



HOUSE OF COMMONS
CANADA

MATTERS RELATED TO THE REVIEW OF THE OFFICE OF THE PRIVACY COMMISSIONER

REPORT OF THE STANDING COMMITTEE ON GOVERNMENT OPERATIONS AND ESTIMATES

**Reg Alcock, M.P.
Chair**

**Derek Lee, M.P.
Paul Forseth, M.P.
Co-Chairs**

**Subcommittee on Matters Related to the
Review of the Privacy Commissioner**

November 2003

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THE STANDING COMMITTEE ON GOVERNMENT OPERATIONS AND ESTIMATES

has the honour to present its

NINTH REPORT

In accordance with its mandate under Standing Order 108(1)(a), your committee established a subcommittee and assigned it the responsibility of examining matters related to the Review of the Office of the Privacy Commissioner of the Standing Committee on Government Operations and Estimates.

Your committee adopted the following report which reads as follows:

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INTRODUCTION

1.1 This report provides the findings, conclusions and recommendations of the Subcommittee on Matters Related to the Review of the Office of the Privacy Commissioner, established by the Standing Committee on Government Operations and Estimates in September of this year.

1.2 The Subcommittee was established in response to the following commitment, made in the fifth report of the Standing Committee on Government Operations and Estimates entitled *Matters Relating to the Office of the Privacy Commissioner*, and tabled before the Clerk of the House in June 2003:

Regarding possible contempts of Parliament: the Committee remains extremely concerned about the possibility that Mr. Radwanski and certain employees in the OPC [Office of the Privacy Commissioner] are in contempt of Parliament as a result of their provision of deliberately misleading testimony during our hearings. This is an extremely serious matter, and will be pursued by the Committee in the fall, in a study that will include a review of the adequacy of processes relating to the testimony before parliamentary committees and of all restrictions and obligations applying to public servants in relation to Parliament.¹

1.3 The anticipated shortening of the fall session has precluded exploration of some elements of the study agenda envisioned last spring. However, members of the Committee believe that it is necessary to present a report before Parliament rises, in order to bring closure to immediate concerns relating to the contributions of several individuals to the hearings that resulted in the Committee's fifth report. The Subcommittee has given close attention to the central issue placed before it: the conduct of certain witnesses during the June hearings. As part of this process, follow-up contact was made with the witnesses whose conduct is the subject of this report. They were advised of the willingness of Subcommittee members to hear any further testimony they might wish to provide, but did not avail themselves of this opportunity.

BACKGROUND

1.4 The concern about possible contempts that Committee members expressed in their fifth report originated during the testimony of the Privacy Commissioner on June 9 and June 13, 2003 (*in camera*); of witnesses from the OPC on June 12 (*in camera*) and June 17, 2003 (*in camera*); and of witnesses from the Office of the Information Commissioner who were included in the June 12 hearing because they had knowledge of matters relating to the OPC, and to claims concerning privacy that had been made by the

¹ House of Commons Standing Committee on Government Operations and Estimates, fifth report, *Matters Relating to the Office of the Privacy Commissioner*, June 2003, p. 19.

Privacy Commissioner. Testimony received from these witnesses was inconsistent concerning several matters of central interest to the Committee, raising the possibility that some of the witnesses may have knowingly misled the Committee during these hearings.

1.5 The need to further consider the testimony of some witnesses, and to define this study as an inquiry into possible contempts of Parliament, reflects a longstanding procedural tradition that has established a class of offences that are, essentially, attacks upon Parliament. These offences, which have come to be termed “contempts of Parliament”, are serious offences for two closely related reasons. First, they directly threaten the effectiveness of Parliament itself, by undermining its performance of central roles in considering legislation and holding governments accountable for their actions. Second, in undermining the effectiveness of Parliament, these offences represent an assault upon the democratic process itself, and when they occur in Canada they directly threaten the interests of every Canadian citizen or resident of this country. Similarly, all courts and most administrative tribunals have powers and mechanisms to protect the integrity of their own processes and the evidence they receive.

1.6 The need for parliamentary institutions to be able to protect themselves against acts which could undermine their effectiveness is reflected in the fact that each House of Parliament retains the authority to judge whether conduct amounts to a contempt. This study is a contribution to that work, and identifies issues that members of the Standing Committee on Government Operations and Estimates believe need to be given immediate attention by the House.

A. *The Concept*

1.7 According to Marleau and Montpetit — authors of the definitive contemporary work on parliamentary procedure in Canada — the concept of contempt applies broadly to:

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed... Contempt may be an act or omission; it does not have to obstruct or impede the House or a Member, it merely has to have the tendency to produce such results.²

1.8 The concept of contempt is open-ended, allowing for the possibility that unforeseen threats to the effectiveness of Parliament may occur, and may have to be remedied by Parliament. However, within the lengthy tradition of parliamentary procedure, a series of relatively specific actions have come to be recognized as contempts. Derek Lee, one of the co-chairs of this subcommittee and the author of a specialized study of Parliament’s capacity to send for persons, papers and records, cites the following list of actions developed by the eminent British procedural authority Erskine May:

² Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, House of Commons, Ottawa, 2000, p. 52.

- (a) refusing to be sworn or take upon themselves some corresponding obligation to speak the truth;
- (b) refusing to answer questions;
- (c) refusing to produce documents in their possession, or destroying documents in their possession which have been sent for;
- (d) prevarication;
- (e) giving false evidence;
- (f) willfully suppressing the truth;
- (g) persistently misleading a committee;
- (h) trifling with a committee;
- (i) being insolent;
- (j) being insulting;
- (k) appearing in a state of intoxication.³

1.9 Allegations of contempt arise from time to time in all parliaments, and decisions are made about individual cases. Much less frequently, the concept of contempt is reassessed, in the light of accumulating precedents. The most recent major study, by parliamentarians, of the concept of contempt was undertaken in the United Kingdom by the Standing Joint Committee on Parliamentary Privilege in 1999.⁴ The conclusions of this study are consistent with the definitions of contempt discussed above, indicating that a contempt can comprise:

any conduct (including words) which improperly interferes, or is intended to interfere, with the performance by either House of its functions, or the performance by a member or officer of the House of his duties as a member or officer.⁵

³ Derek Lee, LL.B., M.P., *The Power of Parliamentary Houses to Send for Persons, Papers & Records: A Sourcebook on the Law and Precedent of Parliamentary Subpoena Powers for Canadian and Other Houses*, University of Toronto Press, Inc., Toronto, 1999, p. 180.

⁴ Great Britain, Parliament, Standing Joint Committee of the House of Lords and the House of Commons on Parliamentary Privilege, *First Report*, March 1999. Available online at: <http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>.

⁵ Ibid., Chapter 6, p. 1.

1.10 That committee also observed that the categories of conduct that may constitute a contempt are not closed. However, it provided a list of types of contempt that have come to be generally recognized. The list is more extensive than the earlier list developed by Erskine May, but is clearly consistent with previous lists. The types of conduct listed are:

- interrupting or disturbing the proceedings of, or engaging in other misconduct in the presence of, the House or a committee;
- assaulting, threatening, obstructing or intimidating a member or officer of the House in the discharge of the member's or officer's duty;
- deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition);
- deliberately publishing a false or misleading report of the proceedings of a House or a committee;
- removing, without authority, papers belonging to the House;
- falsifying or altering any papers belonging to the House or formally submitted to a committee of the House;
- deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee;
- without reasonable excuse, failing to attend before the House or a committee after being summoned to do so;
- without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee;
- without reasonable excuse, disobeying a lawful order of the House or a committee;
- interfering with or obstructing a person who is carrying out a lawful order of the House or a committee;
- bribing or attempting to bribe a member to influence the member's conduct in respect of proceedings of the House or a committee;
- intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a committee;

- bribing or attempting to bribe a witness;
- assaulting, threatening or disadvantaging a member, or a former member, on account of the member's conduct in Parliament;
- divulging or publishing the content of any report or evidence of a select committee before it has been reported to the House.

Additionally, in the case of members:

- accepting a bribe intended to influence a member's conduct in respect of proceedings of the House or a committee;
- acting in breach of any orders of the House;
- failing to fulfil any requirement of the House, as declared in a code of conduct or otherwise, relating to the possession, declaration, or registration of financial interests or participation in debate or other proceedings.⁶

1.11 The central importance of the integrity and completeness of the information provided to Parliament, either by witnesses or by its own members, is strongly reflected in the content of both the list developed by the 1999 committee, and the earlier list developed by Erskine May. This is a consequence of the critical role of information in the processes of deliberation and debate that are fundamental to the work of Parliament, and to the effectiveness of its contribution to the democratic process.

B. Key Criteria

1.12 The four types of conduct, on the U.K. committee's list, that most clearly reflect the importance of accurate information to Parliament's work are also the four that are directly relevant to the issues that have been examined by this Subcommittee. In considering the following findings and recommendations concerning the behaviour of certain witnesses who appeared before the Standing Committee on Government Operations and Estimates during its June 2003 hearings on the conduct of the previous Privacy Commissioner, Subcommittee members believe that the House of Commons will find the following criteria to be of central relevance:

1. Did the individual deliberately attempt to mislead the House or a committee (by way of statement, evidence, or petition)?

⁶ Ibid., p. 2.

2. Did the individual falsify or alter, or cause to be falsified or altered, any papers belonging to the House or formally submitted to a committee of the House?
3. Did the individual deliberately alter, suppress, conceal or destroy a paper required to be produced for the House or a committee?
4. Did the individual, without reasonable excuse, fail to attend before the House or a committee after being summoned to do so?

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

1.13 During the June 2003 hearings, the Committee heard detailed statements from a person who had originally brought concerns about practices at the Privacy Commission to the attention of members, in the manner detailed in the Committee's fifth report.

1.14 We also heard testimony from other Office of the Privacy Commissioner (OPC) employees who were in a position to corroborate the statements of the person just mentioned on essential points, and did so. In certain cases, these individuals appeared before the Committee voluntarily. The consistency among voluntary corroborating witnesses and others who appeared solely because the Committee had requested their appearance, and the availability of corroborating physical evidence on certain critical matters, were important factors in convincing Committee members of the accuracy of the account of events provided by the person who had initially raised concerns about practices at the Privacy Commission.

1.15 Several key conclusions emerging from this testimony, and presented in detail in the Committee's fifth report, were contradicted by individual witnesses. The conclusions were:

1. (a) A letter, originally sent by the previous Privacy Commissioner to the Deputy Minister of Justice on August 2, 2002, was reprinted with one of the original paragraphs removed, and then date stamped with the August 2, 2002 date of the original. This was done in response to direction from Mr. Radwanski, then-Privacy Commissioner.
- (b) The falsified letter was included in a package of materials provided to the Committee covered by a letter signed by the Executive Director, Mr. Julien Deslisle, and dated March 21, 2003.
- (c) The cover letter did not indicate that the falsified letter had been altered, but described it simply as a "Copy of a letter of August 2, 2002, (Radwanski-Rosenberg) concerning the report of the Access to Information Review Task Force."

- (d) Concerns were expressed by several individuals to Mr. Radwanski about the provision to the Committee of an altered letter, and at least one individual suggested that the letter be used as the basis for a briefing note that could be sent to the Committee. The concerns, and the briefing note option, were rejected by Mr. Radwanski.
2. The March 21, 2003 package of materials also included a set of expenses claim forms, in response to a request initially made by Mr. John Bryden, M.P., at a March 18, 2003, meeting of the Committee. The letter described these as “copies of his Expenses Claim Forms from April 1, 2001 to March 18, 2003.” Names on the expenses claim forms originally submitted by the Privacy Commissioner had been blacked out. Copies of the forms, obtained subsequently, without the names blacked out indicated expenses had frequently been claimed in relation to lunch meetings between Mr. Radwanski and Ms. Donna Vallières, Director General of Strategic Policy and Communications. Furthermore, the forms were extensively vetted before being included in the packages provided to the Committee, and information on four claim forms was concealed using white-out material. These practices responded to general direction from Mr. Radwanski. At least one instance of whiting out — relating to references to Honolulu stop-overs on a trip to New Zealand — was done in response to explicit direction from Mr. Radwanski.
 3. Financial management and staffing practices at the Privacy Commission required specific investigation by the Auditor General and the Public Service Commission, to get to the bottom of wide-ranging allegations made before the Committee. One such allegation was that an atmosphere of fear and intimidation prevailed at the OPC, illustrated by claims that at a management meeting that occurred during the June investigation by the Committee, Mr. Radwanski had made statements to the effect that if he discovered the identity of the “rat,” that person’s public service career would be over.

TESTIMONY

2.1 During its June hearings, the Committee received testimony from several OPC witnesses that conflicts with these key findings. As set out in the fifth report of the Committee, Mr. Radwanski provided a version of events that differed in important particulars, and the Committee was not able to accept the accuracy of his account as it related to matters such as the alteration of the letter. As well, several other OPC employees provided testimony that was either ambiguous or incorrect in certain particulars, concerning events of which Subcommittee members believe they had immediate knowledge.

2.2 In what follows, attention is given separately to the issues raised by Mr. Radwanski's testimony, and to those that relate to the testimony of other individuals.

MR. GEORGE RADWANSKI

2.3 The version of events provided to the Committee by Mr. Radwanski in June of this year departs in several important ways from what actually happened, as summarized in the "Background" section of this report.

2.4 First, Mr. Radwanski denied that he had provided, or caused to be provided, the falsified letter contained in the March 21 information package. He described this as the result of a misunderstanding between Mr. Radwanski and his Chief of Staff, during telephone conversations necessitated by the fact that Mr. Radwanski was in Vancouver on March 21, 2003, when the package was being finalized. Mr. Radwanski claimed that his intention was that the paragraphs of the letter, excluding one paragraph omitted because it was confusing, were to have been used in the preparation of a briefing note.

2.5 Second, Mr. Radwanski has argued that, on the copies of expenses claim forms provided to the Committee, names were blacked out in order to safeguard the privacy of individuals. However, he denied any knowledge of the whiting out of information.

2.6 Third, Mr. Radwanski has denied that he made remarks of a threatening nature to employees, relating to the future career of anyone who had been disclosing information about practices at the OPC.

2.7 These inconsistencies relate to matters about which we believe Mr. Radwanski had direct personal knowledge. In the course of our hearings he was made aware of the inconsistencies and chose not to alter his version of events. Members of the Subcommittee have therefore concluded that Mr. Radwanski deliberately sought to mislead the Committee, in June of this year, concerning these matters.

CONCLUSION 1

That, as outlined in paragraphs 2.4, 2.5 and 2.6 of this report, Mr. George Radwanski provided misleading testimony to the House of Commons Standing Committee on Government Operations and Estimates in June 2003, and caused to be provided misleading information during March and April of 2003, and should therefore be found in contempt of the House of Commons.

OTHER WITNESSES

2.8 Members of both the Committee and the Subcommittee which has prepared this report believe that the Committee, Parliament and the people of Canada owe a tremendous debt of gratitude to those OPC employees who, under very difficult circumstances, stepped forward in June of this year and told the truth about activities that were not proper, and needed to be stopped. Given the atmosphere prevailing within the OPC at that time, these individuals had every reason to fear the impacts that their cooperation with the Committee could have had on their day-to-day working relationships and longer term career prospects. Members of both the Committee and the Subcommittee applaud the exemplary commitment of these OPC employees and their colleagues from the Office of the Information Commissioner to the values and ethical standards of public service.

2.9 Regrettably, four OPC employees who were requested to appear before the Committee in June because of their direct personal knowledge of the accuracy of statements being made by Mr. Radwanski failed to meet the high standards reflected in the conduct of their colleagues. Several employees provided accounts of the alteration of the letter that, in whole or in part, supported the false account provided by Mr. Radwanski. At least one individual with knowledge of appropriate practices relating to expense forms denied any awareness of inappropriate financial practices at the OPC. One individual who was present at the executive meeting where threatening statements were made denied that Mr. Radwanski had made threatening statements about the future employment of the person who had informed Committee members of inappropriate practices at the OPC. One individual who did not appear before the Committee during its June hearings provided an explanation of the failure to appear which Subcommittee members find to be unconvincing, in light of other information that was made available to the Committee.

2.10 Reflecting on these events, members of the Subcommittee have concluded that several OPC witnesses in addition to Mr. Radwanski chose either to withhold or avoid providing information which it is reasonable to believe they had, or to mislead the Committee concerning matters of which they must have been aware.

2.11 In the course of the deliberations that resulted in these findings, Members of the Subcommittee also concluded that there are a number of important mitigating considerations that the House may wish to take into account in considering the conduct summarized above. First, the individuals who appeared in June were invited before the Committee on short notice, late at night (in several cases) and testified under extremely stressful circumstances. As well, one of them voluntarily returned before the Committee to correct the testimony initially provided. When their testimony was complete, all of these witnesses had to return to the OPC, where they reported either directly or indirectly to Mr. Radwanski. As OPC employees, they faced the challenge of continuing to work in circumstances that they were to describe to the Auditor General, in the course of her subsequent investigation, as “a poisoned work environment [and] a ‘reign of terror’”⁷. In contrast, Mr. Radwanski had the opportunity to communicate his views to the Committee both in public meetings and *in camera* hearings, and in carefully premeditated letters as well as verbal testimony, and alone among our OPC witnesses did not have to return to the office to face a hostile boss.

2.12 The circumstances under which the individuals other than Mr. Radwanski testified do not excuse the provision of incomplete or misleading evidence to a parliamentary committee. However, in our view, a case can be made for recognizing significant mitigating circumstances. We believe it would be excessive, at this time and given the stresses to which all of those who work in the OPC have been subject, to name these individuals in a public report alleging that their conduct in June placed them in contempt of the House, or to suggest penalties of the kind discussed elsewhere in this report.

2.13 With these considerations in mind, Subcommittee members have reached the following conclusion:

CONCLUSION 2

That, in addition to Mr. Radwanski, four employees of the OPC were, to varying degrees, less than forthcoming in their assistance to the Committee during its hearings in June. Subcommittee members have taken into account the mitigating circumstances described in this report, but remain disappointed in the conduct of these four OPC employees.

⁷ Auditor General of Canada, *Report on the Office of the Privacy Commissioner*, September 2003, p. 6.

RELATED MATTERS

A. Further Possible Contempts

2.14 The special reports of the Auditor General and Public Service Commission, released in September of this year, have amply validated the concerns about financial management and staffing practices at the OPC, expressed by the Committee in its fifth report.

2.15 These reports document a lengthy list of unsatisfactory practices, including overclassification of favored employees and resulting inflated costs; the prevalence of stress, intimidation and generally poor labour relations; lack of basic financial controls; contraventions of the *Financial Administration Act*; failure to follow travel and expense policies; abuse of financial controls on travel and hospitality spending; and inadequate contract management. These are matters that require attention by the OPC, Treasury Board Secretariat, the Public Service Commission and Privy Council Office, in line with recommendations made by the Auditor General.

2.16 Two of the Auditor General's findings are of special concern to this subcommittee, given the subject of its investigation. First, the Auditor General found that those who prepared the financial statements of the OPC for the fiscal year ending 31 March 2003 knowingly omitted about \$234,000 of accounts payable at year end. As a result, it would appear that false information was included in the Public Accounts, a central financial reporting document provided to Parliament each year. The Auditor General's report indicates that Mr. Radwanski denied any knowledge that the financial statements had been falsified, while the Director, Financial Services, acknowledged that this had been done, and indicated that officials had believed that the deferral of liabilities to the new fiscal year would go undetected, because Public Accounts statements had not been audited for a long time.

2.17 Second, the Auditor General found that the former Privacy Commissioner had received a sum of \$15,000, entered on the OPC books as a "special travel advance," because he believed that he had not been reimbursed for all his travel and hospitality expenses. This amount was carried on the OPC books until the end of the fiscal year, and then the former Commissioner paid it back on March 31, 2003 (thus avoiding the need to reflect it in the financial statements that would appear in the Public Accounts). When the new fiscal year began, the former Privacy Commissioner then promptly obtained another \$15,000 payment, which was again identified as a "special travel advance" on the OPC books.⁸

⁸ Ibid., p. 21 and 19 respectively.

2.18 Subcommittee members recognize that this practice technically met reporting requirements. However, its purpose and effect was clearly to deprive Parliament of accurate information about the state of financial affairs at the Privacy Commission. This deception was intentional, and was directed by the former Privacy Commissioner.

CONCLUSION 3

That the findings of the Auditor General, as reviewed in paragraphs 2.16, 2.17 and 2.18, provide evidence that Mr. Radwanski has committed contempts of the House additional to those arising directly from his conduct in relation to the Standing Committee on Government Operations and Estimates.

B. Placing Witnesses Under Oath

2.19 Witnesses appearing before the Committee during its June hearings were uniformly advised, and accepted, that their testimony before the Committee had the same status as testimony under oath, acknowledged that they were testifying as if under oath and acknowledged that they had a duty to speak the truth. The inconsistencies in the testimony received from various witnesses, on matters concerning which they all had direct knowledge, has left the Subcommittee with no alternative, however, but to conclude that some witnesses ignored the obligation to speak the truth.

2.20 With the recent experience of the Committee in mind, Subcommittee members have considered the formal swearing in of witnesses, and the possibility that parliamentary committees should adopt this practice in the future in order to discourage witnesses from deciding to provide less than the complete truth in their testimony and related written submissions.

2.21 The realistic possibility of detection and exposure, along with a clear likelihood that the exposure will lead to action by the Senate or House of Commons against any contempts of Parliament involved, remain the central safeguards against any future provision of incomplete, misleading or false evidence to Parliament and its committees. Members believe that the establishment of this subcommittee, along with the findings and recommendations set out in this report are, in themselves, a contribution to the effectiveness of these safeguards.

2.22 Aside from the threat of exposure and punishment, the central means available to Parliament and its committees to ensure truthful testimony is the placing of witnesses under oath. With respect to the Senate and the House of Commons, and committees of either House, the *Parliament of Canada Act*, s. 10, provides that an oath or solemn affirmation may be administered by the Speaker of either House, or the Chair of any

committee, to any witness appearing before them.⁹ A schedule to this Act provides the appropriate form of the oath. It is noteworthy that the Act also provides that any person who wilfully gives false evidence while under oath is liable to conviction for perjury.¹⁰

2.23 The fact that witnesses may be found in contempt by a House for deliberately providing misleading, incomplete or altered evidence to Parliament or one of its committees creates an unconditional obligation upon all witnesses to provide the full truth in testimony before Parliament and its committees. The experience of the Committee in its June hearings suggests, however, that this obligation may need to be communicated as unequivocally and directly as possible to all witnesses, in order to emphasize the seriousness of the responsibility involved in providing information to Parliament.

2.24 The formal placing of witnesses under oath does not create obligations that do not exist already. However, we believe it would communicate the importance of the obligations to which witnesses are subject more effectively than, for example, simply informing them that their testimony will have the status of testimony given under oath. More obviously, it has clear advantages over merely assuming that witnesses are aware of their duty to speak the whole truth.

RECOMMENDATION 1

That parliamentary committees consider formally placing witnesses under oath more often, when circumstances warrant.

C. Available Sanctions

2.25 If the House of Commons finds that any of the conduct described in this report constitutes a contempt of Parliament, it will then face the need to select and implement appropriate sanctions. While action against contempts, like the finding of contempt itself, remains the responsibility solely of the House, Subcommittee members invite attention to the following considerations.

2.26 Remedies are available to Parliament. This may not be widely known, given the infrequency of cases of contempt, especially by witnesses. The impression that remedies do not exist may be fostered, as well, by the tendency in the past for Parliaments to be inattentive to the implementation of disciplinary measures concerning witnesses, while the measures that are consistently applied to Members found to be in contempt (e.g. suspensions) are not applicable to witnesses.

⁹ See Lee, p. 58-9. It is noted that persons authorized by a Speaker or Chair, or pursuant to the rules of either House, may also administer an oath.

¹⁰ See Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, House of Commons, Ottawa, 2000, p. 106.

2.27 The 1999 U.K. committee study mentioned earlier in this report notes that, in that country (where many traditions of parliamentary procedure that apply in Canada originated) the power to commit to the custody of the “Sergeant-at-Arms,” or to prison, was regularly used in the eighteenth and early nineteenth centuries.¹¹ The British House of Commons has also applied fines, although not since 1666, and has relied in modern times on powers of admonishment, suspension and expulsion. Non-members of the House have been imprisoned overnight (as recently as 1880, for failing to attend as a witness), and have been summoned to the Bar of the House of Commons to apologize (or take the consequences, which could have included committal to jail) as recently as 1957.¹²

2.28 In his study of the power of committees to send for persons, papers and records, Mr. Derek Lee, M.P., gives extensive attention to the issue of remedies.¹³ Possible sanctions that could be applied to witnesses found to be in contempt of the House are:

1. Reprimand or admonishment, which involves placing the offender in the custody of the Sergeant-at-Arms and bringing him or her before the Bar of the House, to be reprimanded or admonished. This relatively mild measure relies on public shame, serving primarily to make it clear to the offender, and to the general public, that the House views contempt as a serious offence.
2. The power to imprison, or place in the custody of the Sergeant-at-Arms. This power has been used on rare occasions in Canada before Confederation, and has been invoked once at the federal level since 1867 (the House of Commons ordered an individual committed in 1913). The House may commit an individual until the end of a parliamentary session, and may recommit the individual in a subsequent session. This is clearly a stronger deterrence measure, although in practice it could range from a primarily symbolic one-day committal to a lengthier period.
3. The power to fine, as noted above, has not been used in the U.K. since 1666. It has never been used in Canada. However, it has been accepted by the courts in New Zealand as recently as the nineteenth century, and affirmed by parliamentary committees in several jurisdictions more recently.

¹¹ *Report*, Chapter 6 (Disciplinary and Penal Powers), p. 5.

¹² *Ibid.*, Chapter 6 (Disciplinary and Penal Powers), p. 13.

¹³ See Lee, Chapter 16, p. 183-222.

2.29 It is noteworthy, as well, that the powers of a Parliament to take action concerning a contempt are not limited to the time period during which that Parliament exists. A Parliament may take up issues of possible contempt that have arisen during a previous Parliament, or findings of contempt that have been made during a previous Parliament, and apply sanctions.¹⁴ This consideration may prove to be important in the disposition of the matters drawn to the attention of the House in the present report.

2.30 Finally, as noted in previous sections of this report, the seriousness of the contempts of Parliament relating to the provision of misleading, incomplete or altered information cannot be overstated. Members of this subcommittee believe that Parliament needs to reflect this principle not only in words, but in deeds.

CONCLUSION 4

Sanctions applied in response to the conduct described in this report, should it be found to constitute a contempt of Parliament, need to fully reflect the gravity of the offence.

2.31 Your committee believes that it is its duty to place these matters before you at this time since parliamentary privilege may be involved, and to give the House an opportunity to respond to these matters.

¹⁴ Lee, p. 209.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION 1

That, as outlined in paragraphs 2.4, 2.5 and 2.6 of this report, Mr. George Radwanski provided misleading testimony to the House of Commons Standing Committee on Government Operations and Estimates in June 2003, and caused to be provided misleading information during March and April of 2003, and should therefore be found in contempt of the House of Commons.

CONCLUSION 2

That, in addition to Mr. Radwanski, four employees of the OPC were, to varying degrees, less than forthcoming in their assistance to the Committee during its hearings in June. Subcommittee members have taken into account the mitigating circumstances described in this report, but remain disappointed in the conduct of these four OPC employees.

CONCLUSION 3

That the findings of the Auditor General, as reviewed in paragraphs 2.16, 2.17 and 2.18, provide evidence that Mr. Radwanski has committed contempts of the House additional to those arising directly from his conduct in relation to the Standing Committee on Government Operations and Estimates.

CONCLUSION 4

Sanctions applied in response to the conduct described in this report, should it be found to constitute a contempt of Parliament, need to fully reflect the gravity of the offence.

RECOMMENDATION 1

That parliamentary committees consider formally placing witnesses under oath more often, when circumstances warrant.