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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Monday, February 9, 2009**

**Chair**

**Mr. Paul Szabo**

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## Standing Committee on Access to Information, Privacy and Ethics

Monday, February 9, 2009

• (1640)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** I call the second meeting of the Standing Committee on Access to Information, Privacy and Ethics to order. The order of the day is committee business, the planning of future business.

Colleagues, the subcommittee on agenda and procedure of the committee had a brief meeting, and I'd like to give a brief oral report of where we are. I think there is some consensus, which I've received from the representatives of each of the parties. We have a break week next week, as you know, but we do want to make use of each and every day.

Now, I can tell you that we do want to do the estimates, if we can. The supplementary estimates that we have are for the Office of the Privacy Commissioner only. You will be getting a briefing note. We're going to try to do those on Wednesday; I don't think there's much discussion on this.

We also have a motion from Madam Freeman with regard to the Access to Information Act. I think the motion you have received in your office is basically that we recommend, I guess to the justice minister, that consideration be given to making changes to the Access to Information Act along the lines of, or using as a basis, the Reid report, which was done by a former access commissioner. So we'll be dealing with that.

We had some discussions about the concerns that relate to the protection of the integrity of Parliament and contempt of Parliament issues. I think there are some legitimate questions. It's been suggested that we ask the law clerk of the House of Commons, Mr. Rob Walsh, to join us, maybe with one of his colleagues, to give us a little bit of information about when we start getting into areas that are maybe a little bit beyond our specific expertise, etc., so that we know what the process is, the seriousness of it, and the basis under which a committee can deal with it. This is basically to help inform members. So we're going to do that. I think we agreed that we would do that in camera, so people could be a little freer in asking their questions without worrying about them. This is for our information, but it's not to take decisions on whether we should call somebody forward and see if we can find them in contempt of Parliament. I think those decisions will have to be made down the road. But I think this is a resource to us—and we'll try to do that. If for some odd reason he's not available, there has been a suggestion that we hear from the Public Sector Integrity Commissioner as an alternative source of briefing information. So we're going to try to do this on Wednesday. I think that's fairly straightforward.

The committee seems to be very strong in its view that we should hear from each of the three commissioners individually, with one meeting each, so we can get an update on the reports that they have issued but that we have not addressed as a committee. The commissioners will let us know whether they feel there are matters that we should be dealing with, and they will make their pitch for why we should be doing a little bit more work on some of their areas.

There also is, at least with regard to privacy and access, the issue of human resources, which we identified in our previous work in the last Parliament. It would appear there is such a significant shortfall in authorized FTEs that the responsibilities under the privacy and the access to information acts are not being discharged in a fashion that meets the benchmarks that have been established. They have serious problems. We've asked the Privacy Commissioner specifically to keep us informed, and we will have an opportunity to find out what they've done there. The Access to Information Commissioner also has taken some internal actions to try to expedite priority areas, but those are not necessarily in compliance with normal practice for dealing with complaints under access legislation. We'll find out when they're here. We'll try to schedule them, based on their availability, at the earliest available time.

The other area that I think we agreed upon was that the committee had done a fair bit of work on the Privacy Act already. I think the last time we dealt with it, there was supposed to be a draft report. In fact there is a draft report.

We can pass a motion to bring forward all the testimony, all the documents, and everything to do with that work from the last Parliament and have that made available to all honourable members. We'll have an opportunity to work that out. It would likely be one or maybe two meetings to tidy up any loose ends so we can finish and adopt a report to send to Parliament. I think it will be useful to do that.

I think that would bring us quite a bit down the road. Having done that, the committee will probably be in a position to decide on a major work study. We'll probably have another agenda and procedure meeting based on what we've heard from the commissioners and interactions with these people. The committee representatives on that agenda and procedure committee will have to have one more of these meetings to see if there is a consensus on how we proceed.

That is about where we are. I think it's workable and flexible enough, and it should make good use of our time.

At this point I'm going to open it up to the members. The clerk keeps the list of people who would like to speak. We like to hear from all honourable members who'd like to be heard.

We'll start with Mr. Hiebert.

**Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC):** Thank you, Mr. Chair. I want to congratulate you on doing a very good job in summarizing the discussion we had during the first hour.

I'd like to move a motion that would bring forward all the testimony, all the documents, and all materials, for that matter, relating to our previous study on the Privacy Act, including the draft report that was put together by the researchers.

I'm trying to make it as wide as possible. Basically it's to bring forward anything that may have touched on the Privacy Act in our discussion and provide a summary to the members of the committee. They can then review this in advance of our subsequent meeting with the Privacy Commissioner so we can complete the study we spent so much time on last year.

**The Chair:** Thank you. That is a motion.

I'm advised by the clerk that they do have a standard boilerplate motion to do that. But I think there is a good consensus of the committee on this, and the intent of your motion is very clear. I'm going to rule it in order.

I don't think there's going to be much discussion, so I'll put the question on the motion that we bring forward all the privacy study from the last Parliament into this one.

(Motion agreed to)

● (1645)

**The Chair:** Is there further discussion?

*Madame Freeman, s'il vous plaît.*

[Translation]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Thank you, Mr. Szabo, for summarizing our in camera discussions.

You mentioned the matter of contempt of Parliament and the fact that we would be inviting the law clerk, Mr. Rob Walsh, or some other individual to come here to explain in greater detail what action constitutes contempt of Parliament. The subcommittee also touched on the need to continue the committee's work on the fundraising practices of the Conservative Party.

I did mention earlier that in July or August of 2008, just prior to the elections, the committee sat for six days to hear from various witnesses and to discuss the spending practices of the Conservatives during the 2006 election. The study was never completed. Several witnesses refused to give testimony. We have yet to hear from the principal Conservative Party strategists.

It is critically important that we finish this study and produce a report to ensure that our efforts were not in vain. It is essential that we do so because this is a very serious matter.

The Conservative Party is suspected of having exceeded its authorized spending limit by \$700,000. The party had every interest

in cooperating to show that it had nothing to hide. I should point out that nothing has changed since the committee last met in August for six days. The questions raised at the time have still not been resolved. Who is responsible for this scheme? How much money was legally spent? Who knew what exactly?

The matter is still before the courts and there could very well be another general election before all of the facts come to light.

In fact, there is cause for even greater concern since some of the people involved in this whole affair have been appointed to public office by the Prime Minister. I'm thinking here about Michel Rivard, for example, who was appointed to the Senate on December 22, 2008. He had refused to testify before the committee, even though he had worked as a Conservative Party organizer in Quebec City during the 2005-2006 election. Another person that comes to mind is Irving Gerstein, who was also appointed to the Senate on December 22, 2008. Until very recently, he was the head of the Conservative Fund Canada. Like Mr. Rivard, Mr. Gerstein had also been summoned on July 31, 2008 to appear before this committee, but was a no-show.

If the Liberals refuse to give this matter priority consideration, I'm not sure what will happen. The reasons that led this committee to review the Conservative's election spending still hold. I hope our friends will agree that we need to continue with our study of the Conservative Party's election spending.

The other point I wanted to mention was the need for us to take action with regard to the individuals who refused to testify. That's the reason for inviting the law clerk here so that we can decide on a course of action. I want to be clear about this, Mr. Szabo. We can invite the law clerk here to explain to us the procedures to follow to determine if, by refusing to testify, these individuals were in fact in contempt of Parliament. However, I would also like us to agree on the need to continue the work of the committee, which was interrupted last summer, on the Conservative Party's fundraising practices.

● (1650)

[English]

**The Chair:** I hesitate to debate, but maybe I'll just say this for information purposes. Mr. Hiebert reminded the committee on agenda and procedure that there are some who question whether the mandate of the committee is comprehensive enough to deal with the matter.

If members would go back and look at the decision of the chair, they would see that it is a fair bit narrower than trying to find out whether a particular political party overspent or did something wrong. It had to do with public office-holders. The discussions and the interest went way beyond, but that was how you got the information you needed with regard to public office-holders.

That's one of the reasons I think it's important that we speak with Mr. Walsh and ask the questions. I think everybody understands that we want to make absolutely sure the integrity of committees, and therefore the integrity of Parliament, is protected when we do our work, regardless of the subject matter. Unfortunately, in this case, it has to do with a political party, but we should apply our work consistently regardless of who the party is. It's one of the reasons I thought maybe we should have this opportunity for a little in camera time with Mr. Walsh so that everybody can ask their questions and find out how we can deal with this in a proper fashion.

Before we decide on the balance of our work plan, I think that's what we decided, or at least there was a consensus in the agenda and procedure subcommittee. We wanted to hear from the three commissioners. We also wanted to deal with privacy and a couple of matters for the next meeting, including your own motion, Madam Freeman. Subsequent to that, we wanted to have another meeting, when we had heard all of that, to consider the next action—whether we're going to complete the work on the in and out scheme, whether or not we're going to do a study on access, or whether we're going to get involved in some other matter that the committee may want to recommend we deal with.

I don't think anyone has said no to doing this, but I think we have enough to keep us going for probably three or four meetings, after which time we will have to have this discussion more fully and maybe consult with whoever we have to consult with about whether or not this is the next priority for the committee.

Yes, Madam Freeman.

[Translation]

**Mrs. Carole Freeman:** I have another question. I don't have a problem with asking the law clerk here to get more information about the contempt issue, but the work undertaken by the committee when it sat last summer has yet to be completed. I can appreciate the importance of working on the Access to Information Act. That's been an ongoing process for 25 years. I can appreciate the importance of working on the Privacy Act. That's been an ongoing process for 35 years.

Last summer, the work of the committee was interrupted. Why not pick up the work where we left off?

• (1655)

[English]

**The Chair:** I don't think the committee has decided that it's not going to carry on with the work. I think it's just a matter of timing.

Madam Freeman, I think everybody understands that we have some tidying up to do there. We'll have to answer the question that Mr. Hiebert has raised about the legitimacy of the committee doing this work.

The last committee decided it was within the mandate. This committee will also have to make that determination, again, just as we did with the Privacy Act, to move a motion to bring forward all of the testimony and all the activity into the current Parliament and to make the necessary arrangements to complete that work. We have to make that determination, and we will do that at our next agenda meeting.

[Translation]

**Mrs. Carole Freeman:** So then, you're saying that we will look at continuing the work of the committee that was interrupted last summer.

[English]

**The Chair:** As you know, the privacy work also was interrupted.

[Translation]

**Mrs. Carole Freeman:** I understand, but it was the last...

[English]

**The Chair:** We're going to tidy up our work, but let's keep our eye on the ball. There are important things. The members will probably have seen and heard that there are going to be reports from both the Privacy Commissioner and the Access to Information Commissioner that are going to be very important. Those are two areas of substantial responsibility for us.

Madame, I understand, and the committee will decide as a whole. We will try, as the steering committee or this agenda and procedure committee, to give some guidance to the overall committee as to how to proceed, and hopefully information from people like Mr. Walsh will give us a better idea.

Mr. Siksay, followed by Mr. Poilievre and Mr. Wrzesnewskyj.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Chair, I do agree with your summary of the discussion we had at the steering committee. I have to say that I also agree with Madam Freeman that we can't let drop the concerns and the work of the committee related to the fundraising issue.

I do think, however, that we've reached a point where we need the advice of the law clerk on issues of contempt of Parliament. I'm not prepared to not move on those, because they are very crucial to the integrity of this institution, and it seems to me there are separate issues of contempt coming out of Mulroney-Schreiber and out of the fundraising issue.

It also seems to me that the committee last summer reached a point where it was about to give people a second chance to appear before the committee. So I expect Mr. Walsh will have something to say about that, or we may have some questions for him about whether that's appropriate or if that is the way to proceed. In that case it may clarify how we actually proceed in resuming the study on that, should the committee decide to go that route.

I don't want this to be seen in any sense as putting off or shelving our interest in the fundraising issue, but I do believe hearing from the law clerk on contempt of Parliament issues is the appropriate next step for the committee to engage before we resume that work.

**The Chair:** Mr. Poilievre, please.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Mr. Chair, we have an opportunity to rebuild the reputation of this committee, and I'm hoping we will put our heads together and undertake that effort in the days ahead.

There is the political question and there is the mandate question. On the mandate, the committee's mandate is very narrow, as you have correctly pointed out. As such it is incapable of conducting any kind of serious study, if that indeed was the intention in the first place of the motion that was heard before the election.

The second question is a political one. What we learned in the last election is that all the accusations around this subject were heard: they were aired; they were printed on the front pages of newspapers and aired on national television; they played on radio stations. On election day we found out that, with all this knowledge in mind, voters just didn't care. So we have to ask ourselves whether we want to be seen by the public as engaging in a political scrap over an issue that doesn't matter to people, in the way we did last time. By the way, the method of the committee was condemned by a whole series of observers, including even *The Globe and Mail* editorial page, which I think you will all agree is not particularly friendly to our government.

There were a lot of observers who were very much unimpressed with the way the hearings happened last time. So I would encourage the committee to stay focused on some good policy work that will actually improve the country as opposed to fixating on something that really has nothing to do with our mandate, number one. Number two, if the object is political, it probably will not achieve its political objectives because, as I mentioned earlier, the opposition parties had this so-called ammunition in the last election and it bore exactly no fruit.

Thank you.

• (1700)

**The Chair:** Mr. Wrzesnewskyj.

**Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.):** Thank you, Chair.

I have a couple of questions for clarification. I've not sat on this committee in the past, but in other committees, typically when committee work was interrupted by an election or prorogation, committees have used the boilerplate motion to move all of their previous incomplete reports and work related to those reports forward. Is this motion today just to move on one single report, as opposed to all the work, an indication that we will not be moving forward, or was it just to accommodate Mr. Hiebert's particular motion? With so much effort put into it by the committee, but unfortunately interrupted, will there be a motion put to the committee to move forward all of the work that was done so meticulously into this incarnation of the committee?

**The Chair:** The motion is pretty explicit with regard to Mr. Hiebert's motion, but normally the committee does decide on these actions. Right now I think from the standpoint of the agenda and procedure committee, the committee is at this point saying that we want to get further information and we'll come back to the committee with a recommendation. The committee can do whatever it wants. It can say everything we've ever done and bring it forward, but I think we have to stay in a bit of focus.

There's a consensus on the privacy issue, and we're going to proceed with that. Hopefully, with regard to any other items, whether it be other reports or other issues that were dealt with and you may

want to follow up on, we can certainly make those motions at the appropriate time.

**Mr. Borys Wrzesnewskyj:** For further clarification, how many reports were in progress prior to the interruption?

**The Chair:** There were no other studies under way by the committee at the time of the call of the election, although there were a number of reports that were referred to us. We just have not chosen to study them. There have been subsequent reports, and there will be annual reports, etc. They're automatically referred to the committee, but it doesn't mean the committee has to do anything with them. We had, for instance, an order in council appointment of the deputy privacy commissioner. That position has been filled and it's history right now, and it may not be fruitful for us to get involved in a review of that at this time.

Everything the committee had in process...really the only two items were the privacy and the in and out scheme. That's the only other work that was ongoing at the time.

**Mr. Borys Wrzesnewskyj:** That provides a little clarity on that.

Contempt of Parliament, and that's a very serious charge, was mentioned several times. For clarity, and I wasn't absolutely sure, people referenced witnesses summoned who didn't appear. It was also mentioned that witnesses inadvertently or advertently may have misstated the facts in testimony before the committee. Is the contempt of Parliament that we'll be asking Mr. Walsh to inform us on a misrepresentation of facts by witnesses, or is it on non-appearance, or both?

**The Chair:** We're not talking about anything in specific. We're talking about "generally", about addressing matters should they arise, and what tools and resources we have available to us. This is not restricted to the in and out scheme. Certainly with regard to the subsequent disclosures related to the Mulroney-Schreiber hearings there are clear allegations that people lied to this committee. If that's a fact, does this committee feel it's something we should address? It's not to be taken lightly, and that's why I think this committee should hear from Mr. Walsh just to get a better feel.

So we're not talking about specifics. You're getting far too specific. We're having a brief meeting with Mr. Walsh in camera simply to talk about this whole question about protecting the integrity of Parliament.

• (1705)

**Mr. Borys Wrzesnewskyj:** You also mentioned—I believe it was you—that he would be asked about the scope of our work as well, or did I misunderstand the comment?

**The Chair:** The Speaker has already ruled on this. You might want to comment. This is more for the edification of members. And it appears that down the road sometime we will probably get involved in a situation where a matter related to the contempt of a committee, lying to the committee, contempt of Parliament, becomes an issue.

I think we should have the advice of the law clerk of the Parliament of Canada on what's gone on. He did the same thing with us when I was on the government operations and estimates committee and we had the case of George Radwanski, the former privacy commissioner, who ultimately was found in contempt of Parliament. But the process goes on.

So it's a resource.

Mr. Poilievre.

**Mr. Pierre Poilievre:** On the question of contempt of Parliament, I think it goes without saying that this is meant to be used very sparingly and in exceptional cases. If members wish to use it as a political baton to score a quick headline, they will find it very quickly loses any value at all, and its meaning becomes null and void.

The other thing to keep in mind—while I know it's a separate committee, I make reference to it—is that Public Accounts did not get a chance to finish its study on whether or not members of the Liberal Party engaged in contempt of Parliament during the sponsorship scandal. They may have, in some cases, testified one thing before Public Accounts and another thing before Gomery, and as such, that committee began its study, Mr. Chair, of whether or not to proceed with contempt of Parliament. I'm not sure if the committee is interested in re-opening that file, but we might want to check with them just to find out how they are approaching it so there is a certain consistency in the way we proceed.

I know you believe in consistency, Chair, and as such, perhaps you would be willing to consult with your counterpart at the public accounts committee and ascertain if there should be a motion coming forward from any of the members of that committee, and I do know some of the members will participate there. Should they decide to re-open the contempt of Parliament discussion with regard to the sponsorship scandal, how and what steps would be taken at public accounts and whether or not we would consider the same sort of process....

Thank you.

• (1710)

**The Chair:** Mr. Wrzesnewskyj again, please.

**Mr. Borys Wrzesnewskyj:** Thank you, Chair.

I'd just like to reference some of the comments made by my colleague, Mr. Poilievre, from Public Accounts. He initially stated that voters don't care about these issues and he referenced the past election. In fact, there is a deep cynicism in the public about political processes. It's not a matter of voters not caring.

Voters care a great deal about how their elected representatives conduct themselves. Voters care a great deal about how those for whom they have made that leap of faith and put an X next to their names conduct themselves in ethical and honest ways. I don't agree with that flippant comment that voters don't care. Voters care, but they've been very disappointed.

That's why I'd like to agree with the subsequent comment Mr. Poilievre made that these very serious issues be treated with seriousness, and not as political batons. The not-so-subtle threat that Mr. Poilievre made about Public Accounts and going back to reports

that were dealt with in detail in Public Accounts—in fact, completed—does a disservice. I certainly hope he subscribes to the very sentiment he initially expressed when he started his interjection. These are serious issues. I believe the Canadian public would like us to treat them with seriousness, and I believe we should rise to the occasion and have the capacity to do so.

Thank you.

**The Chair:** Madam Freeman.

[Translation]

**Mrs. Carole Freeman:** Mr. Chair, something that my distinguished colleague opposite, Mr. Poilievre, said earlier might add to what Mr. Wrzesnewskyj said.

I think we being disrespectful toward the people who elected us when we say that the fundamental problem of financing... Elections are at the root of our democracy. People follow an established process. Elections are held and rules must be followed. Observers are dispatched to certain countries that do not follow the rules. Canadians travel abroad as observers to see if election rules are being followed. And now, we have Mr. Poilievre saying that no one is interested in this, because the editor of the Globe and Mail, or some other newspaper, apparently said that this story was of no interest to anyone.

It's truly insulting to the people who elected the MPs and who believe that they were elected to office through honourable means. That's the first thing I wanted to say.

My second remark concerns something else that Mr. Poilievre said. If we want to ask the people who initially refused to testify to come back and if we want to make a political issue out of it, then again, Mr. Poilievre's comments defy comprehension.

If witnesses appear before a parliamentary committee, if they lie and distort the truth, then what does that say about us as a Parliament? When people fail to appear when they are summoned, it's not a political issue, but rather a legal matter. The voters are entitled to hear the truth. At issue here is the institution of Parliament, and all such institutions around the world must establish and abide by rules of procedure.

Mr. Chair, I expect this committee to refrain from insulting with such impunity members of the voting public.

• (1715)

[English]

**The Chair:** In this place we should always feel free to express our views openly. I hope we all respect everybody else's right to express different views. This matter will become clearer. I doubt very much that this committee will ever make a bad decision when it comes to defending the integrity of Parliament if we have the right circumstances.

Particularly with regard to a couple of people involved in the Mulroney-Schreiber case, in the subsequent evidence it was pretty clear that someone said they had no knowledge and involvement, but there was correspondence between them and others on that subject matter during the period of time. You have to wonder, especially if the consequences of misleading the committee affected someone's terms of reference recommended to the Prime Minister. It also affected our report. It's too bad the committee didn't have the full light of day on those things. It meant we couldn't do the job as well as we should have or could have. It was because people decided that their interests were better than other people's interests.

It's an interesting discussion. Let's always keep in mind that we have to respect each other's differences of opinion. I think we should just leave it at that. We'll get some more information. We're going to be dealing with this down the road.

Members should reflect on where we're moving, and when we make a decision on taking up further work at the right time, our best arguments will be put forward. We will have a debate and a vote in this committee on what we'll do. That's how we operate our business. Hopefully we'll do it with due respect to all honourable members, taking into account that sometimes there are aspects of it that are very personal. Parliament is not a personal matter. Parliament is pretty solid in terms of what we are here to do.

I think we have a fairly clear picture for the next three or four meetings. Hopefully we'll be getting through Madam Freeman's motion on Wednesday, as well as the supplementary estimates. Then we'll have a brief in camera session with Mr. Walsh to give us some things to think about and put everything in context. He may want to go away to review certain things, and maybe even come back with more information for us, if that's the way it works out. We'll see.

Subsequent to that, we'll deal with the commissioners. We'll schedule them as we can. Hopefully, in the meantime, you will have received for your review all the documents and information you need, including a draft report on the privacy work we engaged in prior to that. Hopefully, we will be able to schedule the committee's consideration of a draft report and a report to the House.

Subsequent to that, at our agenda and procedure meeting we'll schedule another meeting to follow up on the matters we've discussed to see where we are and give our best assessment and advice for the whole committee as to where we proceed after that work is done.

There being no further business before us, we're adjourned.

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