last leaves the minister's hands.

**The Chair:** Mr. Reid.

**Mr. Scott Reid:** The point I'm getting at here is—

**The Chair:** Okay, let's try to get it.

**Mr. Scott Reid:** —simply that Mr. Rae's testimony was very relevant, and I think we should both include the documents I've suggested and—he has a good point—that additional other material he's included, which I think adds to my case of the fact that the minister didn't alter these things. That should be added in as additional documentation submitted to this committee. It does help us to get to where we want to go.

**The Chair:** Okay.

**An hon. member:** Can we vote on that?

**The Chair:** Mr. Young, you're the last on my speaking list.

**Mr. Terence Young:** Thank you, Chair.

I do want to comment, because there's something Mr. Paquette said that is so fundamentally wrong I actually have hope that this issue could be turned around at this meeting today.

Mr. Paquette, we're not here to decide did the minister mislead the House by miscommunication or whatever. We're here to decide if the minister was in contempt, and that's a huge, massive, difference.

The minister admitted to a miscommunication. She's apologized for that. The question is, did she do it intentionally?

And if you go to number 20, by the way, the standard of proof is a very high standard of proof—

**The Chair:** Let's stay on number 2.



**Mr. Terence Young:** In practice in New Zealand, it's "proof of a very high order".

So that is not what we're here to decide. We're here to decide: did she do it intentionally, and is there evidence of a very high order? There's a huge difference.

**The Chair:** Are you finished?

**Mr. Terence Young:** I do want to make reference to number 19.

**The Chair:** Let's make reference to the motion that's on the floor, which is Mr. Reid asking if certain documents can be given to this committee. That's the motion we're discussing right now. We'll get back to each of the clauses, hopefully in our lifetime.

**Mr. Terence Young:** Last week we went through this charade of wanting to get information from the government. When the information's provided, well, it's too much information. It was evident from questions since and some comments in the media that they didn't even read the information they got. Now we have an opportunity to get information that is helpful to the committee. That's not a big deal. It's not as if there's a hundred pages, it's only.... What is it, Mr. Reid? Two pages?

**Mr. Scott Reid:** Two pages, plus a cover page.

**Mr. Terence Young:** What is wrong with getting helpful information at the committee? Why are you always trying to prevent us from getting new information?

**An hon. member:** Not at all.

**Mr. Terence Young:** Of course we should accept the information.

• (1210)

**Mr. David McGuinty:** Just ask the question, Chair.

**The Chair:** Okay. I've finished the speakers on my list, so I will ask the question on Mr. Reid's motion to table the three documents that he has.

Those in favour?

**An hon. member:** Absolutely. No problem.

**The Chair:** Any opposed?

Boy, that was worth....

**Mr. Marcel Proulx:** Oh, Tom is opposed.

**Mr. Tom Lukiwski:** Is this in both official languages?

**The Chair:** Of course they'll have to be before they're distributed, but they can be given to us for evidence that way.

I'm back now to—

**Mr. Scott Reid:** Sorry, Mr. Chair, but I have a point of order.

I just consulted. We did get these from the clerk, and we're told there should be a French translation. So she's going to see if she can get it from the computer, because we have permission to table that as well, and then it can be distributed.

**The Chair:** Great, if it's there, to make it easier. Thank you.

Mr. Reid, you've asked for an insertion of wording in paragraph 2.

**Mr. Scott Reid:** Yes, I have wording.

**The Chair:** You've got it?

**Mr. Scott Reid:** Yes.

**The Chair:** Slowly, please, for translation purposes, if it's long and....

**Mr. Scott Reid:** Yes.

Essentially, a paragraph 2.1 or 2(a) would be entered after paragraph 2, which would say that the document obtained through Mr. McKay's order paper question—

**Hon. Bob Rae:** No, it wasn't the order paper question, it was an ATIP request.

**Mr. Scott Reid:** It was an ATIP.

**Hon. Bob Rae:** It was an ATIP request that produced the public information—

**Mr. Scott Reid:** Okay, I thought you just said it was an order paper question.

**Hon. Bob Rae:** —in November. No, there was another order paper question from Glen Pearson in March—

**Mr. Marcel Proulx:** And Jennings.

**Hon. Bob Rae:** —and Jennings in March about the question of Kairos.

**Mr. Scott Reid:** I see, so it was an access to information request. That's what I've been arguing all along. Okay.

**The Chair:** All right. Let's insert those words.

**Mr. Scott Reid:** Hang on. No, I think the point is it can't go where I was going to suggest, it would have to....

**Mr. Marcel Proulx:** Maybe we should recess, so they could looked at it.

**Mr. Scott Reid:** Sorry about this.

The way it's written, it's a little hard to insert it there.

I think what we should do is make it paragraph 4.1, then.

**The Chair:** Okay, 4.1. What's it going to say?

**Mr. Scott Reid:** So the document obtained through the Access to Information Act.... Or maybe we should just say whatever the document number is. There's an actual number on that document. I don't have a copy of it with me. Without having to cite it, can we assume that number is cited, so we're referring to the document, not the manner in which it was achieved?

**The Chair:** All right.

**Mr. Scott Reid:** Okay. So document number whatever "...was meant to be an internal document, deemed to be a cabinet confidence under the terms of Canada's access to information legislation because it is advice to a minister and was made public only through an administrative error. The minister could not have had an expectation that this document would be made public except after a delay of several decades."

**The Chair:** All right.

So we have the wording. Are we okay on the wording of that?

Monsieur Godin, on that.

I'll take a speakers list.

[Translation]

**Mr. Yvon Godin:** No one said this was a Cabinet confidence. Even Ms. Oda never said that. The document is clearly marked “unclassified”. Mr. Reid is just making something up here and he would like us to include it. That is the way he would have liked things to have occurred. It's just ridiculous.

Mr. Chairman, can you tell me exactly when a witness, either the Minister or someone else, might have told us that the document that was released was a Cabinet confidence?

[English]

**The Chair:** I'm not here to give testimony.

Members of the committee certainly can offer amendments.

Mr. Lukiwski is next.

**Mr. Tom Lukiwski:** Just for Monsieur Godin, I mean, he's not been in cabinet.... Well, perhaps you have provincially, but certainly not federally.

It is common knowledge and common practice, frankly, that advice to ministers is cabinet confidence.

**An hon. member:** That's your statement.

**Mr. Tom Lukiwski:** Well, it is.

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

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

**Mr. Tom Lukiwski:** I mean, any clerk of the Privy Council will testify to that.

**Mr. Yvon Godin:** Nobody came in and testified to that, Mr. Lukiwski.

**The Chair:** Excuse me. Through the chair, please.

**Mr. Yvon Godin:** Mr. Chair, we're writing a report—

**The Chair:** Mr. Lukiwski has the floor. I will put you on the speakers list again, and you can repudiate anything he says.

**Mr. Yvon Godin:** I can come back.

**The Chair:** I'm sure you can.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Mr. Chair, neither did we hear witnesses that the sun comes up in the morning and sets at night, but it does; that's a fact.

**An hon. member:** Then put it in the report.

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

• (1215)

**Mr. Scott Reid:** But we didn't put in the report that it—

**The Chair:** Mr. Reid.

**An hon. member:** Filibuster.

**Mr. Tom Lukiwski:** So that's my point.

**An hon. member:** You started the first point of order.

**The Chair:** Excuse me. Mr. Lukiwski has the floor.

**Mr. Tom Lukiwski:** No, I'm done. Thank you.

**The Chair:** All right.

Mr. Rae, you were next.

Mr. Rae has the floor.

**Hon. Bob Rae:** I'm happy to have a vote on this issue, Mr. Chair.

**The Chair:** Thank you.

Monsieur Godin.

[Translation]

**Mr. Yvon Godin:** Even if the sun does rise and set every night, I am prepared to vote on this, Mr. Chairman.

[English]

**The Chair:** Thank you.

On the amendment to paragraph 4 that Mr. Reid has suggested, all those in favour?

**An hon. member:** We'd like a recorded vote, Mr. Chair.

**The Chair:** Thank you.

(Amendment negated: nays 6; yeas 5)

**The Chair:** So we're still on page one and paragraphs 1, 2, 3, and 4 of the report.

Mr. Proulx.

**Mr. Marcel Proulx:** On paragraph 4, Mr. Chair, in the French version, the first sentence, the first line, we're referring to the word “*non*”, meaning “no”.

I think we should have some sort of an explanation or some sort of a note to say that in the document the word was not “*non*” but “not”.

**The Chair:** It would be written literally rather than as translated.

**Mr. Marcel Proulx:** Yes.

**The Chair:** Are we okay with that?

**Some hon. members:** Agreed.

**The Chair:** Go ahead.

[Translation]

**Mr. Nicolas Auclair (Committee Researcher):** Mr. Proulx, we could add in brackets that the “*non*”—or “not” in this case—was only written in English.

**Mr. Pierre Paquette:** Yes, because otherwise, the sentence in French doesn't make sense.

**Mr. Nicolas Auclair:** We even considered translating it as “*ne pas*”.

**Mr. Pierre Paquette:** What professionalism!

[English]

**The Chair:** With that change in the French version, we are now dealing with paragraphs 1 through 4.

All in favour...?

Sorry. More, Monsieur Proulx?

**Mr. Marcel Proulx:** In paragraph 3, Mr. McKay informs me that there's an error in the first sentence. We say that "through an access to information request Mr. McKay obtained a document". It wasn't Mr. McKay who obtained it; it was *Embassy* magazine.

**Hon. Bob Rae:** *Embassy* magazine did the access to information request and the information then became part of the public record. Those documents became widely available.

**The Chair:** Did Mr. McKay obtain it after that?

**Hon. Bob Rae:** Yes.

**The Chair:** And through *Embassy* magazine?

It's not actually incorrect, then, but we could lengthen it by adding that it was somehow different from that.

What would you like?

**Mr. Marcel Proulx:** I suppose we could say "through an ATIP request by *Embassy* magazine, Mr. McKay obtained...."

**The Chair:** On that, Mr. Lukiwski?

**Mr. Tom Lukiwski:** That's fine. I was just going to say that the way it reads is not technically incorrect. It says "through an access to information request". It doesn't say "Mr. McKay facilitated an access to information request". But if you want to put in "*Embassy* magazine", sure, that's fine.

**The Chair:** All right. So in both—

**Mr. Scott Reid:** In actual wording, I think if we said "As a result of an access to information request through *Embassy* magazine, Mr. McKay drew the committee's attention to a document", I think that was the function of what Mr. McKay did. He said "Hey, you should be looking at this". Does that seem reasonable?

**The Chair:** Are we okay with those semantics?

**An hon. member:** Yes, that's better.

**The Chair:** Mr. Albrecht.

**Mr. Harold Albrecht:** Mr. Chair, at the risk of putting you to sleep, I don't understand, if that is a fact, why we didn't hear from *Embassy* people at this committee. I was under the impression all along that it was directly from Mr. McKay.

**The Chair:** We certainly could have called them as witnesses, I suppose, and I'll offer again a return to the evidentiary portion of this committee's work.

**Mr. Harold Albrecht:** That's not a bad idea.

**Mr. Marcel Proulx:** So 1, 2, 3, 4...?

**The Chair:** Are we okay with those changes to 1, 2, 3, 4?

**Mr. Marcel Proulx:** Yes, sir, absolutely.

**Some hon. members:** Agreed.

**The Chair:** Any opposed?

**Mr. Marcel Proulx:** None opposed.

**The Chair:** None opposed. Thank you for the assistant chairmanship there today.

**Mr. Marcel Proulx:** That was his echo.

**The Chair:** Page 2: I take the guidance of the committee here. One at a time, or can we do the page?

**Mr. David McGuinty:** The page.

**Mr. Harold Albrecht:** One at a time.

**The Chair:** Okay. All in support of number 5?

**Some hon. members:** Agreed.

**The Chair:** All in favour of number 6?

**Some hon. members:** Agreed.

**The Chair:** All in favour of number 7 the way it sits?

**Some hon. members:** Agreed.

**The Chair:** All those in favour of number 8 as written?

**Some hon. members:** Agreed.

**The Chair:** All those in favour of number 9?

**Some hon. members:** Agreed.

**The Chair:** All in favour of number 10?

**Some hon. members:** Agreed.

**The Chair:** Great. Look at that: a whole page.

**Mr. Marcel Proulx:** In French, it was a page and a half.

**The Chair:** Number 11.

Monsieur Paquette.

● (1220)

[*Translation*]

**Mr. Pierre Paquette:** I'd like to talk about the wording here. It refers to a "supplementary report". Are we not actually talking about an opinion?

This is strictly technical. It says that this report contains a supplementary opinion.

**Mr. Nicolas Auclair:** Once again, we hesitated somewhat. It must have come that way from the translation service, and we left it. It's the committee report.

**Mr. Pierre Paquette:** As a general rule, since it is part of the report, it cannot also be a report. It's an opinion.

**Mr. Nicolas Auclair:** So, it's a supplementary opinion.

**Mr. Pierre Paquette:** Also, on the second line it has to be changed to "opinion" again.

[*English*]

**The Chair:** Mr. Reid, then Mr. Lukiwski.

Mr. Reid first. On that word?

**Mr. Scott Reid:** Yes, I think the same problem exists in English. It wasn't a supplementary report, it was a dissenting report.

I'm not sure if Mr. Lukiwski probably had the same thing I was going to talk about.

**The Chair:** Mr. Lukiwski.

**Mr. Tom Lukiwski:** My point is that we have to amend this because the report states that the dissenting report—this is called a “supplementary” report—is “prepared by the Conservative Party of Canada”. It was not. It was prepared by the government members on the committee, not the Conservative Party of Canada.

**The Chair:** The report states it as “a supplementary report prepared by the Conservative Party of Canada”, attached to the report.

So I know where they got the words. It may not be correct, but that's where the words came from.

**Mr. Scott Reid:** It's not the end of the world.

**The Chair:** No.

**Mr. Tom Lukiwski:** [*Inaudible—Editor*]

**Mr. Scott Reid:** I know, but that's what it says, so I'm not worried about it.

**Mr. Tom Lukiwski:** It would be the government members sitting on the committee who prepared the report, would it not?

**The Chair:** Yes, it would be.

**An hon. member:** It doesn't matter.

**Mr. Tom Lukiwski:** Well, that's my understanding.

**Mr. Marcel Proulx:** Whatever suits you.

**The Chair:** I believe it says that too.

**Mr. Tom Lukiwski:** If it's factual, it's fine.

**The Chair:** So that's paragraph 11. As written, or any changes?

**Mr. Marcel Proulx:** There are a few changes in French.

**Mr. Pierre Paquette:** “*Opinion*” has been changed.

**The Chair:** Okay, so we've gone to “*opinion*”.

**Mr. Harold Albrecht:** There's the question about “supplementary” or “dissenting”.

**The Chair:** It says “supplementary”, so we're going to sit there, I think.

All in favour of paragraph 11, as changed?

**Some hon. members:** Agreed.

(Paragraphs 12 to 15 inclusive agreed to)

**The Chair:** All in favour of paragraph 16?

**Some hon. members:** Agreed.

**Mr. Tom Lukiwski:** Sorry, did you say paragraph 16?

**The Chair:** Do I have a comment on 16, or an opposition to 16?

**Mr. Tom Lukiwski:** I have a suggestion on additional information to be included in paragraph 16. I don't have the transcript of the Speaker's ruling, all of his wording, but I believe he mentioned at the time that the incident that was forwarded to the committee in February 2002 actually ended up with the Minister of National Defence being found not in contempt. Of course that was also in a

majority government environment, but he did make reference to the fact, I believe.

I have it here, if I may read it into the record.

**The Chair:** Certainly.

**Mr. Tom Lukiwski:** This is from the debates of February 1, 2002:

I am prepared, as I must be, to accept the minister's assertion that he had no intention to mislead the House. Nevertheless, this remains a very difficult situation. ... I have concluded that the situation before us where the House is left with two versions of events....

No, I'll withdraw that, Chair. I thought the Speaker made reference that in the case of the Minister of National Defence in 2002, the ultimate ruling was that he was not found in contempt. I do not see where the Speaker says that in the ruling.

● (1225)

**The Chair:** So we're going to leave paragraph 16 as it is?

**Some hon. members:** Agreed.

(Paragraphs 17 to 24 inclusive agreed to)

**The Chair:** All in favour of paragraph 25?

Sorry, do you have a question, Mr. Lukiwski, on 25?

**Mr. Tom Lukiwski:** Sorry, Chair, I had notes here. I just want to go back over them.

**The Chair:** Mr. Young, did you want to jump in? Do you have an intervention?

**Mr. Terence Young:** Thank you, Chair.

In paragraph 24, when you read it, it sounds like Mr. Franks had drawn a conclusion with regard to contempt. Neither Professor Franks nor the parliamentary counsel drew any conclusion with regard to contempt. They specifically chose not to when given the opportunity. I just have a concern that 24 makes it sound like a conclusion has been drawn.

Perhaps at the beginning of the paragraph it could say that although Mr. Franks chose not to or never made a conclusion with regard to the contempt....

**Mr. Marcel Proulx:** Point of order.

**The Chair:** Yes.

**Mr. Marcel Proulx:** We've dealt with paragraph 24. Whatever Mr. Young is bringing forth, I don't read it like that in the French version, that's for sure.

**The Chair:** Yes.

**Hon. Bob Rae:** Mr. Chair, I think paragraph 22 satisfies Mr. Young's concern. It's clear. It says: “Without offering an opinion as to whether Ms. Oda was guilty of contempt of Parliament...”. So you don't have to repeat it in 24.

**Mr. Terence Young:** Yes, I read that. I was concerned with 24, though. If the members agree that it's not a concern, I'll withdraw my concern.

**The Chair:** I'm not feeling it, so I'm thinking we're going to leave it there.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** I can live with what you have there.

**The Chair:** Then I'll go back to where I was.

All in favour of paragraph 25 as written?

**Some hon. members:** Agreed.

(Paragraphs 26 and 27 agreed to)

**The Chair:** On paragraph 28, you have a point, Mr. Reid.

**Mr. Scott Reid:** I move that we add a sentence at the end of paragraph 28, which would read: "She subsequently submitted two such memoranda, at the request of the committee, which had been marked in this manner."

That is the motion I'm suggesting, and now I will speak to it, if I could, very briefly.

• (1230)

**The Chair:** Sure.

**Mr. Scott Reid:** These are the documents we've just tabled.

Of course the point of putting this in here is that this demonstrates very clearly that this was the standard operating mode within the department, and therefore it could not have been the case that this word was inserted to mislead Parliament.

**The Chair:** Okay, on Mr. Reid's motion to insert that sentence or to insert something to that effect.

**Mr. Marcel Proulx:** Can we have that wording?

**The Chair:** Sure. You said something at the beginning that sounded to me as if it was exact. Go ahead and give it a shot.

**Mr. Scott Reid:** Actually, we have the date, so we could cite the date. I think it was actually March 18 or something. I gave in my copy.

**The Chair:** It is at the end of paragraph 30.

**Mr. Andre Barnes (Committee Researcher):** At the very end of paragraph 30, it says: "On March 21, 2011, Ms. Biggs provided an example to the committee. The document showed that Ms. Biggs and another official had recommended a proposal..." and so on.

**Mr. Scott Reid:** In that case, let me withdraw. You've included the evidence. I thought it hadn't been included. I owe you an apology, because I was actually going to be critical and say that it should have been included. So let me apologize for something I almost said. There is no need to put this in here.

**The Chair:** Thank you.

(Paragraphs 28 and 29 agreed to)

**The Chair:** On paragraph 30, Mr. Young.

**Mr. Terence Young:** Chair, what the opposition coalition just voted to not accept in the committee were two documents, actually, that Mr. Reid proposed.

Is that correct, Mr. Reid?

**Mr. Scott Reid:** That's correct.

**Mr. Terence Young:** They both showed that it was normal procedure at CIDA, between the minister and CIDA, to—

**Hon. Bob Rae:** We voted yes. We've agreed. We've accepted it.

**Mr. Terence Young:** Thank you for doing that, because it's very important, colleagues.

The report should then therefore show that there were actually two documents. It indicates at the bottom of paragraph 30 that there was one document.

**Hon. Bob Rae:** It is the regime versus the coalition, is it?

**The Chair:** Okay, where am I? It's 28. I'm sorry, I thought I was at 30. I'm holding my thumb where I thought I was.

**Mr. Harold Albrecht:** Mr. Chair, we jumped ahead to 30 because of the reference to 30 the analyst drew to Mr. Reid's attention.

**The Chair:** According to this, there is no opposition to paragraph 29.

Are all in favour of paragraph 30, as written?

**Mr. Scott Reid:** I'm proposing an amendment to 30.

**The Chair:** We still have more here. Go ahead.

**Mr. Terence Young:** The last sentence says "The document showed that Ms. Biggs and another official...". It refers to one document. In fact, there are two documents. There are two precedents. Can we make that correction?

**The Chair:** It's easy enough to say that there were two documents.

**Mr. Tom Lukiwski:** For clarity, what it should say, if I may, Mr. Chair, is that "On March 21, 2011, Ms. Biggs provided two examples to the committee"—not "an example", but "two examples". And then, "These documents"—plural—"showed that Ms. Biggs and another official had recommended a proposal for funding and signed the documents on December 1, 2009".

**The Chair:** Are you okay with that?

I have Mr. Reid before you. We'll have Mr. Reid and then Mr. McGuinty.

**Mr. Scott Reid:** It's not my amendment. I'm suggesting it as an adjustment to the amendment, which I think Mr. Lukiwski will accept.

There may be a problem with the dates on the documents, because if you take a look at them, there are two documents, which are dated with two dates, if I'm not mistaken, both in March 2010.

Am I wrong? I'm doing this all from memory, because I don't have them. Can I have them back here for a second?

**The Chair:** Show those to Mr. Reid so he can get his dates.

**Mr. Scott Reid:** There are two documents there. Where are the dates on these things? According to her cover letter, one is dated March 5, 2010, and the second one is dated March 8, 2010.

●(1235)

**The Chair:** Just go ahead.

**Mr. Andre Barnes:** I stand to be corrected, but I think we only received one document in the e-mail from CIDA. You might have two. I stand to be corrected, but I think that the committee has only circulated one in the e-mail.

**The Chair:** Then that will be fixed by Mr. Reid's previous motion of two documents. He has two examples, and you've only received one. We've now moved that this committee will receive both of the ones you have in evidence in your hands. I don't believe I've seen either yet, so that will be fine, but where are we on this, if that's the case?

[Translation]

**Mr. Nicolas Auclair:** I'm going to try to answer your question, Mr. Paquette.

As my colleague was saying, when Ms. Biggs and the Minister appeared, they both promised to send documents to the committee that would reflect a similar practice to the one being considered now. We received only one document, and that is the one mentioned in paragraph 30. The committee is now considering another motion, and the reason they were not included in the document was that we didn't receive them.

**Mr. Pierre Paquette:** We hadn't received them. So we haven't seen them either.

[English]

**The Chair:** So Mr. Reid's motion, accepted unanimously by the committee, is about two documents. That's fine. If there is a second one, it will now be in evidence with us. So what's been asked for in the wordsmithing change here then is to make it read in the plural about documents received. Okay? So we're all right with that?

Mr. Reid, I know you're talking to Marcel, but are we finished with your intervention?

**Mr. Scott Reid:** No, I was trying to make an amendment.

**The Chair:** Go ahead.

**Mr. Scott Reid:** While I'm doing it, I'll explain it. Let me just go through this. Forgive me, it's a bit confusing here, and normally you should make the amendment and then speak to it.

First, I have the cover page of a letter from the clerk dated March 21 sent out to all members or whatever assistants they are. It's the usual kind of list of assistants. It just says:

Dear Members of the Committee,

Please find attached, for your information, responses to questions from Margaret Biggs (Canadian International Development Agency), following her appearance before the Committee on Friday, March 18, 2011.

That's the cover letter that was sent out to all offices, although I recognize there are members here who aren't normally members and they may not have seen it for that reason.

**An hon. member:** That was received on the 21st?

**Mr. Scott Reid:** The 21st at 1:31 p.m., and it was sent in your case to....

**The Chair:** I have a cover letter from Michelle saying that she sent it, but it doesn't say whether there are one or two letters in it. It just says an e-mail went out at that time. So the argument still is whether there's one or two.

I think we've dealt with that by saying you have two examples, and you wanted them tabled. We voted unanimously to do that, so now they are on record in this, even if there was one in the e-mail and now there are two. We've dealt with that.

**Mr. Scott Reid:** Yes. I'm just trying to move now to what they.... The analyst didn't put this in there, so now we have a cover letter addressed to you from Ms. Biggs, saying there are two documents, and now here's the part where we have to start amending. It's two documents, their dates are March 5, 2010, and March 8, 2010—that's recorded in the cover letter—and one of them uses the word "not" in two spots, the other one uses the words "do not". So if we can make those changes, this part would now reflect the documents we were given.

**The Chair:** Great. So we have an idea how we're going to say that then: it's a matter of changing it into the plural and adding "not" and "do not".

I have Mr. McGuinty. You're okay?

**Mr. David McGuinty:** Yes, let's get through this. I'm fine.

**The Chair:** Mr. Paquette.

[Translation]

**Mr. Pierre Paquette:** I want to be sure I understand. In that case, you will be checking to ensure that there are, in fact, two examples and will include them in this paragraph. However, if we were to conclude that there is only one, you will ensure that the report reflects that fact.

[English]

**The Chair:** We have both of the documents now in both official languages. They're about to be given to you. I think we can safely say there were two documents. From that, we'll make the changes on this to the plural. And with the other suggestion, Mr. Reid, because they're not exactly the same—one says "not", one says "do not"—we'll make it read that.

Mr. McGuinty, are you okay?

●(1240)

**Mr. David McGuinty:** Yes, I'm fine. I just want to make sure of something, Chair.

Earlier, in one of the other paragraphs that we've already approved, there was reference to the "sheer number of memos". In paragraph 27 it reads: "Due to the sheer number of memos that she must deal with (in 2010, she dealt with 758 memos)....". So I assume, because we requested of the minister any examples and all examples, frankly.... I recall putting the question to her and to Ms. Biggs. I don't know if it's useful for folks who will be reading the report finally to know that it's two examples of the 758 memos that she would have decided upon in her year of 2010.

**The Chair:** It's not my recollection, but I'll take other interventions.

Mr. Lukiwski, on that.

**Mr. Tom Lukiwski:** I apologize, David. I was dealing with the document I had in front of me. Could you repeat what you said? Were you saying your assumption was that since there were 758 memorandums that the minister dealt with and she only supplied these two, we should surmise, then, that those were the only two? Is that the thrust of what you were saying? I don't want to put words in your mouth, but I couldn't quite hear what you were saying.

**Mr. David McGuinty:** I recall asking Ms. Biggs and the minister if they could deliver up all of the examples of the 758 memos. I remember putting that right to her, saying to her that she—

**Mr. Tom Lukiwski:** I'd like to—

**Mr. David McGuinty:** Can I finish?

**Mr. Tom Lukiwski:** Sure, go ahead.

**Mr. David McGuinty:** I remember reminding her. I asked the minister whether she had reviewed 758 applications. She confirmed the 758. And I asked both witnesses, the minister and Ms. Biggs, if they could deliver up any and all examples of the 758.

**Mr. Scott Reid:** You might have said that. Let's find the—

**Mr. David McGuinty:** You can go back to the testimony.

Again, I'm not going to die on the hill on this, Mr. Chair. If it's not going to work, then let's move on.

**The Chair:** Mr. Lukiwski.

**Mr. Tom Lukiwski:** I think it's fairly important. The point Mr. McGuinty was trying to make is that if there were only two examples out of 758, perhaps it could be argued it wasn't common practice. I don't recall—and I'd like to check this out in testimony—Mr. McGuinty saying “any and all”. I believe Ms. Biggs just said they would endeavour to give us some examples to demonstrate that this was common practice. And that was the context in which this whole discussion took place. The minister stated in testimony that it was common practice for her to handle the requests in this fashion. And I believe they just said that they would endeavour to give some examples. I don't believe they said they would give all examples.

**The Chair:** The wording we're trying to get to here is that there are two documents, and they say that. Mr. McGuinty, you're trying to add something—

**Mr. David McGuinty:** Fine, I'll withdraw it.

**The Chair:** Great. That's an easier way to do it.

Mr. Reid.

**Mr. Scott Reid:** I found Mr. McGuinty's testimony here—

**The Chair:** He's already said he's not putting this piece in here.

**Mr. Scott Reid:** I understand that. But he has asserted effectively that he asked for everything and only got some things.

**Mr. Marcel Proulx:** Who's running the show here?

**The Chair:** I sometimes wonder myself, Monsieur Proulx.

**Mr. Scott Reid:** Mr. McGuinty actually said, and I'm quoting:

The Conservative government, the Harper regime, is very effective at doing good research. I'd just like to follow up on Mr. Martin's question. Can you table, or can Mrs. Biggs table, a single other project funding application with the word “not” inserted? Of the 758 that you have approved or reviewed, can you please table today a single other instance?

Mrs. Biggs, in your recollection, since you're the head of CIDA, is there a single other instance when this has occurred?

That's what he said, not “all”—a “single” one.

**The Chair:** Thank you. We're back to evidence again.

Monsieur Paquette, on any topic.

[Translation]

**Mr. Pierre Paquette:** Mr. Chairman, I do want to say that we have two cases. We asked for them, we are including them and there is no problem there, except that both cases are in 2010, when in fact the Minister signed in 2009. I would have been interested to see cases dating back before November, 2009, in terms of documents that have handled in a similar manner. This is something we will have to follow up on.

**A voice:** That's a good point.

[English]

**The Chair:** Again, I will offer that if you want to go looking for more evidence, we'll have to change where we are in the committee review of this report and go back to taking new evidence. If you'd like to do that, we can.

• (1245)

**Mr. Pierre Paquette:** After the election.

**The Chair:** I think you're pre-assuming something there.

**An hon. member:** So where were we?

**The Chair:** We were about to pass paragraph 30 with the changes now to pluralize that there are two reports.

On paragraph 30, all in favour?

**Some hon. members:** Agreed.

**The Chair:** Great. Thank you.

(Paragraph 31 agreed to)

**The Chair:** On paragraph 32.... Yes?

[Translation]

**Mr. Pierre Paquette:** Mr. Chairman, this paragraph refers to statements made by the Parliamentary Secretary and the Minister and specifically mentions April 23, 2010. The fact is that an answer to a question raised in the House could have been provided.

Indeed, another point that should be made in the report is the answer given by the Minister to Question 106 on the Order Paper which was, I would point out, a written question. So, I would simply like to see the date of April 23, 2010 added after the part where it says “in statements to the House of Commons, including one made on April 23, 2010 and in answer to Question 106 on the Order Paper”. It was the same date.

It's written, and there's no room for interpretation. It's question 106 on the Order Paper.

[English]

**The Chair:** Where are we inserting that?

**Mr. Nicholas Auclair:** In paragraph 32.

**The Chair:** I'm in 32, but where are we inserting it in 32?

[Translation]

**Mr. Pierre Paquette:** I would like to add that, as: "in statements to the House of Commons, including one made on April 23, 2010 and in answer to Question 106 on the Order Paper". We would simply add the same date, and the sentence would continue after that. That is an objective fact.

[English]

**The Chair:** Okay: after 2010, "and in response to question 106...".

Members have heard that's the insertion. That's what we would like. Are all in favour of the new wording on paragraph 32?

**Some hon. members:** Agreed.

**The Chair:** Great.

Now, on paragraph 32 itself, are all in favour of 32 as it's now worded?

**Mr. Tom Lukiwski:** I have some questions, Chair.

**The Chair:** On paragraph 32?

**Mr. Tom Lukiwski:** On 32.

**The Chair:** Fire away.

**An hon. member:** That was agreed to.

**The Chair:** No, it looked like it for a second, but we never quite got there.

**Mr. Tom Lukiwski:** You always ignore my hand. I'll try waving or something, Chair.

**The Chair:** I know.

On paragraph 32, Mr. Lukiwski.

**Mr. Tom Lukiwski:** This is important, because I'm not disputing that what is written is not factual, but I think it's more the omission than anything else. In effect, what this paragraph is doing is parroting the opposition's position on this.

I have the blues here, and we can go over it. This is stating, for example, that a statement had been made by the minister to the effect that Kairos' proposal did not meet government funding standards, and it seemed to be unclear by some members that if the decision not to fund Kairos was the minister's and not that of CIDA, why did her statement to the House not reflect that?

On several occasions, if members recall, when Minister Oda appeared before committee I asked her whether she was here to testify that when she makes a decision it then becomes a CIDA decision. She said yes. I asked her whether that was how she reflected it in her commentary both in the House and outside the House, consistently throughout this whole period of discussion. She

said yes. I went on to ask her whether or not she at any time had tried to suggest, either directly or indirectly, that the decision not to fund Kairos was a CIDA official's decision as opposed to her decision. She said there was no intent at any time.

This paragraph doesn't really reflect the counter-argument, and I think it should, because it's really relevant to the whole discussion whether there was intent of the minister to deceive.

This paragraph as written seems to imply that the minister had been making statements that referred to the CIDA decision as a decision made by officials. She stated categorically during her appearance before the committee that she never at any time had intended to do that. In fact, she had always said it was a CIDA decision, and that was quite factually correct. This paragraph seems to be a little ambiguous, to say the least, when it comes to that clarification.

I think, at the very least, it should have the counter-argument that was presented during committee, that while some members may feel there was some confusion, Minister Oda felt there was no confusion. If members recall, she said she was quite surprised at the apparent confusion among the members of the opposition. She said it was common practice to deal with issues like this on recommending or not recommending projects to be funded in this way, and she'd always referred to this as a CIDA decision, which in her mind meant once she made the decision, it became a CIDA decision.

This seems to be more of a narrative woven by the opposition than actual testimony that occurred. There is a huge difference. I understand that it's debatable, and this is the crux of the argument, that the opposition contends that when Minister Oda said it was a CIDA decision, she was trying to deceive and she was referring to CIDA officials. The minister said absolutely not. When she said it was a CIDA decision, in her mind it was because she had made the decision not to fund Kairos and her decision became a CIDA decision.

I don't think there should be any ambiguity in this report about that. We have to make it quite clear that while there is a difference of opinion between the opposition and the minister, it isn't generally accepted that the wording as expressed here on a couple of other points is in fact true. We have to have that second point of view. That's the whole thrust of this argument. We'll get to the options and we'll discuss it more then, I suppose, but we have to be absolutely clear in this report that there are divergent points of view. Just because the opposition feels that when she said it was a CIDA decision.... That doesn't necessarily mean that she was referring to CIDA officials.



●(1250)

Nowhere do I really see here that there's any commentary saying that the minister, under questioning by some members, particularly me, stated categorically that when she continued to refer to this being a CIDA decision, she was referring to the fact that when she as minister decided not to fund Kairos it became a CIDA decision. And that is factually true. I don't see any reference to that point of view here, and I think we need to....

**Mr. Andre Barnes:** It might be helpful if in paragraph 33 you wanted to import some of that language, perhaps.

**Mr. Tom Lukiwski:** Yes, I certainly think that needs to be done consistently throughout it all.

**Mr. Andre Barnes:** If that's the committee's will.

**Mr. Tom Lukiwski:** She never varied from that whatsoever. And I think any commentary we have in here, whatever points, we have to have that counterpoint.

**The Chair:** I'm looking for a suggestion of what that language is.

I'll move on while you're doing that, Mr. Lukiwski. I will come back to you when you say you're ready, but I have other speakers on the list too.

Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** I simply wanted to say, Mr. Chairman, that paragraph 32 makes reference to the statements made by certain members. Other paragraphs do the same in relation to other members. I believe the researchers have simply reflected the discussions that actually occurred in committee. In paragraph 32, the wording is consistent with the discussions that occurred at that time and the questions raised by certain members. In paragraph 33 and others as well, the Minister provides an explanation.

This is an accurate account of the discussions that took place in committee, Mr. Chairman.

[English]

**The Chair:** Monsieur Proulx.

**Mr. Marcel Proulx:** Mr. Chair, there are seven minutes left in this meeting. Are we to reconvene at three o'clock, after question period? We have a duty to file a report on this particular question by tomorrow.

**The Chair:** It was my thought that we would reconvene tomorrow, not this afternoon. I have things I have to get done.

**Mr. Marcel Proulx:** When would you suggest tomorrow, sir?

**The Chair:** After question period, in that 12 p.m. to 1 p.m. period of time, we could present a report.

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

**The Chair:** That's what I would suggest. It's nice that you find my life funny, but it hasn't really been in the last week or so.

**Mr. Marcel Proulx:** I would table a motion to say that we should reconvene this afternoon after question period. There are other members in your party, I'm sure.

●(1255)

**Mr. Harold Albrecht:** Do we let them come in and let them do all this after...?

**Mr. Marcel Proulx:** Maybe they should have accelerated this topic when we first started the meeting. We need to do this report by tomorrow. We can't just keep an hour tomorrow, because you know very well what's going to happen. We like so much to discuss between ourselves that we will forget the deadline and we won't reach an agreement.

I think we should reconvene this afternoon after question period, maybe for just an hour, if you want, and then make sure that if we need to, we can come back here tomorrow morning at eight o'clock or nine o'clock.

**The Chair:** I have a motion from Mr. Proulx on the floor. I think I have Monsieur Paquette on it.

[Translation]

**Mr. Pierre Paquette:** I am fully supportive of Mr. Proulx's motion, particularly since routine proceedings immediately follow oral question period. That is when we should table our report.

[English]

**The Chair:** Mr. Lukiwski, you are next on the motion by Mr. Proulx.

**Mr. Tom Lukiwski:** We're talking about a potential motion of contempt, or a finding of contempt for a minister of the crown. Clearly, that's serious.

I have been part of this discussion since this onset. I honestly do not feel, Mr. Chair, that it would be fair—if there is such a thing as fairness on this committee—to have these discussions without the members who have been part of the committee hearings of last week present. I personally cannot. I scheduled my time. We know what's going to happen tomorrow, and my time today is pretty well booked. I am not available at three o'clock, and I would certainly like to take part in these discussions. I've been certainly part of the discussion since the onset. Just because the opposition wants to perhaps meet at three o'clock doesn't mean it's something that we need to do. I think it's imperative that we have all of the members who have been part of this whole discussion for the last several weeks, and particularly the ones who were on committee last week, when we heard direct testimony, be here to draft this report. I think it would be highly unfair to just say, well, give it to a member who has no knowledge of the testimony, wasn't part of the testimony, and just have him sit here and rubber-stamp this. I don't think that's fair and I don't think that's right.

I would very much argue against coming back unless we had the approval of all members.

**The Chair:** Thank you.

Mr. Armstrong, on that motion.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** I was on the committee for three days last week, and I heard a lot of testimony. There were many committee members who sat and listened to a lot of testimony. I don't know how people who were not here during that time can come and participate in an effective way. This is a report that may lead to a contempt charge. We've heard time and time again that this is an historic thing that would happen in the 40th Parliament of Canada.

I don't see how people who did not hear the testimony, who did not hear the expert testimony as well as the testimony that was given by the minister, and heard the questions and answers provided by the minister and by all members of that committee could effectively, in any way, manage to participate in the writing of this report. I can't see someone coming in without having that background, without having that personal knowledge of what was said by not only the minister but the experts before as well as the committee members. If they had time to possibly read the blues and prepare themselves for a couple of days, someone might be able to educate themselves enough where they can participate effectively.

To meet again this afternoon, when many members of this committee have other duties, without providing any time for any of

the new members to prepare themselves, to develop a knowledge of what was said and what went on.... It is absolutely impossible to participate effectively and create a report that has any relevance to what was actually said at the committee.

Thank you.

**The Chair:** Mr. Laframboise, you are next on my list.

[*Translation*]

**Mr. Mario Laframboise:** As you know, Mr. Chairman, the Standing Committee on Procedure and House Affairs is the most important committee in the House of Commons. After the Speaker of the House of Commons, you are the most important committee chair. I see no reason why others could not participate in the debate. All members of Parliament are...

● (1300)

[*English*]

**The Chair:** I see it is one o'clock.

We will reconvene tomorrow at the call of the chair.

We are adjourned.

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