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Chair

The Honourable Larry Bagnell

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• (1105)

[English]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Good morning, everyone. I call the meeting to order.

This is meeting 29 of the Standing Committee on Procedure and House Affairs. This meeting is being held in public.

There are a couple of updates I want to give you. The meeting on Tuesday at 11 a.m. will be at the trailer, the one halfway up the hill from the Confederation Building to Centre Block. You'll get a notice from the clerk. We'll meet there at the regular time. They'll do a briefing, both safety and a briefing on the project. You'll put on all your safety clothes, etc., and then we'll do the tour. If people think there are more questions after that or if people want a further briefing or whatever, you can decide afterward if all your questions haven't been answered during the tour.

Go ahead, Mr. Richards.

Mr. Blake Richards (Banff—Airdrie, CPC): I would assume that should Parliament rise before Tuesday, the tour would not happen. Do we know—

The Chair: That's a good question.

That'll be up to us. If Parliament were to rise before Tuesday, which would be wonderful, do people still want to continue with the tour or not? It's not an official meeting, so why don't we keep it on for those who are interested, especially those who live in Ottawa?

Is that okay? That's a good point you brought up, though.

Mr. Blake Richards: The only reason I asked is that I know some members will be here, and it would be great for those who are. Some who wouldn't be here would be disappointed, but I certainly think it would be okay to continue with it. Perhaps other people have different opinions. I don't know.

The Chair: No one objects, so if Parliament rises, we'll still leave the tour on for those who happen to stay or go.

Go ahead, Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Kingston, CPC): I think Parliament will be sitting on Tuesday, but in the event we're not, may I suggest that we are the committee that monitors this on an ongoing basis, so doing another one in the autumn would be appropriate under any circumstances, frankly.

The Chair: Go ahead, Mr. Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): That's a good point.

The Chair: We'll keep on if the House isn't sitting, if members want to go.

I've mentioned to the parties that we have a letter that we should, out of courtesy, resolve before the summer. We'll distribute the analysis of it electronically to you and hopefully we'll deal with it before the summer somehow. That would be in camera, to protect the privacy of the person.

We will resume consideration of Mr. Richards' motion concerning the study of the question of privilege on Bill C-14. We're still on the same motion as in the previous meeting.

Seeing no hands, I will note that Mr. Schmale was in the middle of a long oratory that he hadn't quite finished and would like to continue. After that, Mr. Richards and Mr. Reid are still on the list.

Go ahead, Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you.

Mr. Reid, prior to the meeting, said that he liked where my arguments were going, but he just needed a bit more convincing, so I thought I should take this time to, hopefully, convince him.

The Chair: You go ahead and convince Mr. Reid.

Mr. Jamie Schmale: Mr. Chair, I thought that was the only right thing to do.

Mr. David de Burgh Graham: Mr. Chair, I have a point of order. I'd just like to make sure that Mr. Reid lets us know when he's been convinced.

Mr. Scott Reid: Probably not until one o'clock. Just shake me, wake me up, and I'll let you know.

The Chair: New historical precedents for us, Mr. Reid...?

Mr. Scott Reid: They are old historical precedents, but they are newly discovered through my research—

Mr. Blake Richards: By the looks of all the paper in front of Mr. Schmale, he may not get the opportunity to share any precedents with us, because there's a lot of documentation that he appears to be ready to....

The Chair: If you guys all leave, we'll send you an email when Mr. Schmale is finished.

Some hon. members: Oh, oh!

The Chair: Jamie, you're on. You have a lot of paper there, so we're excited.

Mr. Jamie Schmale: I have lots of water, paper.... We'll see how we go.

Thank you, Mr. Chair.

To continue where I left off, we were talking about the importance of continuing on with this investigation. We have direction from the Speaker. We're trying to convince all members here that Mr. Richards' motion does have precedents, does have a requirement to continue on.

I should point out that these words were not taken by us from out of the sky. They were taken from the Minister of Justice directing us a little further. We feel that by getting this list, it will help us continue in our investigation.

As a journalist, I want to talk about a few things, about how the two articles—Laura Stone's in *The Globe and Mail* and the CBC's *The National* the day after—had pretty specific details and very convincing wording that it was fact and not journalistic speculation.

I'll just quickly quote from "Principles for Ethical Journalism" taken from the Canadian Association of Journalists:

Journalists have the duty and privilege to seek and report the truth, encourage civic debate to build our communities, and serve the public interest. We vigorously defend freedom of expression and freedom of the press as guaranteed under the Canadian Charter of Rights and Freedoms. We return society's trust by practising our craft responsibly and respecting our fellow-citizens' rights.

I think it's under the first point, "We strive for accuracy and fairness", that we go into our debate here. The quote continues:

We avoid allowing our biases to influence our reporting.

We disclose conflicts of interest.

We give people, companies or organizations that are criticized in our reporting the opportunity to present their points of view prior to publication.

We respect people's civil rights, including the rights to privacy and a fair trial.

We don't alter photos, videos or sound in ways that mislead the public.

Then you go to these articles. Again, I go back to the wording of "according to a source", says Laura Stone in *The Globe and Mail*, and "according to the source, who is not authorized to speak publicly about the bill".

Then we go to the CBC's *The National* on April 13, "Sources tell the CBC...".

Again, this is not journalistic speculation. These are words of fact, and of course the reporter wouldn't do that, based on their goals of striving for accuracy and fairness. Speaking as a former journalist, and I know there are other former journalists at this table, it's your wording that is important. If it were just speculation, you would not use "Sources tell the CBC", or say that the piece of legislation will do this or won't allow for this. That is a very important point.

Going back to the principles, journalists are "independent and transparent". They "don't give favoured treatment to advertisers or special interests". They "don't accept or solicit gifts or favours from those they might cover". The principles continue:

We don't report about subjects in which we have a financial interest.

We don't participate in movements and activities that we cover.

Editorial boards and columnists or commentators endorse political candidates or causes. Reporters do not.

This is where we tie it in to what we're doing here:

We generally don't conceal our identities. When, on rare occasions, a reporter needs to go "undercover" in the public interest, we will clearly explain why.

Clearly this is not the case in these situations with CBC's *The National* and *The Globe and Mail* with Laura Stone. When you're talking to a source, of course you're not going to identify the source. That's clearly something we all accept and something that is paramount to continuing as a journalist, but again, it's the wording that says that they did have conversations with someone—someone who had access to this legislation.

In this case, we're trying to find the source of this leak, and based on the justice minister's own testimony, it seems a good place to start, or a good place to continue this investigation, Chair, is to find out who had access to this documentation. That is why it is so important to see this list.

I'll go on even further and I'll tie this in.

● (1110)

Again, from the Canadian Association of Journalists:

We keep our promises

We identify sources of information, except when there is a clear and pressing reason to protect [the sources].

The valuable reason for keeping their sources anonymous is clear. That's why we do not obviously have any idea of the source, because that source was not supposed to reveal the text of the legislation.

It then says, "We explain the need for anonymity when we decide to grant it." That's clearly not the case here, but that's our job.

We independently corroborate facts given by unnamed sources.

If we promise to protect a source's identity, we do so.

That's from the Canadian Association of Journalists.

Obviously we don't expect Laura Stone or the CBC's *The National* to disclose their sources, so that again leaves it up to us to continue this investigation. Was this declared before Parliament had the chance to see it? Again, there is very clear wording in these articles.

As a journalist myself, there were many years that you would have sources who, in many cases, would like to maybe leak a story ahead of time, because it's a way of framing the debate the way they want it. It's a way of getting ahead of the story on certain issues that may or may not be controversial. For this case, and if you look at the articles, it did frame the debate how they wanted it.

This was clearly leading the conversation in the direction the government wanted to take it. It's a very controversial bill. It's a very emotional bill. It's a bill of a magnitude that impacts on pretty much everybody across the country. To think that it would not be a good strategy to get ahead of it or steer the conversation in a certain direction...I think it was a good communications strategy.

However, there are very good details that suggest it was leaked before Parliament had eyes on it. If we just give up now and say, “Well, I think we asked the Minister of Justice. She said no. We believe her, so that’s good enough”, then how do we prevent this from happening again? How do we stop this?

There are very clear indications in these articles that very clear details were released that certainly give very clear evidence that this was more than just a casual conversation or a reporter taking a wild guess. Going to the ethics guidelines from the Canadian Association of Journalists, it talks here about accuracy. This is where it ties into this, because, yes, I think it was pretty accurate:

We are disciplined in our efforts to verify all facts. Accuracy is the moral imperative of journalists and news organizations, and should not be compromised, even by pressing deadlines of the 24-hour news cycle.

Chair, again these are pretty specific details. It was pointed out that there was one part that wasn’t in the bill, but as was pointed out by Mr. Reid and Mr. Richards, in a conversation or one on one, if the reporter was taking the notes by old-fashioned writing, there could have been a minor error. But for the rest of it, that looks pretty clear.

We seek documentation to support the reliability of those sources and their stories, and we are careful to distinguish between assertions and fact. The onus is on us [the reporters] to verify all information, even when it emerges on deadline.

● (1115)

Mr. Chair, I think that both reporters did just that in their articles, *The Globe and Mail* and *The National*. To look at both stories and see how close they are in their details, again, Mr. Chair, this tells you that these reporters are not taking a guess because the stories would be wildly different. The wording tells us the same story.

Why, Chair, are we giving up? Why are we stopping this investigation? Why, Chair, do we not ask for a detailed list? Why don’t we look into this further?

There are a lot of former political staffers at this table too. I can imagine, should we find this person, he or she might be watching very closely right now and wondering whether we are going to get somewhere. “Are they going to find that list and get to me?” As a former staffer, if I possibly were the source of this leak, I think I’d be sweating right now.

The chair has pointed out that the justice minister said that she asked her political staff, she asked her deputy minister, to conduct an investigation. Her staff said, no, it wasn’t them. The deputy minister said they went through the list of people who had the draft legislation and they said it wasn’t them.

This is my hockey analogy. As a referee, I’m sure everyone I give a penalty to would say it wasn’t them. I would say a number of times that the penalty was correct and it was the correct call, but everyone will say no. I don’t blame them. It’s only what you do.

That’s why this investigation...and I’m hoping I’m convincing the other side here.

● (1120)

Mr. Scott Reid: You’re starting to convince me.

Mr. Jamie Schmale: I’m starting to convince Mr. Reid.

Mr. Scott Reid: You’re only just starting. I need more facts.

Mr. Jamie Schmale: You need more facts. Okay.

Mr. Scott Reid: More primary documentation would be appropriate, in my view.

Mr. Jamie Schmale: I am so glad you said that, Mr. Reid, because look at all of this paper I have to go through.

Look at what I have to do here.

Mr. David de Burgh Graham: Is Mr. Reid convinced yet?

An hon. member: I don’t think he is. He looks very skeptical.

Ms. Ruby Sahota (Brampton North, Lib.): He said he’s getting there.

Mr. Scott Reid: I’m intrigued, as I’m sure everybody is.

An hon. member: Didn’t he talk about sheep and cows last time?

Mr. David de Burgh Graham: Cattle as the super class of all animals.

Mr. Jamie Schmale: I’ll have to see if I can fit something in here.

Mr. Blake Richards: If you are going to hockey, you need to get in something about maple syrup, Mounties, and things like that, so you’re being very Canadian.

Mr. Jamie Schmale: Very good. I like that.

I will have to focus here. I didn’t get much sleep last night. I had my windows open and I live in a noisy neighbourhood. There was a cat meowing all night long, and it wouldn’t stop meowing. It gave me lots of time to think, if I can get my head together here.

I will continue with quoting the ethics guidelines from the Canadian Association of Journalists, “We make sure to retain the original context of all quotations or clips, striving to convey the original tone”, which we are seeing in these articles. “Our reporting and editing will not change the meaning of a statement or exclude important qualifiers.”

It’s in the ethics guidelines, right there; they do not change the meaning or statement. Look at the articles. If this is not a leak, why are the stories so close together? Why does the wording of both stories show statement of fact rather than just speculation?

I will quote here from March 19, 2001. At that time, the Speaker ruled on a question of privilege regarding an incident whereby the media was briefed on a justice bill, Bill C-15, before the members of Parliament. The Speaker indicated that there were two important issues in that case: “the matter of the embargoed briefing to the media and the issue of members’ access to information required to fulfil their duties.”

In that ruling, the Speaker said:

In preparing legislation, the government may wish to hold extensive consultations and such consultations may be held entirely at the government’s discretion. However, with respect to material to be placed before parliament, the House must take precedence.... The convention of the confidentiality of bills on notice is necessary, not only so that members themselves may be well informed, but also because of the pre-eminent rule which the House plays and must play in the legislative affairs of the nation.... To deny to members information concerning business that is about to come before the House, while at the same time providing such information to media that will likely be questioning members about that business, is a situation that the Chair cannot condone.

Mr. Chair, I think we find ourselves in the same type of situation.

This bill was probably the most important bill I will get to vote on in this term, in this Parliament, and—if the voters are willing to return me to this place, which I hope they are—probably in my entire career. Nothing will be as wide-reaching as this bill, the magnitude of this bill.

By the way, I did a constituency referendum on Bill C-14. Of almost 4,000 returned ballots, 78% voted in favour of Bill C-14. It was a good experience to do that and consult the constituents. My riding, Mr. Chair, is not as big as yours, but as the House was sitting at the time, it was a way to consult a large number of constituents in a small to medium-sized area in that short period of time and get a fairly accurate reading of constituents. Everybody, regardless of how they voted, had the opportunity to tell me how to vote. The range of comments was very good, lots of good feedback. People were telling me to vote yes or no based on a wide range of reasons, whether they saw a family member suffer—

• (1125)

Ms. Ruby Sahota: How did you vote?

Mr. Jamie Schmale: I voted yes.

Ms. Ruby Sahota: Oh, interesting. You listened to your constituents.

Mr. Jamie Schmale: I listened to the constituents, absolutely. I wasn’t sure what to expect, actually, coming into that referendum. I had never done that. I took the lead from Mr. Reid, who has done seven or eight of them.

Mr. Scott Reid: Seven.

Mr. Jamie Schmale: I will probably do a few more.

Mr. Blake Richards: He likes referendums.

Mr. Jamie Schmale: I do like referendums.

Mr. Scott Reid: I am a fan of referendums. I am wearing my Swiss flag today—

Mr. Jamie Schmale: Yes, that’s right. They did one. That is a good idea.

Mr. Scott Reid: —in honour of the profound respect the Swiss have for democracy.

Mr. Jamie Schmale: I agree. That’s good.

Actually, let’s segue into that.

Thank you, Mr. Reid.

Mr. Scott Reid: You’re welcome.

Mr. Jamie Schmale: Speaking of consulting, this is a government that likes to consult, so let’s do that. Let’s consult. Let’s keep looking into it.

You know, we look at the issues that are before us today, and on this side of the House, some of the answers seem pretty obvious, like the Trans-Pacific Partnership or the pipeline issue, building new pipelines to get our oil to market. Those seem like an easy yes.

In this case, I think we have an easy yes here. We’re just convincing the other side. We’re working on it, though. We’re getting there, so let’s consult. We all like to consult, so let’s keep going. Let’s dig in. Let’s dig in and keep going. There are many different ways we can take it.

As a reporter, most of the time your conversations come from staff, maybe high-up staff in the communications department. That’s why it was important to note, as Mr. Richards did last time, that we’re not asking for the Prime Minister to attend, because we’re pretty sure it wasn’t him. It was on the staff level, probably someone in the communications department, hence the wording of his motion asking for those communications people to attend, because in all likelihood that’s the best place to start.

It was often that I would get tips as a reporter. They would come through the communications department because that’s who you would have the relationship with. As a new government starting out, they would want to build those relationships with reporters. I think much of the political staff—either from what I’ve read or staff I knew—would have to be, I guess, for the most part, from various backgrounds, or from different provinces with backgrounds in provincial government. At the same time, a lot of these relationships would be new. They would be fostering these relationships and they would want them to grow.

How do they do that? Possibly, they give a bit more information than they probably should. Judging by the accuracy, I don’t think this is a watering hole conversation that happened. This was something a little more than that. We’re going to get to the bottom of this.

How is my convincing so far?

• (1130)

Mr. Scott Reid: I’m taking notes.

Mr. David de Burgh Graham: On what?

Mr. Jamie Schmale: He’s ready for it.

Mr. Scott Reid: Might I do a brief question here?

The Chair: Go ahead.

Mr. Scott Reid: It’s one of the things you mentioned earlier on. Just before it moves on to different themes, I wanted to dwell upon it.

He quoted verbatim from *The Globe and Mail* article and also from the CBC coverage. Although the content overlaps very closely, the wording of it suggests to me the possibility that these might actually be two separate leaks.

It seems unlikely that someone would have said to Laura Stone and to whomever the person at CBC was, "Could you get together in one room so that we can do a conference call?" The CBC does not quote *The Globe and Mail* and say that it was their source, nor the reverse. This suggests to me that there were probably two leaks going on here. Up to this point, we've treated this as if it were a single leak. There may be a single leaker, don't get me wrong, but there is a possibility that these are two distinct contempts, if you will, grouped for convenience as a single contempt. I wonder if Mr. Schmale could comment a little bit on what strikes him in this regard.

Mr. Jamie Schmale: Yes, that's actually a very good point. It goes back to my previous comment about how journalists try to make inroads in government departments, especially with a new government. As communications staff you're trying to build relationships, and if you want to fast-track a relationship, this is a possible way to do it to build trust, especially given the magnitude of this bill and how many people it affects.

You could see departments possibly not knowing what others are doing and what conversations are happening, and different people having these conversations. You're absolutely right. The CBC did not quote *The Globe and Mail*. Do we, then, have two sources? Do we have one who seems to enjoy the limelight by talking to journalists when they're not supposed to about legislation that has yet to be tabled?

That's why it's so important that we get this list. The justice minister pointed us in that direction. It was the minister herself pointing us in that direction.

Let's continue the conversation, then. Let's consult. Let's find the people who may possibly have had access to the legislation. We may see something that we're not seeing now.

I say to Mr. Reid's saying that there could possibly be two sources, you're absolutely right. That is a bigger issue, when you now have two people talking about legislation that has yet to be tabled in the House before legislators have a chance to look at it.

Mr. Scott Reid: With your permission, Mr. Chair...?

The Chair: Yes, go ahead.

Mr. Scott Reid: If I may say so, that does imply coordination. In fact, there is no logical scenario I can imagine whereby, if you have more than one person doing the leaking, there wasn't coordination, which frankly points more in the direction of a deliberate strategy from some political actor, some elected official who is ultimately in a decision-making position here. It just strains credulity to imagine two people, simultaneously and independently, leaking to the media with identical selections of facts.

• (1135)

Mr. Jamie Schmale: I agree, because as we mentioned, if you want to frame the debate on an issue of this magnitude, how do you do it? They did it quite well, in my opinion. The problem is that they gave very significant details about a bill that had yet to be tabled in

the House of Commons, which is why we're discussing this issue and hopefully getting some consensus on this motion.

The Chair: Do we have any more questions for the witness?

Mr. Jamie Schmale: Is there any more consulting I can do? I have lots of information to hopefully convince everyone here.

I'm going to speak about privileges and immunities from the *House of Commons Procedure and Practice*, the second edition, of 2009. It goes to what we're talking about here.

The rights accorded to the House and its Members to allow them to perform their parliamentary functions unimpeded are referred to as privileges or immunities. In modern parlance, the term "privilege" usually conveys the idea of a "privileged class", with a person or group granted special rights or immunities beyond the common advantages of others. Parliamentary privilege refers, however, to the rights and immunities that are deemed necessary for the House of Commons, as an institution, and its Members, as representatives of the electorate, to fulfill their functions. It also refers to the powers possessed by the House to protect itself, its Members, and its procedures from undue interference, so that it can effectively carry out its principal functions which are to legislate...and hold the government to account. In that sense, parliamentary privilege can be viewed as the independence Parliament and its Members need to function unimpeded.

Here we are, then. Apparently we all saw the article, so are we "unimpeded"? We got a preview of what was in the legislation before it was tabled; that was handy. Are we, then, unimpeded? Well, no, I don't think so. We're seeing clearly that we were given details before it was even tabled in the House.

Privilege has long been an important element of our tradition of government. The practices and precedents of the House of Commons of Canada regarding parliamentary privilege stretch far back into colonial times. At an early stage, the young assemblies of the colonies, modelling themselves on Westminster, claimed the privileges of the British House, though without statutory authority. At Confederation, the privileges of the British House were made applicable to the Canadian Parliament in the Constitution Act, 1867, and for many years the Canadian House continued to look to the experience of the British House for guidance in matters of parliamentary privilege.

Again, in the article, showing language of statement of fact clearly identifying in its language that "sources tell the CBC the legislation will not...", we're seeing that privilege was violated here, Chair. We're seeing through the justice minister's testimony, her own words, that she gave us this direction, and Mr. Richards asked very clearly, how else we would carry on this investigation. It was her giving us ideas on how to pursue this, because I believe she took it very seriously. I honestly believe that and I thank her for her testimony. I thank her for appearing before this committee. I think it was very important that she did so. I think it was very important that she came out and talked to us and rather cleared the record, because I think she did. I appreciated her assistance in guiding us along as we do our jobs as members of this committee.

For those of you who may need a bit more definition of what privilege is and why it's so important, the definition of parliamentary privilege is found in Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively...and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

O'Brien and Bosc then go on to say:

Those “peculiar rights” can be divided into two categories: those extended to Members individually, and those extended to the House collectively. Each category can be further divided. The rights and immunities accorded to Members individually are generally categorized under the following headings:

freedom of speech;
 freedom from arrest in civil actions; and
 exemption from jury duty;

● (1140)

There are quite a few more, and I'm happy to comment on those as well.

We'll go back here, “Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively...and by Members of each House individually, without which they could not discharge their functions”.

Here we have an article telling us very specific details of what will not be in a bill that has huge magnitude across this country. Why is it that the reporters got the briefing? That goes back to what Mr. Reid was saying about whether it is one leak, one source. Is it two sources? Possibly. If it's two sources that's an even bigger issue we should be investigating. It would be nice to get to the bottom of this, because if you allow this to happen...it's almost like a child. You don't reward bad behaviour, so if we stop, are we rewarding bad behaviour? Are we getting to the end of this? Just saying, no, means the staffer might be thinking, “Wow, I got away with that. Okay, this bill seems pretty important, the press is itching for any details they can get, so what's the harm? They clearly will not get any further. It will go to maybe one witness, and then they will shut it down and say they did their job and it won't get any further.”

How is that actually correcting the problem? You're rewarding bad behaviour by saying, that's good enough, even though the justice minister gave us direction, gave us an avenue to pursue, gave us idea on where to go.

I can talk a bit about historical privilege and how this applies to us here. This, again, is from the *House of Commons Procedure and Practice*, second edition, from 2009.

Parliamentary privileges were first claimed centuries ago when the English House of Commons was struggling to establish a distinct role for itself within Parliament. In the earliest days, Parliament functioned more as a court than as a legislature, and the initial claims to some of these privileges were originally made in this context. These privileges were found to be necessary to protect the House and its Members, not from the people, but from the power and interference of the King and the House of Lords. Over time, as the House of Commons gained stature and power as a deliberative assembly, these privileges were established as part of the common law of the land.

The House of Commons in Canada has not had to challenge the Crown, its executive, or the Upper House in the same manner as the British House of Commons.

That, of course, makes sense.

The privileges of the British House of Commons were formally made applicable to the Canadian Parliament at the time of Confederation by the Constitution Act, 1867, and were articulated in a statute now known as the Parliament of Canada Act. Nonetheless, these privileges enjoyed by the House and its Members are of the utmost importance; they are in fact vital to the proper functioning of Parliament. This is as true now as it was centuries ago when the English House of Commons first fought to secure these privileges and rights.

Chair, this is as true now as it was centuries ago and for a very good reason, as I just pointed out.

There are two articles, very close in detail, one source, possibly two. They're very clearly saying, we have a source. They are statements of fact. I just find it inconceivable that we continue to say, “Good enough, brush this under the rug, and we're fine.”

● (1145)

This weekend I'm going back to my riding and I'm going to attend a bunch of events. Some people may know this is happening. Some people may not, but I think you could ask anybody in any workplace what they would do if a confidential document were leaked. Would they just give up on the investigation? Would they keep going until they possibly found the source? Would they keep investigating? Maybe they find the source or maybe they don't. If they don't, do they put mechanisms in place to prevent this from happening again?

I don't think anyone would say, “Let's give up after one witness.” I can't see anybody saying that's good enough. That goes back to rewarding bad behaviour. If we just say, “Yes, we're good enough”, I think that sets a very bad precedent.

We look at the mandate of PROC. We look at all of the different cabinet committees. There are 57. We did a bit of research. I want to thank my staff for doing a bit of research and helping me out.

The justice minister led us to believe that she and her staff were not responsible for the leak. Now we go on to who possibly had access. According to the justice minister, both the PMO and the health minister and staff had access.

Let's look at the health minister's staff. We're just going to make up a list and see if that works. I apologize for those whose names I get terribly wrong: Danielle Boyle, the executive assistant to the chief of staff; Robert Brown, the senior project officer; Peter Cleary, director of parliamentary affairs; David Clements, director of communications; Jordan Crosby, parliamentary secretary's assistant; Cindy Dawson, scheduling assistant to the minister; Adam Exton, special assistant, parliamentary affairs; Geneviève Hinse, chief of staff; Jesse Kancir, policy adviser; Mark Livingstone, special assistant for the Atlantic region; Janet MacDonald, the CFIA departmental liaison; Andrew MacKendrick, the press secretary—I think that's a pretty important one—Kathryn Nowers, the policy adviser; Caroline Pitfield, the director of policy; Jennifer Saxe, the House of Commons departmental liaison; Mark Thompson, the driver—probably I would say no on that one—and Lydia Turpin, the receptionist.

Mr. Scott Reid: I concur on that.

I think if we ever get the distribution list, I feel confident that Mr. Thompson will not be on that distribution list. That's a bit of a guess, but I feel confident.

Mr. Jamie Schmale: I would probably concur with that, Mr. Reid.

Mr. Scott Reid: Yes.

Mr. Jamie Schmale: There are 57 PMO staff. There are 17 staff of the Minister of Health, and that doesn't include any officials that could have access as well.

Let's go over the PMO staff, because there are 57 of them. We don't know what cabinet committees the legislation went to. That's why it's so important to get this list, because there are a lot of cabinet committees and a lot of people who had access to this bill. Let's go through the Prime Minister's staff. We did the Minister of Health's.

We have Gerald Butts, the principal secretary, who is the executive assistant to the Prime Minister. Geoff Hall is the scheduler to the Prime Minister. Probably not the photographer, but I'm going to guess, Daniel Arnold, the director of research and advertising. Roland Paris is the senior adviser to the Prime Minister, but that was on defence, so I'm guessing he wouldn't. The director of operations probably did not. I'm guessing here, possibly the regional desk, because they would be responsible for distribution once it was tabled. We have Lindsay Hunter of the Ontario regional desk. Jamie Kippen is another regional desk for Ontario. Cyndi Jenkins is from the Atlantic region. Jessie Chahal is from the Prairies and northern regional desk. Brittney Kerr is from the British Columbia desk, and Marie-Laurence Lapointe is from the Quebec regional desk. Terry Guillon, the lead media advance, most likely did have access. Probably not the writers of the correspondence, or the members of the deputation, but we don't know. We're just doing some speculation right now.

The Prime Minister's press secretary would probably be one that I'd be interested in hearing from, because I would guess that person would be on the list. The executive assistant to the director of communications would definitely be on it, as well as the lead of media relations and the communications officer. There are two communications officers. The chief of staff, Katie Telford, would probably be one we'd like to have a chat with, definitely. We're going through these names, but without that list, how do we keep going? Why would we reward bad behaviour in not continuing? It's clear and important for this committee to acquire who had access, as well as question other government ministers and senior PMO staff.

Chair, should we not give the same opportunity to the ministers and staff to clear themselves and their staff of any potential accountability for that leak? You go back to hockey, and I'll do another analogy. I know my predecessor liked to use hockey analogies a lot. I know that Mr. Reid does appreciate them sometimes. On any team, whether it's hockey, baseball, or football, the captains are the leaders. The captains speak for their teams. The team members take their lead from the captains. Most of the time you don't run a play based on, "Well, I think this is the right idea. The quarterback said we're going to run this play, but I think it's better if we run this play and not tell anyone". I'm thinking, and this is speculation on my part, they wanted to frame a story in a certain way with the huge magnitude of this bill, so they said, "Let's start the conversation a couple of days early. Let's get the ball rolling, and let's start forming the conversation as we'd like it".

That's why it's important to speak to the captains, or the leads, the department heads, and find out where their range of thinking is and where they might direct us.

• (1150)

Without this list we are just giving up and not even continuing in our mandate to carry out this investigation as directed by the Speaker. Without continuing, we don't even know what mechanisms

we could send to the House for possible implementation so that this doesn't happen again, or recommendations to the various departments on how they might be able to prevent this from happening again.

Let's see the list, let's talk to those people, and let's have them give us the opportunity to clear them. Maybe they'd like to clear themselves instead of having this cloud hanging over them.

We go back to the Canadian Association of Journalists who have a duty to report the truth. I think it's clear, based on the wording, that they had very good sources to do that.

We'll give some background, and this goes on to why we have to do this. We have to continue this investigation because privilege is something we hold dear in this place.

As to privilege—and this is where it came from in Canada—centuries ago the British House of Commons began its struggle to win its basic rights and immunities from the king. The earliest cases go back to the 14th and 15th centuries when several members and Speakers were imprisoned by the king, who took offence to their conduct in Parliament, despite the claims of the House that these arrests were contrary to its liberties.

In the Tudor and the early Stuart periods, though Parliament was sometimes unable to resist the stronger will of the sovereign, the conviction continued to be expressed that Parliament, including the House of Commons, was entitled to certain rights. The elected Speaker of the House of Commons in 1523, Sir Thomas More, was among the first Speakers to petition the king to seek the recognition of certain privileges for the House. By the end of the 16th century, the Speakers' petition to the king had become a fixed practice.

Despite these early petitions of the Speaker, the king was not above the informing the Commons that their privileges, particularly freedom of speech, owed their existence by his sufferance. James I did this in 1621.

In protest, the Commons countered, "every Member of the House of Commons hath and of right ought to have freedom of speech... and...like freedom from all impeachment, imprisonment and molestation (other than by censure of the House itself) for or concerning any speaking, reasoning or declaring of any matter or matters touching the Parliament or parliament business".

In rebuke, James I ordered that the *Journals* of the House be sent to him. He tore out the offending page of protest and then dissolved Parliament

Nor was privilege able to prevent the detention or arrest of members at the order of the crown. On several occasions in the early 17th century, members were imprisoned without trial while the House was not sitting or after the dissolution of Parliament.

In 1626, Charles I arrested two members of the House while it was in session, and in 1629 judgments were rendered against several members for this action. These outrages by the crown were denounced after the civil war, and in 1667 both Houses agreed that the judgment against the arrested members had been illegal and contrary to the privileges of Parliament.

In 1689, the implementation of the Bill of Rights confirmed once and for all the basic privilege of Parliament, including freedom of speech. Article 9 states, “freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”.

Here we go. We're tying this in. This is from O'Brien and Bosc:

• (1155)

Free speech in the House was now finally established and protected from interference either from the Crown or the courts.

In the late seventeenth century and the first half of the eighteenth century, some claims of the House as to what constituted privilege went too far. The privilege of freedom from arrest in civil matters was sometimes applied not only to Members themselves, but also to their servants. In addition, Members sought to extend their privilege from hindrance or molestation to their property, claiming a breach of privilege in instances of trespassing and poaching. Such practices were eventually curtailed by statute because they clearly had become a serious obstruction to the ordinary course of justice. Thus, privilege came to be recognized as only that which was absolutely necessary for the House to function effectively and for the Members to carry out their responsibilities as Members.

Mr. Chair, right there, privilege was recognized as “absolutely necessary for the House to function effectively and for the Members to carry out their responsibilities”.

Here we go again: a bill of huge magnitude, affecting pretty much every Canadian, released in significant detail, and saying what is not going to be in the bill. That provides evidence to the fact that the source had quite a bit of knowledge as to what was in this bill.

Mr. Blake Richards: Mr. Chair, I have a point of order.

• (1200)

The Chair: Sorry, we have a point of order.

Mr. Blake Richards: I just want to make sure.... I think I am next on the speaker's list, if I am not mistaken. Is that correct?

The Chair: Are you getting antsy that you are not going to have any time?

Mr. Blake Richards: Yes. I understand Mr. Schmale has a lot to say that is important, and I want him to have that opportunity. Actually, I needed to use the washroom, Mr. Chair, and I wanted to make sure he still had more to say, because I didn't want to miss my opportunity if he was done while I was out of the room for a moment.

The Chair: Mr. Schmale, do you have a significant amount?

Mr. Jamie Schmale: I could probably keep going.

Mr. Blake Richards: I just wanted to be sure that I wouldn't miss my opportunity.

Mr. Jamie Schmale: I appreciate that.

Mr. Blake Richards: Thank you, Mr. Schmale.

The Chair: We wouldn't want you to miss....

Mr. David de Burgh Graham: The trouble is that Mr. Reid is not convinced yet.

Mr. Scott Reid: My feeling is that it would not be your loss, Mr. Richards, but our loss if we didn't have an opportunity to hear what you have to say.

Mr. Blake Richards: I think you feel that way. I am not sure that others do.

Mr. Scott Reid: I appreciate that.

Mr. Jamie Schmale: I would be quite upset if you missed your opportunity, Mr. Richards. I am happy to keep going.

Mr. Blake Richards: Thank you, Mr. Schmale. I appreciate that.

Mr. Jamie Schmale: See how well we are getting along.

We just explained a bit of history as to why privilege is so important. Based on the fact that it is so important, based on the fact that I think we all agree it is important, and based on the fact that the House does need to see the legislation before it is leaked, that leak prevents us from doing our jobs properly or carrying out our responsibility as members of Parliament.

I ask rhetorically—but if the other side would like to answer, I am happy—why would they shut that down? You never know, the shoe could be on the other foot. We could be switching places at some point. Why would you not like to get through this now, start a precedent, maybe put in mechanisms so that this doesn't happen again, and maybe work towards something where we don't have this again, whether it be this Parliament, the next Parliament, or any future Parliaments? Let's work to fix this and get to the bottom of it.

I will continue and hopefully convince the other members that I am on the right track here:

In the midst of their occasional [duties], the House of Lords and the House of Commons both acknowledged that a balance had to be maintained between the need to protect the essential privileges of Parliament and, at the same time, to avoid any risk that would undermine the interests of the nation. In this connection, it was agreed in 1704 that neither House of Parliament had any power, by any vote or declaration, to create for themselves any new privileges not warranted by the known laws and customs of Parliament. Since then, neither House alone has ever sought to lay claim to any new privilege beyond those petitioned for by Speakers or already established by precedent and law.

The nineteenth century witnessed numerous cases of privilege, which helped to determine the bounds between the rights of Parliament and the responsibility of the courts. Perhaps the most famous of the court cases was *Stockdale v. Hansard*. In 1836, a publisher—

Mr. Scott Reid: I remember it well.

Mr. Jamie Schmale: I thought you would. I know you would remember this, and you could probably quote this without a book in front of you.

—John Joseph Stockdale, sued Hansard, the printer for the House of Commons, for libel on account of a report published by order of the House. Despite numerous resolutions of the House protesting the court proceedings and the committal to prison of Stockdale by the House, the courts refused to acknowledge the claims of the House because it had not been proven that the claimed privilege existed....

Based on all that, again, we go back to what the justice minister said and what the Canadian Association of Journalists said in their “Principles for Ethical Journalism”. I think you know this, David. You are a former journalist.

Mr. David de Burgh Graham: Like you, I was a journalist and a staffer, but I chose the right party.

Mr. Jamie Schmale: I would disagree with that but I appreciate your comments.

• (1205)

Mr. Scott Reid: We chose the right party. He chose the centre party.

Mr. David de Burgh Graham: And there's nothing left.

Voices: Oh, oh!

The Chair: Relevance...?

Mr. Jamie Schmale: You look at the "Principles of Ethical Journalism". They strive for accuracy and fairness. They're independent and transparent. They keep their promises. They respect diversity and they are accountable.

That keeps them from just printing items out of thin air, or if it is speculation, from using language and guiding...when clearly fact is the case. In this case, the language tells us what we need to know.

Mr. Chair, I would submit that the reporter knew somebody.

The Chair: Mr. Schmale, just in case you didn't notice, Mr. Richards is back.

Mr. Jamie Schmale: I didn't know that.

Mr. Blake Richards: Mr. Chair, I didn't want to pressure the member to rush. I know he has lots to say. I'm anxious to have an opportunity as well, but I wouldn't want to take away from his opportunity either.

Don't feel pressured, Mr. Schmale.

The Chair: Mr. Reid, I assume you want to get in too.

Mr. Scott Reid: No, I don't want to get in.

I just want to say that I'm finding him more and more convincing.

A voice: So it's working.

Mr. Scott Reid: I would be reluctant to stop him before he gets to the key points, which I feel are coming closer by the minute.

Mr. Jamie Schmale: They are.

Chair, could you let me know when there are two minutes left?

Mr. David de Burgh Graham: Could we call a vote at that point?

Mr. Jamie Schmale: That's true; at fifteen seconds or less, then.

Thank you to Mr. Richards. I actually didn't see you sneak in behind me.

Mr. Blake Richards: I can be like that sometimes.

Mr. Jamie Schmale: You're stealthy.

Where was I on this? Yes, the reporter identified someone in the know who had provided specifics to this bill. As we're going through this step by step, I think we can say they're referring to the source in both cases. I think it's clear, and I think maybe we all agree, that there are specific elements of the legislation in these articles, with very similar details. I think we've established that it proves these just weren't picked out of the air. I don't think you can have two articles.... Well, *The National* could have the same details, but they

would have to quote their sources, which would at that point have been *The Globe and Mail*, "According to *The Globe and Mail* this, this, and that".

To Mr. Reid's point, are there one or two sources of the leak? Maybe, but we don't know until we get on this. Was it a coordinated effort to leak this information and to frame the story as the government wanted? We don't know until we get this list.

Going back to privilege, and again why it's so important, I do stress that privilege came to be, and it was absolutely necessary for the House to function effectively and for the members to carry out their responsibilities.

The late eighteenth and nineteenth centuries also saw, for the first time, the systematic study of the history of privilege and contempt with the publication of several manuals on parliamentary procedures. The culmination of these efforts to understand and elucidate better the constitutional history of Parliament was achieved in 1946 with the publication of the 14th edition of *May*.

I cited that a little earlier.

This edition presented a thorough and elaborate examination of parliamentary privilege based on an exhaustive examination of the *Journals* and the principles of the law of Parliament. It also cited instances of misconduct of strangers or witnesses, disobedience to the rules or orders of the House or committees, attempts at intimidation or bribery and molestation of Members or other Officers of the House as cases that more properly involve a contempt of Parliament rather than an explicit breach of an established privilege.

The British House of Commons now takes a more narrowly defined view of privilege than was formerly the case, with the emphasis being placed on parliamentary proceedings. The change became apparent in 1967 when the Select Committee on Parliamentary Privilege accepted the need for the radical reform of the law, practice, and procedure relating to privilege and especially contempt, agreeing that they required simplification and clarification and to be brought into harmony with contemporary thought. The Committee went further to express the conviction that the recognized rights and immunities of the House "will and must be enforced by the courts as part of the law of the land".

Now I'm not saying this applies in this case, but I think the point about privilege is very much clear:

While the House took note of the Committee's report, it was never adopted. In 1977, the Committee of Privileges re-examined the meaning of privilege and contempt, and the general thrust and conclusions of the 1967 report were reiterated in its report, later adopted by the House. The Committee recommended that the application of privilege be limited to cases of clear necessity in order to protect the House, its Members and its officers from being obstructed or interfered with in the performance of their functions.

Now, Chair, to do our duty, as I've stated a couple of times already, and to do our duty properly, as members of Parliament, to leak a bill, in this case a very important bill, but to leak any bill before parliamentarians have had a chance to take a look at it and examine it blocks us from effectively carrying out our responsibilities as members of this place.

•(1210)

If we all have the heads-up that one or two sources of the leak find it okay to go on their own, maybe with direction from their team captain, and we do not investigate, which is what I think the other side is implying, that we just call it a day and shut down, then that is not letting us do our job. Without mechanisms in place to either stop it from happening, or to find the source of the leak, this could actually prevent us from doing our job. Could this happen again? Quite possibly it could, because there doesn't seem to be a consequence. Again, it's rewarding the child's bad behaviour.

This will say why it's important here:

Privilege in the Pre-Confederation British North American Colonies

From the establishment in 1758 of the first legislative assembly in Nova Scotia, the common law accorded the necessary powers to the legislature and its Members to perform their legislative work. "Members had freedom of speech in debate and the right of regulating and ordering their proceedings, and were protected from being arrested in connection with civil cases, because the legislature had first call on their services and attendance." As to the power of an Assembly in the colonies to punish and more especially imprison for contempt, the situation was not at all clear. In effect, the rights enjoyed by the Assemblies in the pre-Confederation period were quite limited. However, as early as 1758, the House of Assembly of Nova Scotia had an individual arrested and briefly confined because of threats made against a Member of the Assembly.

In Upper and Lower Canada, the Constitutional Act, 1791, adopted by the British Parliament, was silent on the privileges of the Legislatures, although by 1801 the Speaker of the Legislative Assembly in Upper Canada claimed "by the name of the Assembly, the freedom of speech and generally all the like privileges and liberties as are enjoyed by the Commons of Great Britain our Mother Country". ... the Assembly of Upper Canada proceeded to fight for and assert many of the same privileges, such as freedom from arrest while sitting and freedom from jury duty, claimed by the British Commons. The Assembly also claimed the power to send for and question witnesses and to punish any individual who refused to appear or answer questions, using its power of imprisonment to ensure obedience of its orders. Although challenged on occasion, the Assembly was successful in enforcing its privileges.... In the period prior to responsible government, the Assembly in Upper Canada guarded its reputation by punishing libels against it in the newspapers and also fought for the right to initiate money bills, that is, bills for appropriations and taxation. In general, the Assembly of Upper Canada was satisfied that it could discharge its functions with the privileges it had.

In the same period, the Assembly of Lower Canada also asserted both individual and corporate privileges—freedom from arrest and freedom from the obligation to appear in court with respect to civil suits brought against Members, and the right of the Assembly to punish for contempt, no matter the offender. The Assembly was not afraid to put forward its claims of privilege against the Crown. In 1820, it blocked the conduct of business at the opening of a new Parliament because of a dispute over the return of election writs and again in 1835 over comments made by the Governor about the privileges of the Assembly.

With the Union Act, 1840 which created the Province of Canada out of Upper and Lower Canada, and especially following the achievement of responsible government, issues of privilege were less frequent or serious. This can be attributed to the fact that responsible government acknowledged the supremacy of the Assembly.

Chair, it's right there.

•(1215)

The Chair: That's very interesting.

Mr. Schmale, given that we all have a copy of that book—I know you're reading it into the record and it's 1,471 pages long—maybe you might just refer to the pages you want us to read into the minutes.

Mr. Blake Richards: Mr. Chair, I might respond to that.

I think there is some legitimacy to it. I think I might object if he were to try to read the whole book, but I assume he's not going to do

that. If, in order to build the point, he needs to have that in front of him, I think asking people to read it later would make it difficult to make the point he's trying to make.

The Chair: Okay.

Mr. Blake Richards: I would argue that maybe it would be appropriate to let him continue.

The Chair: Okay.

Mr. Schmale.

Mr. Jamie Schmale: Thank you, Mr. Richards.

As was mentioned, Chair, that's why I tried to tie this in. I appreciate what you're saying, and I will not read this whole book. When you talk about privilege, it's in place for a reason, as I pointed out. It's there to allow us to do our jobs as members. Without these rules, we find ourselves in an interesting situation, because how many times can this happen, or how many times will we allow it to happen, before we take it more seriously than we're taking it right now? We want to continue with this investigation. There are others who don't. What does this say to those who possibly might want to foster their relationship with certain reporters, with the media? It says that the privilege I was mentioning doesn't mean much, because the investigation is going to be short and sweet, and probably not get to the meat of it, which is about who had access. Question those people, and try to find out who did it.

Chair, with any investigation, which may slow it down from happening again, if the people who have access to the legislation knew that should a leak happen again in the future they would most likely be called before this committee, would they be more likely or less likely to do this type of activity again? I would say, probably not.

Although we are a friendly bunch, being called before a parliamentary committee and asked to face questions on whether or not they were the source of a possible leak probably isn't that much fun, and probably quite uncomfortable. It probably causes loss of sleep and probably causes a whole bunch of stress they don't need.

Mr. Blake Richards: Would that be different from the loss of sleep you had with the cat meowing last night?

Mr. Jamie Schmale: Then the mind starts running. Your mind starts running when you're up. It's hard to get back to sleep.

If you were the source of the leak and you knew that you were going to be called before the committee—because we will find out who has the access—I don't think you'd want to do this again. However, rewarding bad behaviour... If you were the source of the leak and you knew the investigation wasn't going to go very far and you knew that there was a very good chance you were not going to be called before the committee to answer questions about this leak and the actions you may have taken, why wouldn't you do it again?

If privilege is so important, and I think we all agree it is, and if we all don't want it to happen again, how is ending this investigation going to solve anything? It will solve nothing. You might as well take this book and say, well, it only works in certain times, in certain circumstances.

It's like the rules of hockey. As a referee, you don't get to choose the rules. You're there to enforce them. You may not agree with certain rules, but that's not your job.

We have a job. There are rules. Our job is to get to the bottom of this. Our job is to make sure the rules are enforced. To basically give up goes against everything. How many times can this happen or will this happen until we stand up and say enough is enough; at what point? Some could argue, and I would actually say that this bill is probably the most important, as I said before, but how many times do we say, "It's okay, that bill doesn't have much magnitude"? Do we just start leaking legislation to the media beforehand? That's what will happen. That's what will happen because we are not clamping down on it, because we are not taking these steps to find out why.

I can't remember who said it last time, maybe Mr. Richards or Mr. Reid. We might not get to the cause of the source, but to put some fear into that person I think is one way to make sure they think twice about doing this again.

Again, Chair, I'll mention this, and I know you don't want me to read the whole thing, and I understand why. Here we go. This is from chapter 3, at page 85:

By far, most...cases of privilege raised in the House relate to matters of contempt challenging the perceived authority and dignity of Parliament and its Members. Other cases have involved charges made by the Member about another Member or media allegations concerning [other] Members. The premature disclosure of committee reports and proceedings has frequently been raised as a matter of privilege as has the provision of deliberately misleading information to the House by a Minister and the provision of misleading testimony by a witness before... committee. Finally, the denial of access of members to the Parliamentary Precinct.....

That obviously doesn't have relevance here.

I think this goes to show, Chair, that we take parliamentary privilege very seriously. Do we, though? If we don't pursue this, do we actually take it seriously? Do we just say, "We had one witness; that's good enough"? As Mr. Reid pointed out, we have one source for sure, because that was the first one, in *The Globe and Mail* article. Do we have a possible second source?

• (1220)

If yes, were they working together on a way to get the message out before the legislation was tabled in the House in order to shape the discussion the way the government wanted it? If you're looking at it as that serious, which I believe it is, why shut it down? Why not let us go and continue to ask these questions?

As I pointed out, Mr. Chair, when I read those names, I believe I said there were 57 in the Prime Minister's office. With the Minister of Health, I can't remember exactly. There were 20-odd people who obviously cared, but not all of them are going to have access to this legislation. The ones who would have an advantage to leak this information would have access, and that's who we want to talk to. That's why it's so important that we see that list. If we're talking about the openness and the transparency of the government, and how they're going to do things differently, okay. I wasn't here in the last Parliament, but okay, let's say we're going to do things differently. How is shutting down this investigation going to prove that we are open and transparent?

There's a quote here in the *Ottawa Citizen* mentioning that the opposition has been unable to offer any evidence that there was premature disclosure. I sincerely disagree with that. I think we're laying out our case bit by bit here on how important parliamentary privilege is, why it's so important, why journalists strive for accuracy and fairness, why they keep their promises, why they are accountable, and why members of Parliament need to have these rules in place in order to do their jobs properly.

If we're not taking it any further, then why would we go? We need to have these rules in place for a reason. There's a reason why. I'll quickly quote here:

The manner in which questions of privilege were raised following Confederation was vastly different from today's procedure. Dozens of cases between 1867 and 1913 followed the same, simple course. A Member would rise, explain the matter of privilege and conclude with a motion calling on the House to take some action—usually that someone be called to the Bar or that the matter be referred to the Standing Committee on Privileges and Elections for study and report. At that point, without any intervention on the part of the Speaker, debate would begin on the motion, amendments might be moved and, finally, the House would come to a decision on the matter. The House would then take whatever further action was required by the motion. Perhaps because of the immediate recognition given to Members rising on "questions of privilege", it was also common throughout this time for Members to take the floor ostensibly to raise such a question, but in fact to make personal explanations. Members used the claim of a breach of privilege as a ready means to be recognized by the Speaker and to gain the floor in order to state a complaint or grievance of whatever kind. Here, too, they met with little interference from Chair Occupants.

That's good. Thank you.

From 1913 to 1958, while the number of "questions of privilege" blossomed for such purposes as the recognition of school groups in the gallery, congratulatory messages, complaints, grievances and a plethora of procedural matters, in addition to the continued "personal explanations", the number of legitimate matters of privilege dealt with by the House declined dramatically with only three being referred to the Standing Committee on Privileges and Elections and one to a special committee.

Let's look at my point. How do you stop this from happening again? We have direction from the Speaker to look at this.

• (1225)

I think everyone wants to make sure this doesn't happen again, and I'm sure that when the members opposite, or possibly over on this side.... I don't think they would appreciate its happening. I know we don't, so let's start looking at ways by which we can stop this from happening again in the future, so that we are not dealing with it over and over again.

We're also looking at committee time, Chair. How many times could this be referred to us, so that we just keep dealing with it and dealing with it? Otherwise, we would just say, "What's the point of the rules? It doesn't matter; they're not going to be enforced. Nobody is going to be called on it." Then what happens? That's probably a very extreme case, but these rules are here for a very good reason.

• (1230)

The Chair: On a point of order, I'll hear Mr. Reid.

Mr. Scott Reid: Is it acceptable for me to make an inquiry to the member vis-à-vis one of the points he made, or would that be out of order?

The Chair: That's fine.

I'd just like Mr. Schmale to know that he has only left half an hour for his two colleagues to speak.

However, Mr. Reid, go ahead and ask Mr. Schmale a question.

Mr. Scott Reid: I wanted to go back to one of the items he raised. After he made the point, I was interested enough to go over and pick up the article. This is from Kady O'Malley's live blog. She had quoted from a statement from the Prime Minister's Office that was provided to the *Ottawa Citizen*, which contains the following wording, and this is the justification not merely from the members here, but we know this is from the PMO—the same PMO that would almost certainly be the source of authorization for any leak, so that makes the wording particularly interesting. It says:

Since the opposition has been unable to offer any evidence that there even was a premature disclosure of the bill during six different committee meetings, the government members on the committee have decided to oppose any motion that randomly calls anyone as a part of their fishing expedition....

Leaving aside the unnecessarily snarky wording in that.... I myself have managed to never snark even once in 16 years in the House of Commons, as everybody knows.

At any rate, I just wanted to ask this. Is it reasonable to assume that the opposition can provide evidence, when the Liberals and the PCO are the ones who have the evidence and they're withholding that evidence by refusing to allow this motion to go forward? Isn't this a perverse situation, in which they're saying, "We have evidence that could settle this matter. You haven't provided it, because we're refusing to provide it to you; therefore, we want to shut down the hearings in which you have failed to produce the evidence that we actually have in our back pocket?"

Does that seem as odd to you, Mr. Schmale, as it does to me?

Mr. Jamie Schmale: Mr. Reid, that's exactly correct. That's what I'm getting to with this. I appreciate that I'm convincing you on this.

Mr. Scott Reid: You're starting to.

Mr. Jamie Schmale: You're absolutely right; they have the evidence. We would like to see it in order to complete our investigation or continue it or move forward. If we don't see this evidence, then....

They're actually admitting to having this evidence. We know they are. The justice minister said they did, and the list is pointing us in that direction. You don't have to go very far, then, to look at the minister's own words, in which she basically said that the people who had it were the "need to know". She also laid out here:

...employees who are responsible for developing policy and for developing proposals for the minister, ministerial and departmental personnel supporting a minister on a particular policy proposal or issue that is the subject....

We're being very well led in a direction, and I think she wants to see this come to an end, and possibly see a culprit found, or as we mentioned, see measures put in place to reduce the chance of this happening again, or not happening again.

Let's face it, if we do nothing, this will definitely happen again. If we put mechanisms in place to prevent its happening again, I think that's a good thing. I think everyone wants to see that.

The minister—and I can read the names because I didn't do the justice department—said all her departmental officials who worked

on this draft legislation, as well as her exempt staff, had the valid security and the clearance at appropriate levels. That's a fairly narrow line. We're not talking about hundreds. To get this list, to say that there are hundreds upon hundreds of people we can call in here, well, that's not true. It's a very narrow list of people we can call in on this.

I don't think this investigation is going to take forever, but it will take forever if the opposition feels that we are not being allowed to carry out our parliamentary functions on this committee and we report back to the House that one witness was good enough, although she gave us information pointing us in a direction, and they claim they have the evidence or the information we need to allow us to continue our investigation, but we'll just shut it down and end it.

Does that not seem a bit odd to anyone else here, that we would just put the blinders on and say, "Yes, we're good"?"

We're getting there. We're getting to the end here. We want to take the next step. I know that we on this side want to take the next step. The Minister of Justice pointed us in this direction. By just saying, yes, we're good....

Again, she said here, and I quote, that she has "spoken with [her] deputy minister". She can assure that the "department follows all necessary precautions", and she can assure us "that no breach of information nor evidence of such a breach was reported". Therefore, here we go again, "no internal inquiry was initiated".

That, Chair, brings me to my hockey referee analogy.

Of course you're going to say no, if I just ask in passing. I don't know whether everyone was called into the office and put on the hot seat, but of course you're going to say no.

I actually believe the justice minister when she says she has no idea or that she was not the source of the leak. I believe that. I actually quite respect her for coming to this committee and talking to us about what her thoughts were on this situation.

● (1235)

Here it is again, Chair, and this is again saying why we need to continue and why we need that list. She said:

...it's worth remembering that this sensitive piece of legislation was not crafted by the Department of Justice alone. My department worked closely...with officials in other departments, and my exempt staff worked with their counterparts in other offices.

She also goes on to say, as per the Privy Council guidelines:

...drafts of memorandums to cabinet containing specific policy recommendations were shared with central agencies and other departments and agencies to solicit feedback and to address any potential concerns from various policy perspectives.

As the Minister of Justice, she can't comment on other departments or agencies, but that goes back to Mr. Reid's point that they have the evidence. They have a list that will point us in the right direction. We know that journalists have principles, a guideline for ethical journalism, and they follow that. Both articles, within a day of each other, cited sources, both to the CBC and to *The Globe and Mail*, with very specific details of the legislation that you would have to have in order to speak with some confidence and some accuracy.

Let's get that list. The Minister of Justice pointed us in that direction. Again, Mr. Chair, it wasn't us making this up. She pointed: here you go; this is the direction you have to follow in order to continue your investigation.

It makes me question why we're shutting this down. Do we wait until this happens again? Does it become the Wild West? What happens here? You're having articles showing statement of fact, and as Mr. Reid correctly pointed out, if we have a second source, that's a big problem too, because now we have additional people speaking out of turn.

That's a pretty soft reason for doing it, if they didn't take direction from their team captain. Who knows whether that's the case? Again we can't find this out. Did they do it on their own to further their own careers? Did they do it to further their relationships with journalists? Did they do it because they had direction from above giving them instruction to form the story that they wanted?

Putting that all together, how are we not continuing? I ask the question, how do we not continue with this? I'll point out this and then I'll go on to my next tangent here.

There were two cases, one in 1993 and one in 2005. The Supreme Court of Canada established the legal and constitutional framework for considering matters of parliamentary privilege.

Since parliamentary privileges are rooted in the Constitution, courts may determine the existence and scope of a claimed privilege. However, recognizing that a finding of the existence of a privilege provides immunity from judicial oversight, the courts may not look at the exercise of any privilege or at any matter that falls within privilege. Once the courts have determined the existence and scope of the privilege, their role ceases. Matters that fall within parliamentary privilege are for the House alone to decide.

We know it's not a legal matter. We know it's for us to decide. One witness? That is probably not a pretty thorough investigation.

• (1240)

Are we welcoming this to happen again?

Mr. Blake Richards: I have a point of order, Mr. Chair.

Would it be permissible if I could just briefly ask a question of Mr. Schmale with regard to something he's referring to right now?

The Chair: I have no problem with that.

Mr. Schmale, just so you know, you only have 15 minutes left for your two colleagues who are on the list to speak, but I'll let Mr. Richards ask you a question related to something you just said.

Mr. Blake Richards: I might say, Mr. Chair, as anxious as I am to speak, I do understand what Mr. Schmale is saying. I do have a lot of points I want to make as well. There are a lot of important facts in

here. I've found it illuminating, and I'm sure that many of the other committee members have as well.

Certainly, I don't hold any ill will for his using the time he needs to make his arguments. Don't feel as though it's necessary to caution him on that. I do understand and appreciate.

The Chair: I appreciate your sensitivity.

Mr. Blake Richards: Thanks, Mr. Chair. I knew you would.

He was referring to some of the claims that were being made, I think by the government side. It seemed the members were making claims that one witness was good enough, and I wanted to ask him if he felt it would be unfair to the Prime Minister, the Prime Minister's Office, and the Health Minister, if they weren't given the same opportunity as the Justice Minister was given to clear up any suspicion or doubt there might be about whether there was involvement by their offices. Obviously, I would think if I were in their position, I would want the opportunity to clear that up and take the cloud away that was hanging over my head.

I wondered if you thought that was sort of an unreasonable thing to expect, that they would be given that opportunity.

• (1245)

Mr. Jamie Schmale: Absolutely not.

I agree. The way the Justice Minister came in and cleared the air, she was very good about it. She answered questions very well. I'm actually quite surprised that the Minister of Health and others would not want to take this opportunity to clear that air, just to get it off their plates, make a point that it wasn't them and they had nothing to do with this, and allow us to actually say that we did more than a one-witness exercise, which does nothing to deter events like this from possibly happening again.

If we do nothing, this will happen again, because there are no repercussions, no fear of being called before a committee. It will become common practice, and then where does parliamentary privilege go? Do we no longer need to see legislation beforehand?

I say that is probably the extreme case, but I think my point is clear. If you reward bad behaviour, it will happen again.

The Chair: Mr. Richards, just related to your question, I don't sense any urgency to rush to a vote on the first of your five motions.

Mr. Blake Richards: Obviously, we would like to see a positive result so that we can carry on with our investigation. We're not hearing that.

We've been led to understand that the Prime Minister's Office has directed the members of this committee to vote down those motions. That's obviously quite concerning. Something that I wanted to talk about in my remarks is just that: the Prime Minister's Office seemingly getting involved in the matters of a committee, telling members and forcing upon their government members what they must do, and that's to sweep this under the rug. That's obviously a huge concern to us here in the opposition.

I would hope that members would think better than that and choose to vote to ensure privilege is upheld and not take their orders from the Prime Minister to sweep this under the carpet.

The Chair: Mr. Schmale, you still have the floor.

Mr. Jamie Schmale: Thank you, sir.

I agree with Blake on them obviously getting the orders from somewhere. I think we on this side agreed it was odd that they did not want to continue this investigation, especially after our two days of explaining our case for why it would be a good idea to do that, and why, in order to preserve parliamentary privilege, that we continue this investigation....

Now that obviously someone in some department or some agency—probably the PMO—has given direction that it would be in the best interests to shut this investigation down, that to me is equally as concerning. Why are we being blocked from doing our job as directed by the Speaker of the House of Commons? As we all know, within our system, there are checks and balances. It's Parliament's role to keep the government in check, but if the government is directing its parliamentary members to shut down the investigation on certain issues like this, do we not feel that we have had our powers clipped?

Actually, this might clarify something here about parliamentary privilege and why it's so important. This is picking up where I left off:

The primary question asked by the courts is whether the claimed privilege is necessary for the House of Commons and its Members to carry out their parliamentary functions of deliberating, legislating and holding the government to account, without interference from the executive or the courts.

Right there, Chair, that's exactly what I said. How do we keep the checks and balances in place if the executive is shutting down its parliamentary members or giving direction to its parliamentary members to shut down committee work?

• (1250)

The Chair: Which page are you on?

Mr. Jamie Schmale: It's page 78. It continues:

In determining its existence and scope, the courts will first establish—

Ms. Ruby Sahota: On a point of order, Chair, I feel quite offended that we're being accused of taking orders. There's no factual evidence here. It's a completely unfounded accusation from the other side. We're sitting here listening, and if we're convinced of the reasoning for these motions, we will vote according to how we feel, but I think it's completely baseless and unfounded to accuse us of taking orders from anybody—at least not myself. I can speak for myself on that matter.

Mr. Blake Richards: If I can respond to that, Chair—

The Chair: On the point of order, Mr. Richards.

Mr. Blake Richards: In fact it is founded, Mr. Chair. There were reports in the media that the Prime Minister's Office had in fact put out a statement indicating that they were directing that this motion be defeated.

Ms. Ruby Sahota: Who? Sorry? There were reports...?

Mr. Blake Richards: I can provide the link to the article.

Ms. Ruby Sahota: Sure. Did I [*Inaudible—Editor*]

Mr. Scott Reid: According to Kady O'Malley in the *Ottawa Citizen*, she says:

...on Wednesday evening, a statement from PMO—which was provided to the *Ottawa Citizen*—confirmed that was the case....

Then, the statement from the PMO is:

Since the opposition has been unable to offer any evidence that there even was a premature disclosure of the bill during six different committee meetings, the government members on the committee have decided to oppose any motion that randomly calls anyone as part of their fishing expedition.

Ms. Ruby Sahota: We may have decided on our own.... Anyway, at this committee we have not decided—

Mr. Blake Richards: I had actually seen another article which indicated that the Prime Minister's Office had directed the member, so—

Ms. Ruby Sahota: Anyway, I believe it's—

Mr. Blake Richards: Regardless of the fact, it seems obvious that the government itself—

Ms. Ruby Sahota: I'm here to correct the record.

Mr. Blake Richards: —is looking to shut down the—

The Chair: Blake, hold it. Ruby has the floor. Then you can respond if you want.

Ms. Ruby Sahota: I'd like the ability to be able to correct the record and state here before this committee today that no one has told me to vote any which way on any of these motions. Based on your arguments and what we've been presented by the witnesses who have come before us—and not just one witness, but three different witnesses, and five different positions at five meetings—we'll make our conclusion based on what we have before the committee and nothing else.

The Chair: Is there anyone else on the point of order?

Mr. Schmale, you have the floor, since you're not finished.

Mr. Jamie Schmale: Sure.

I'd like to apologize, Ruby, if I have not done my job in this last hour and a bit of convincing you. I hope to take the next—

Ms. Ruby Sahota: It's an hour and 50 minutes.

Mr. Jamie Schmale: —few minutes to convince you.

Before I do, I'd like to quickly move an amendment to Mr. Richards' motion, Chair, through you.

I'd like to move that the motion be amended in its final line by deleting all words after “Committee”.

The Chair: This is the first of Mr. Richards' five motions. It's the one on the list and the one we've been debating for two meetings. He would remove all the words right at the end of the motion, after the word “Committee”. The words being eliminated are “no later than June 21st, 2016”.

Is there any discussion on the amendment?

Sorry, the debate's now on the amendment. We can start the debate all over again on the amendment.

Now that we're starting a new debate, who would like to speak to the amendment?

Mr. Jamie Schmale: I can quickly speak if you want.

The Chair: Jamie, do you want to be on the list? Okay.

Go ahead.

Mr. Jamie Schmale: I'll just give some background on why we need to make this amendment. It's because the committee, as you know, Chair, is likely not going to be meeting between now and June 21. That makes the date in the original motion by Mr. Richards out of order. I think we need to make this change because, clearly, as I mentioned, the reasons are quite obvious.

I put that before our friends here.

• (1255)

Mr. David Christopherson (Hamilton Centre, NDP): I have a point of order.

The Chair: On a point of order, go ahead Mr. Christopherson.

Mr. David Christopherson: I seek your guidance, Chair.

If this amendment fails or does not carry before June 21, what then is the status of the original motion?

The Chair: I'll ask the clerk that.

If this isn't adopted, another amendment could be moved, the clerk suggests.

Mr. David Christopherson: In other words, it in no way becomes untimely or out of order because we surpass that date before we reach a conclusion, correct?

We're clarifying his legal position here. I'm just trying to help.

Mr. David de Burgh Graham: Mr. Reid, are you convinced yet?

Mr. Scott Reid: Actually, I think I am convinced and I'm not easy to convince, I should tell you. I'm a tough customer but that was very persuasive.

Mr. Blake Richards: You could just see it starting to happen partway through the meeting. It was quite clear. I could tell by the body language; he was nodding.

Mr. David de Burgh Graham: I could see the transition taking place.

The Chair: Mr. Christopherson made a very good point that all the motions, actually, in theory, could lapse before the next time we're meeting on this, which is June 23. Because they're all out of date, we have to propose new motions.

Mr. Scott Reid: The motion itself, I believe, is in order as long as this amendment is in debate. The amendment, of course, allows us to continue on past the 21st. In fact may I suggest—

Mr. David Christopherson: Now we're going way deep into the rabbit hole.

The Chair: Sorry?

Mr. David Christopherson: It was nothing but a smart-ass remark that's not helpful.

Mr. Blake Richards: I'm just trying to clarify your ruling, Mr. Chair. The reason I'm trying to clarify it is that obviously there are other motions as well.

The Chair: Yes.

Mr. Blake Richards: I do understand that they have the same date; however, I would argue that the substance of the motions would still be important to consider. Obviously, there is an opportunity for those to be amended as well.

I would think that it would be possible for us to still carry them and just seek an amendment to them, because the substance is still important and very germane to the subject matter that we're studying on this important matter of privilege.

I would hope that they could still be moved. Obviously, there would be an amendment required.

The Chair: Mr. Reid.

Mr. Scott Reid: For greater certainty, Mr. Chair, I now move separately and severally each of the amendments that Mr. Richards moved, with the change that the words "no later than June 21, 2016" be dropped. Please consider those to have been moved.

• (1300)

The Chair: Can we do that?

Mr. Scott Reid: I'm happy to read them into the record if you wish.

The Chair: Mr. Reid, the clerk informs me you can't move an amendment to motions that aren't before the floor, and our time is up.

Mr. Scott Reid: No, I'm not moving amendments. I'm actually moving motions that are identical in wording, except that the words after "Committee" in the last line are not contained in each of those. I'd be happy to read them into the record.

The Chair: Are you moving new motions?

Mr. Scott Reid: They would be new motions.

The Chair: The clerk informs me that you cannot move more motions while there's a motion on the floor under debate.

Our time is up, but my initial prima facie ruling would be that Mr. Reid made a good point on this motion, and that because the amendment's on the floor, that would make it timely. That's eligible. I'll consult further, but it appears to me that the others will have expired. We're still within the time limit though, so you could just resubmit them without those last words. With the 48 hours, you have lots of time.

Is everyone set with that?

The meeting is adjourned.

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