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

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**EVIDENCE**

**Thursday, October 22, 2009**

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**Chair**

**Mr. Paul Szabo**



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

Thursday, October 22, 2009

•(0900)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** I call the meeting to order.

This is meeting number 32 of the Standing Committee on Access to Information, Privacy, and Ethics. Our order today is pursuant to Standing Order 32(5), report of the Privacy Commissioner on the application of the Personal Information Protection and Electronic Documents Act for the year 2008, referred to this committee on Tuesday, October 6, 2009.

This morning our scheduled witness was to be the Privacy Commissioner. Unfortunately, she has a cold and is not able to sustain any speaking. As a consequence, she has asked, and we certainly welcome, Elizabeth Denham, the Assistant Privacy Commissioner, who is very familiar with the annual report and is in a position to also deal with any of our questions.

I welcome you, Ms. Denham. Thank you for being here, for stepping in.

I understand you have some opening remarks. Please introduce your colleagues who are with you for the benefit of the members. Please proceed.

[Translation]

**Mrs. Elizabeth Denham (Assistant Privacy Commissioner , Office of the Privacy Commissioner of Canada):** Good morning Mr. Chairman and committee members.

[English]

Thank you for inviting our office to address you on the privacy implications of camera surveillance as used in commercial applications, such as Google Street View and Canpages, and on other issues related to surveillance and new technology.

I am joined today by Carman Baggaley, our senior strategic policy adviser, and Daniel Caron, legal counsel. Unfortunately, Commissioner Stoddart can't attend today. She has laryngitis. I think this is a first for her, not attending.

We very much appreciate the committee's interest in this issue. We also followed your hearing on June 17, 2009, at which representatives from Google and Canpages appeared. We welcome the opportunity to discuss this interesting development in technology.

The Personal Information Protection and Electronic Documents Act, PIPEDA, is a technology-neutral law that does not, in our view, thwart the innovation of new technologies. We've sought to ensure

that PIPEDA is a dynamic, modern, and effective tool for strengthening the privacy rights of Canadians. And we believe that PIPEDA can cope with the commercial collection and use of personal information through street-level imaging technology.

We're very much aware that the many services that use street-level imaging are very popular with the public. Our ongoing concerns about the commercial use of this technology really centre on ensuring that it protects the privacy of Canadians by meeting the requirements of PIPEDA, such as knowledge, consent, safeguards, and limited retention.

I would like now to briefly recap our office's involvement in the issue.

The Office of the Privacy Commissioner of Canada has been closely following, for a few years, the development and use of online street-level imaging technology by companies operating in Canada and elsewhere. As I indicated, such technology has potential privacy concerns, and we wanted to know more about it and how it would be deployed in Canada.

Street-level imaging applications use various means of photographing the streetscape. A camera is typically mounted on a vehicle that's driven down a street. The images are then shown on the Internet as part of the company's mapping application. Although the company's interest is to capture a streetscape so that users can take a 360-degree or virtual tour of a particular neighbourhood, the companies are also capturing images of identifiable individuals and tying those individuals to specific locations.

We began to monitor the issue in 2007, when we learned that Google was photographing the streets of certain Canadian cities, for the eventual launch of its Street View application in Canada, without the apparent knowledge or consent of the individuals who appeared in the images.

The commissioner wrote an open letter to Google outlining her concerns about the Street View application. She took that opportunity to point out that if companies like Google wished to use this technology for commercial services in Canada, there was private sector privacy law that would have to be adhered to, and stronger privacy protections would have to be put into place.

I would like to address a common misconception that some companies have about photographing people in public places. If an organization takes a photograph of an individual in a public place for a commercial purpose—for example, when a company, in the course of photographing a streetscape, captures an identifiable image of a person and that image is uploaded onto the Internet for a commercial reason—Canadian privacy law still applies. One of the key protections is that people should know when their image is being taken for commercial reasons and what the image will be used for. Their consent is also needed. And while there are exceptions under the law for the requirement for consent, they are limited and specific, and they concern journalistic, artistic, and literary pursuits.

Street View has now been launched in Canada—it went live on October 7—as well as in other countries. The Canpages service, called Street Scene, was launched earlier this year in certain cities in British Columbia. Canpages is seeking to expand its service to other Canadian cities and has recently provided notice that it is photographing streets in Montreal and Toronto.

● (0905)

Our office and our provincial counterparts with substantially similar commercial privacy laws, Alberta, B.C., and Quebec, have been in contact with both companies about their street-level imaging and mapping applications. Early this year those provincial privacy commissioners and our commissioner issued a fact sheet, which I believe you have a copy of, for industry and the public on what we think needs to be in place for these commercial services that use the technology to be in compliance with Canada's privacy laws.

This fact sheet, called “Captured on Camera”, details the privacy protections that are particularly pertinent in the case of street-level imaging. Among these are that citizens should know in advance that street-level images are being taken, when, and why, and how they can have their image removed if they don't want it to appear online. This could include visible marking on vehicles—and if you've seen the Google car you'll see that it's well identified—notification that the streets are being photographed through a variety of media, outlining dates and locations, the purpose of filming, and how people can contact them with questions.

We also think that faces and licence plates need to be blurred, so that the individual is made anonymous or is at least not identifiable. Companies need an effective and quick take-down process whereby an individual can have their image removed. Unblurred images retained for legitimate business purposes should be protected with appropriate security measures and the raw data should not be retained indefinitely.

We've seen changes to how the technology is used that are more respectful of privacy, and we played an important role in encouraging these changes, not only in Canada, but worldwide. Images of people and licence plates are blurred, but the process of doing so needs to continue to improve and evolve. Take-down processes have been established. The need for clear retention periods has also been addressed by Google.

Companies have solicited the views of umbrella community organizations about any possible sensitivity to filming in certain locations, such as shelters or clinics.

Notifying the public is an ongoing concern. We believe the nature of the information collected is not especially sensitive and that companies can rely on implied consent, provided they give reasonable notification to the public in the form of outreach. Individuals need to know in advance when the organization will be photographing their neighbourhood so they can adjust their plans accordingly.

As you know, the purpose of PIPEDA is to balance the individual's right to privacy with the organization's need to collect user-disclosed personal information. PIPEDA applies to a wide range of businesses, from banks and telecommunications companies to car dealerships and to the local neighbourhood store. It also applies to social networking sites.

The law is not prescriptive; rather, it requires that organizations adhere to a set of fair information practices or a set of principles. Each organization, given its business model and other regulatory requirements, has to find ways to adhere to the principles and achieve the balance between its own legitimate needs and the rights of individuals to their privacy. The Office of the Privacy Commissioner works with organizations to help meet their business objectives and their obligations under PIPEDA. I'd be very pleased this morning to talk to you about Facebook as a good example of that.

As I indicated earlier, PIPEDA is a technology-neutral and principle-based law, and so far it appears to be flexible enough to guide commercial uses of new technology. As you're likely aware, over the summer we released findings in two significant complaints originally filed in 2008, in which technology and new business models featured prominently. One, as I say, involved Facebook, and the other the use of deep packet inspection, or DPI, by a telecommunications company. Under PIPEDA, we were able to strike a reasonable balance that serves as a road map to help us face new privacy challenges on the horizon. These findings will have a positive impact on the privacy rights of Canadians and indeed on 300 million people worldwide who are users of Facebook, while at the same time acknowledging business interests.

● (0910)

What we have learned in the past 18 months through our work in street-level imaging, social networking sites, and deep packet inspection will help us significantly, and we believe these examples have served to raise the profile of privacy for business and average Canadians.

As we note in the PIPEDA annual report for 2008, new technology, for all its indisputable benefits, continues to pose privacy challenges. Indeed, our office is planning to explore over the next year the privacy implications of three significant technologies: behavioural advertising, cloud computing, and geospatial technology. We will be seeking the views of business, academics, advocates, and regular Canadians in order to better understand how PIPEDA applies to these technologies and business practices and their impact on privacy.

Since we were asked to appear, we tabled our 2008 PIPEDA annual report—and I understand that you all have copies. The main themes of the report are really a shout-out to youth, a reminder that Canadians need to take control of their personal information on the Internet. We think youth are particularly vulnerable, because they're big users of technology and may not realize the risks. Therefore, as our report indicates, we really focused this year on public education activities to reach out and talk to that demographic.

We've passed out some stickers for you that say "Think Before You Click". We distributed those during frosh week. We also have many other tools. We have a youth blog and videos produced by youth, so we have youth talking to youth. You can find all these tools on our website, youthprivacy.ca. The federal, provincial, and territorial commissioners passed a resolution in 2008 on youth privacy, advising what individuals and organizations need to do.

Lastly, the other main issue I would highlight in the annual report is the matter of data breaches and notification. As you know, this is a global issue. Governments, organizations, and data protection commissioners are really grappling with various models, including mandatory breach notification.

The report highlights a study we conducted on our current voluntary reporting regime. I'm happy to talk about it more, but what it confirmed is that we can't possibly be receiving reports from businesses about all significant privacy breaches in Canada; there's just no way, because the numbers are relatively low. It underscores also the ongoing need for training, because one-third of the breaches reported to us were not the result of hacking, of technology breaches, but really simple employee errors, such as dialing the wrong fax number.

• (0915)

[Translation]

In conclusion, I would like to thank the committee for inviting us today to discuss privacy, street-level imaging and other new technologies.

[English]

I'd like to thank the committee for inviting us today, and I welcome your questions.

**The Chair:** Thank you very much, Ms. Denham.

As the members will know, we have two items on our agenda: one is the annual report itself; and the other is an update on the camera surveillance issue. In the presentation, the comments of the Privacy Commissioner are combined into one.

I think what we'll do is simply proceed on a global basis and allow the members to go to either issue. That will probably be the best strategy for the committee.

We're going to start now with Madam Simson, please.

**Mrs. Michelle Simson (Scarborough Southwest, Lib.):** Thank you, Chair.

Thank you, Ms. Denham, for appearing before the committee.

The Office of the Privacy Commissioner is to be congratulated for this report. I found it very interesting.

I want to particularly address the matter of identity theft. We're seeing more and more reports of incidents that are quite devastating and have severe financial consequences for a great number of Canadians through no fault of their own. On page 8 of the report it says that last year there were 6,344 inquiries. Many were related to the misuse of SIN numbers and the loss or theft of personal information that led to potential identity theft.

I just want to get a sense, of the 6,344, are you able to comment on how many of those would be related to the loss or theft of personal information?

**Mrs. Elizabeth Denham:** You're talking about the number of inquiries we get. Those are telephone and written inquiries. I don't have the statistics in front of me, but I think it would be a handful of those calls.

A greater number of reports that involved theft or loss of personal information came in through voluntary reports that we would receive from companies. So there was a percentage of the self-reported breaches the cause of which was theft of personal information, often by employees or former employees, and mere loss of information, which means a laptop or a computer disc is lost that contains personal information and the company might not know what happened to it.

**Mrs. Michelle Simson:** Thank you.

Turning to page 29, I want to refer specifically to the use of drivers' licences, for instance. It indicates that the commissioner worked with a home decorating chain that was photocopying and keeping on hand drivers' licences in the course of their business, and the office was able to convince them to discontinue this and dispose of the information. It does go on to state that with a major video rental chain, however, she didn't have the same success and that there is going to be an investigation undertaken.

Could you comment on the status and/or what the commissioner is able to do in terms of whether that is considered a breach? Is she able to do anything that has teeth?

**Mrs. Elizabeth Denham:** In that particular case we had an earlier complaint. We had investigated the complaint, and the video store had agreed to cease collecting the driver's licences, because of course there is a risk of exposure of personal information in the hands of the video chain when that information is no longer needed. So they agreed to stop, and then they began collecting them again.

We initiated a commissioner-led investigation and it's almost completed. All we have the power to do is make recommendations that a company cease the practice. We have to turn to the Federal Court for enforcement. We haven't completed the investigation. It will be completed before the end of the calendar year.

**Mrs. Michelle Simson:** But that's obviously a cause for concern, a video chain or home decorating.

On a larger scale, my concern is that... And I learned, in the course of selling my mother's house two weeks ago, that all real estate transactions now require that identification be presented and copied, as required under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The acceptable forms of identification are all government identification: driver's licence, birth certificate, passport, or a health card are all acceptable.

So if there is a concern about a video chain, my question is about how we now have 100,000 people collecting this information and we have no idea how it's being stored. Personally, I was extremely uncomfortable. And I understand the money laundering issue very well, but you have real estate transactions that not only have the potential to scoop your identity, but also steal your home, because you've got the legal description of the land and you also have identification in a file—God knows where—and it's 100,000 people.

I did write to the commissioner just a few weeks ago on this. Do you have any comment on that and how we're going to manage that particular issue?

● (0920)

**Mrs. Elizabeth Denham:** The commissioner shares your concern, and a draft of that letter is on my desk right now, so you will be receiving it shortly.

The difference between the example you gave about the video store collecting a driver's licence, of course, and a real estate agent scanning or copying a driver's licence is that the latter is required by law. So as you stated, under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act there is a requirement to collect certain information.

**Mrs. Michelle Simson:** But now we have one law that I would argue actually puts Canadians at huge risk of identity theft and of having their property stolen from under them. So is there any discussion about how we can fix that?

**Mrs. Elizabeth Denham:** There is discussion about that. The commissioner has the powers to audit FINTRAC, which collects this data, every two years. We are just completing an audit of that. And in fact there is over-collection by some agencies that are copying drivers' licences when they don't actually need to copy all of the information on the driver's licence. So we are also working on guidance along that line.

But information required by law or mandated by law is a different scenario from the video chain collecting that information for their kinds of transactions.

**Mrs. Michelle Simson:** But the storage is still a huge issue—how a real estate agency chooses to store it-. Is there no mechanism to monitor how that information is being stored?

**Mrs. Elizabeth Denham:** All of the real estate firms are still required under PIPEDA, or the substantially similar provincial laws,

to safeguard that information. So there still is a legal requirement to safeguard the data.

I hear you, though. They need to understand that they are now collecting extensive information.

**Mrs. Michelle Simson:** Thank you.

**The Chair:** Thank you.

We'll have another round. You've had very good questions.

Madam Freeman.

[*Translation*]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Good morning, Mrs. Denham. Thank you for your presentation.

I would like some more details. On page 38 of your report, you talk about backlogs and how that works. You're hanging the way you operate because it used to be first-come, first-served. Now you're calculating your backlogs differently. You also requested additional resources to reduce those backlogs. Subsequently, I believe Lisa Campbell appeared before the committee and asked that this be used to settle the matter and to proceed with the hiring of 20 new investigators. I'd like to get a better idea of your new method for calculating backlogs.

Furthermore, how does that work with your 20 investigators? Where do they work? Are they here? Sometimes it's said that 20 investigators have been hired, but we realize that there are only perhaps 14. How does your staffing work exactly, in view of all the additional funding you've requested? I'd like more details on the use of those supplementary budgets that have been granted to you. How many investigators have been hired, why did you change the way you handle complaints, and what is the current status of the backlogs, please?

● (0925)

[*English*]

**Mrs. Elizabeth Denham:** I'll take your first question, which is about how we are changing the front end of the process and the triaging of new complaints.

We used to deal with complaints on a first-come, first-served basis. We felt that what we needed to do was put more resources into dealing with those cases that were most at risk. If Canadians were at risk by a certain practice or if somebody was suffering harm, we needed to deal with those cases first. There is a new triaging process and a complaint registrar who assigns the cases based on the resources needed and the urgency of the issue. So that's the first question. It seems to be working very well. It's only been in place for six months.

Your second question—

[*Translation*]

**Mrs. Carole Freeman:** Can you give me an example of what you consider an urgent complaint?

[English]

**Mrs. Elizabeth Denham:** If somebody was complaining about getting access to a certain record he or she needed for a custody dispute, if there was a medical issue at stake and information was needed from a physician, then we would deal with that first. So there was something urgently at issue.

Also, if you take a case where there's a systemic privacy risk to Canadians—Facebook is a good example—we would triage that complaint to be at the top of the pile and assign it.

[Translation]

**Mrs. Carole Freeman:** If I understand correctly, you have a code for establishing your priorities.

[English]

**Mrs. Elizabeth Denham:** We do. We have three levels of complaints. If a file is urgent, for the reasons I just outlined, then it would be given priority. It would be assigned right away. We also look at the level of the investigator. A senior investigator, an experienced investigator, would be given a case like Facebook, as opposed to a complaint about a disclosure of somebody's banking information, an allegation about a disclosure to an ex-spouse, or something like that. We have a lot of those kinds of cases.

Your second question was about the resources we've been assigned. In 2009, because of the new resources, we hired ten new PIPEDA investigators on the PIPEDA side of the office. We also put them through a six-week training program, which was a new initiative for our office. It's working very well. We've eliminated, under PIPEDA, 40% of the backlog in the last year, and we're on track for eliminating it by the end of the fiscal year, the end of March. So we're on track with that.

[Translation]

**Mrs. Carole Freeman:** You seem to have a lot of trouble retaining your staff. There seems to be an incredible turnover rate. You offer services to the public, but if you spend your time recruiting and training people, the service will be affected all the more as a result.

Have you determined why you were losing these people, why they went to agencies or elsewhere, and how it is you can't retain them? Do they have lower salaries? What are their working conditions?

Have you conducted an evaluation on that subject?

[English]

**Mrs. Elizabeth Denham:** I'm not the expert on the answer to these questions, but my understanding is yes, we have had high turnover for the last three years. The reasons for that... The workload is heavy. As well, there's natural churn of these kinds of professionals, who are doing access and privacy work among the various agencies. They're in high demand, so it's very difficult to keep them in our agency. We hope by sending them through our in-house, six-week training process they'll feel more confident and hit the ground running. We're doing what we can. We don't think it's a salary issue. We just think there are many opportunities, especially after so many federal agencies became subject to the Access to Information and Privacy Acts over the last two years.

● (0930)

[Translation]

**Mrs. Carole Freeman:** Let's talk about one of your recommendations, concerning the referral of complaints. When a person files a complaint, if I've correctly understood, you encourage that person to go to the department or the business. How does that work? What are the various steps?

[English]

**Mrs. Elizabeth Denham:** That's exactly right. Our new process is a robust refer-back. If somebody comes to our office, we ask them to go to the business or the department first so they have the first chance to resolve the issue before we initiate a full-on investigation.

**The Chair:** Thank you.

Mr. Siksay, please.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Chair.

Thank you, Ms. Denham, for being here today with your colleagues. We hope the commissioner is better soon.

I wanted to come to your remarks about Google Street View and Canpages Street Scene. I know Google went live with their service recently. Canpages has been up and running for a while and are planning to expand. Have there been any specific complaints to your office about those services? Are you investigating any complaints right now?

**Mrs. Elizabeth Denham:** Since Google Street View went live on October 7, we've had a handful of calls from Canadians expressing their concerns. We have received no official complaints, but again, our first response is to send the individual to Google. A lot of people want images of their houses or themselves or their pets or their yards removed from the Internet. That's really up to Google. We haven't received a complaint since it went live.

Earlier this spring, we received a complaint from an individual who felt his image was captured when he was walking down the street in London, Ontario, I believe. That complaint was resolved during the investigation by Google agreeing to permanently delete his image from the database, so it never went to a public report.

**Mr. Bill Siksay:** And you haven't had any feedback yet from members of the public who have tried to use the service whereby you can remove images?

**Mrs. Elizabeth Denham:** The take-down procedure.

**Mr. Bill Siksay:** Yes. Have you had any complaints about that not being effective?

**Mrs. Elizabeth Denham:** No. Somebody in our office tested it. She didn't like the image of her house because the picture of her house showed a baby carriage outside and her garage door was open and she didn't think it was very clean in her garage. That image was taken down within 24 hours.

**Mr. Bill Siksay:** So it appeared to be working from that test, at least.

I know that one of the issues was the security of the images—the unblurred images—and how long they were going to be held. I know you've negotiated with Google around that. I believe Canpages has also made accommodations around that. Google has agreed to store the unblurred images for only one year. Can you say a bit more about that negotiation and that agreement? I understand you want to review that after a period of a year as well.

**Mrs. Elizabeth Denham:** Thank you.

One of the most contentious issues that we had in our discussions with Google and Canpages is what happens to the raw imagery, the unblurred imagery that's stored in databases in the U.S. At first Google was very reluctant to set a retention period for how long they were going to keep that data. In August they agreed with us and they agreed with other data protection commissioners in Europe that indeed they needed to delete the unblurred imagery after one year. They gave us the business rationale as to why they needed to keep it for a year. We accepted that. We also have an undertaking from Google that we can visit their facilities and review how they are permanently deleting or permanently anonymizing the data after a year. That was one of our major concerns with the service.

**Mr. Bill Siksay:** Is the commissioner satisfied that the storage of these unblurred images is secure, even though it is outside Canada?

**Mrs. Elizabeth Denham:** We've been told that it's secure, but we're not investigating, so we haven't visited their facilities yet. The undertaking will happen after a one-year period, and they've invited us in.

**Mr. Bill Siksay:** In the statement this morning you noted that Google had consulted with umbrella community groups about concerns regarding the service. Do you believe that this consultation was extensive enough? I know it was only with umbrella groups, for instance. It didn't go down to local organizations that may have more connection with the concerns that people on the street might have.

• (0935)

**Mrs. Elizabeth Denham:** We asked Google to consult with community agencies. We weren't prescriptive, because again we weren't investigating. We said it's a good idea if you talk to these groups to see if there's sensitivity around photographing clinics, schools, shelters, and other types of agencies. Google then gave us a list, about a week ago, of the umbrella organizations they spoke to, and they told us they didn't get any concerns or any requests from the umbrella organizations.

Is it good enough? Is that an extensive enough consultation? It's a start. If we're investigating, we may want them to go further.

**Mr. Bill Siksay:** Thank you.

From my conversations with Canpages and Google, it seems to me that this is a technology that's used by other companies, not only organizations that are trying to provide the sort of street-scene imagery, but that it's a basic mapping technology now that's used rather extensively. We had the publicity about Google and Canpages, but other organizations that do mapping use it and collect these kinds of images. Has the commission looked at those other applications of this kind of technology and what happens with the images they collect?

**Mrs. Elizabeth Denham:** We have not. We are aware that there are many other services. There are many other smaller companies,

and they might actually be driving and capturing images on behalf of government agencies as well. We didn't look at that. We looked at Google Street View because I guess it was the biggest, and was the most public; Canpages because it was, again, a very similar service operating in Canada. We are aware that these other services are there, which is why we issued our fact sheet, "Captured on Camera", because I think it communicates what the commissioner's expectations are for these commercial entities.

**Mr. Bill Siksay:** Is there any ongoing work being done to understand the extent of the use of this technology and the implications of it for Canadians' privacy?

**Mrs. Elizabeth Denham:** There is, and in my opening remarks I referred to the round tables and the research that we'll be doing in 2010. The idea of doing this research is a lead-up to the next round of PIPEDA review, and one of those topics is on geospatial technology and our understanding of how widely the technology is used and how it's used. We have had two in-services, where experts have come in to talk to us from industry, from academia, from advocacy groups, on this topic.

**Mr. Bill Siksay:** Is geospatial technology the terminology for this mapping technology, or is it broader than that? Help me with understanding what geospatial technology really means.

**Mrs. Elizabeth Denham:** I wonder about that term, if I'm really saying spatial-spatial when I say geospatial technology? I'm not an expert, but it's my understanding that the terminology "geospatial" captures this kind of mapping technology. It's simply incredible, especially the resolution.

I invite my colleagues to perhaps add to that.

**Mr. Carman Baggaley (Senior Policy Advisor, Legal Services, Policy and Parliamentary Affairs Branch, Office of the Privacy Commissioner of Canada):** In addition to simply capturing the images, the other thing we're beginning to see is overlaying other information, whether it's demographic information about the average incomes of neighbourhoods, and images that are captured from space that are getting increasingly clear and have very high resolution. So it's not only images; it's combining different types of information so you can get pictures or a sense of a community that could be used for any number of purposes.

**Mr. Bill Siksay:** Thank you.

**The Chair:** Thank you.

Mr. Rickford.

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair, and thank you to the witnesses today.

I'm going to perhaps build and broaden the discussion on video surveillance, and to a certain extent Google Street View and others that my colleague has introduced.



I just want to say that I'm relieved, in reading your report about the issues you're dealing with, that we're catching up with the law on this. Our starting point goes from Deuteronomy 24:10 to a 1604 case—something to do with every man's house being his castle—to a 1974 Supreme Court of Canada decision in *Eccles*, where we dealt with the right to privacy in a house, but that was with respect to police officers entering a home.

We come up to more recent cases that deal with this issue in a much better way, for example, *Heckert v. 5470 Investments Ltd.*, which I'll refer to as *Heckert*, and *Milner v. Manufacturer's Life Insurance Company*. Are you familiar with those cases?

● (0940)

**Mrs. Elizabeth Denham:** I am not. I'll look to my legal counsel.

**Mr. Daniel Caron (Legal Counsel, Legal Services, Policy and Parliamentary Affairs Branch, Office of the Privacy Commissioner of Canada):** I'm not familiar with those cases either.

**Mr. Greg Rickford:** Just very briefly, these two cases deal in general terms with videotaping on private and quasi-private premises. In the case of *Milner*, the complaint the plaintiff had was that there was a vehicle outside their house taping the activities that were going on in and around the house for the purposes of understanding whether there was a bogus disability insurance claim. In *Heckert*, the plaintiff's complaint was that there was a camera at the end of her hallway in her apartment building that could obviously tape her entering and exiting her apartment.

In the case of *Milner*, it was found that there was a lawful interest with respect to the defendant insurance company's ability to be able to monitor the activities to establish a fraudulent claim. I think it's quite interesting in *obiter* that the judge, as he or she was then, mentioned that in the process of taping, the daughter of the plaintiff was seen semi-dressed, and had she advanced a claim, it would have been problematic for the defendant. It raises issues that my colleague talked about earlier about whether what they do with this information is secure.

In the *Heckert* decision, the most recent one, it was found that there was a reasonable right to privacy in entering and exiting one's home. Those activities were captured, and that judgment falls within violation of the law as it stood in 2008.

These are interesting because they deal with the fuzzy line between the private and public domain. In *Milner* it was found untenable that the private domain could be analogous to a public place—at least, this is what the critics were saying. It's obviously not what the judge felt. In both cases the factual matrix is clear. Video surveillance by a defendant with a legitimate interest in information that might be secured from it has to be balanced with the plaintiff's interest in what information is being recorded and how that's stored, and how the person performing the surveillance might be dealt with.

I'm not sure the Privacy Act provides a bright line here. This is relevant to our discussion today and certainly builds on my colleagues, because Google Street View and other groups like that don't have a nexus like these cases. There's no direct-connection test here with respect to their rights to privacy, whether it's a lady who's concerned about the tidiness of her garage or other activities, directly or unintended, by consequence of surveillance.

I have a couple of questions. Since counsel may not be familiar with the cases, I'll broaden my question. Has PIPEDA been affected by these and/or other court rulings in preparation for this kind of technology? If so, how will you be adapting in light of these kinds of cases from the common law, whether they flow directly from the decisions or as they may be raised as issues in *obiter*?

**Mrs. Elizabeth Denham:** Under PIPEDA we have had complaints in the insurance realm about covert video surveillance, surveillance without the knowledge or consent of the individual. The purpose of the surveillance is to really look at potentially bogus insurance claims.

One of the issues there was the capture of third parties in that covert video surveillance. If someone is out in their yard with their children, playing soccer, should it be acceptable to survey all of the children as well as the subject of the surveillance? We've looked at that.

And we've also issued some guidelines for the insurance field on covert video surveillance. We're suggesting that it be very limited and that it only be undertaken after other less privacy-invasive measures have been taken, such as sending someone off for an independent medical exam.

● (0945)

**Mr. Greg Rickford:** Just to interrupt you, my concern with respect to that is that when we get to things like Google Street View and other surveillance, if you will, or some kind of monitoring, there very quickly could be parties interested in that information, as well, for the purposes of beginning an investigation, for example. The ability to go online and monitor these kinds of activities or to have access to them poses serious problems.

I'd be happy to hear from Mr. Caron.

**Mr. Daniel Caron:** Certainly the issues you mentioned regarding videotaping and using a camera in an apartment are issues to the extent that these would happen in a province over which PIPEDA applies and they happen in the course of a commercial activity. These are issues that would fall under PIPEDA. And certainly as the assistant commissioner mentioned, we have issued guidance on the question of the use of video surveillance in commercial activities.

I'm not exactly sure what else to add, but the greater point is the fact that PIPEDA is a principle-based act that obviously covers questions of videotaping by private entities for commercial purposes.

I don't think I'm answering your question here.

**Mr. Greg Rickford:** That may not be dealing with some of the issues that we're raising here today.

Sorry, Mr. Chair. That was out of line.

**The Chair:** Well, the last comment. But we'll have another round, if you want to work people more.

**Mrs. Elizabeth Denham:** Just as a last comment, I agree that the jurisprudence is far from clear and is developing on these issues, so we'll be watching that.

But the other issue goes to your point about the nexus, because the capture of individuals is incidental to what the street-level imaging is after. As you say, it's not about capturing individuals. They'd rather photograph at five in the morning and capture as few individuals as possible. But as you say, once they capture the data, then there can be an interest in that data because it ties an individual to a location, arguably at a point in time.

**The Chair:** Thank you.

Madam Simson, please; you have five minutes.

**Mrs. Michelle Simson:** Thank you.

With respect to the report, there was the issue of youth privacy and the educational component that you started in 2008. My question is twofold. How much, in terms of financial resources, was dedicated to that? And do you have a sense of how successful you feel that campaign was in 2008?

**Mrs. Elizabeth Denham:** Youth privacy was one of our objectives. It was a priority in 2008.

As to how much we have spent on building the youth blog and the video contest and our outreach, I can certainly provide you with that information. But it really was limited, so it was well under \$100,000 for that campaign.

We also gave a grant under our contributions program to the Media Awareness Network, which is an organization that prepared curriculum materials for the schools on privacy issues for youth. But they were limited amounts of funding.

Was it successful? What's the reach? That's pretty hard to measure. I can tell you how many presentations we gave to how many students. I can tell you how many hits we have on our blog and our website. I can certainly provide you with all that information.

• (0950)

**Mrs. Michelle Simson:** With respect to the website, there are about 3,400 hits a month. In the scheme of things, that didn't seem like a lot. You're right, it's hard to measure success. But is there anything that you intend to change? I agree that some uses of Facebook could come back to haunt some young people in the future.

**Mrs. Elizabeth Denham:** We've talked about having a youth counsel. The youth don't want to hear from someone like me. They want to hear from young people who know how to communicate with them. We have talked about that. It's going to be our priority in the next few years. We think it is youth who are most vulnerable to the new technologies, and we know that their view of privacy is different from our generation's.

**Mrs. Michelle Simson:** Thank you.

**Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.):** Ms. Denham, Madam Simson mentioned her concerns about how real estate companies treat the identification information they have on Canadian citizens. PIPEDA covers how they should go about this, but it doesn't actually get into the necessary mechanisms. When you

think of real estate offices, you think of the agents and the receptionist. There is tremendous accessibility to that information.

Have you considered looking into this and making recommendations that there should be a formal method of securing this private information? It shouldn't just be in files in an office to which pretty much anyone has access. If someone with ill intent were to get hired as a clerk in one of these larger offices, the information such a person could garner and put out onto the street could be quite valuable. Have you considered putting together recommendations that would formalize what they should be doing and how they should go about preventing this information from falling into the wrong hands?

**Mrs. Elizabeth Denham:** We have a tool under development. The audience for the tool is small businesses. It's an information security check list, but it is not geared to real estate agents or brokers. Still, we have a tool in development that will be ready by the end of the year. There are also other guidance documents on our website that deal with ways of protecting personal information.

**Mr. Borys Wrzesnewskyj:** Over to Google Street View, we have been led to understand there is going to be a time lag with regard to when they put the information up. Are they also going to scramble that information? Say we know it's a one-month time lag. They have said they won't show schoolyards and facilities of that sort. Let's say that someone knows that children go along certain streets. Even if there's a time lag, there are patterns that could be followed. Will they be scrambling that information so that it's impossible to find patterns such as the time of day or the day of the week?

**Mrs. Elizabeth Denham:** There isn't a time lag as such. They take the photos and they blur the images of individuals before the images are posted on the Internet. So before it goes live, faces are blurred. Licence plates are blurred. Actually, I'm not sure what you mean by a time lag.

Google has not blurred schools. They've talked to umbrella organizations to ask if they wanted images removed. But if you go on Google Street View and you search for a local Ottawa school, I think you will see the building there. You may see children walking by that are captured at a moment in time. Their faces should be blurred, but the blurring is not 100% effective and we've found many instances in which individual's faces are not blurred. Moreover, there are false positives. The face of Colonel Sanders, of Kentucky Fried Chicken, is blurred out in signage and faces on billboards are blurred out. It is not a perfect technology.

• (0955)

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

**The Chair:** Ms. Davidson, please.

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** Thank you very much, Mr. Chair.

Thanks very much for coming this morning and presenting this to us. It's certainly been very interesting. I'm new on the committee, so it's all new information to me. I'm finding it quite intriguing. I think all of us value our privacy and most of us guard it very well, although there are some instances when that doesn't happen.

In your report you mention that PIPEDA came into full force in January 2004. That wasn't that long ago, but we still didn't have things like Facebook and Google Street View. A lot of the techniques that people are using now to collect information through the Internet weren't available or weren't widely known at that time. Do you think the legislation is still relevant and pertinent to the new changing technologies of today, or do you think we need updates to it?

**Mrs. Elizabeth Denham:** I think the fact that it's a technology-neutral law is very positive. I think the fact that it's principle-based and not prescriptive works, as well. If you can imagine changing a law or creating a law every time a new technology is developed, we'd never keep up with it.

I think the outcome with Facebook was very positive, because, as you say, it's a whole new business model and a new technology that didn't exist. The architects of the law couldn't have foreseen SocialMedia and Web 2.0; they couldn't have seen that. Yet I think our investigation of Facebook showed that the law was flexible, and it confirmed the commissioner's reach into the U.S. The data on Facebook is all stored in California, but one in three Canadians has personal information on Facebook. So Canadian law had a huge impact globally on a business model where individuals are posting their own personal information on the web when there's a commercial engine operating in the background. So it's a mixed personal and business use.

Our jurisdiction was accepted with a California-based company and global data flows. I think that demonstrates that our law is pretty good. Does it need to be adjusted? I think there are all kinds of problems. I think the street imaging technology is a good example where the law was built on the basis of a one-to-one consent regime, you and your bank. Now, if you take Goggle Street View, it's one-to-many. So you've got one company collecting information from many people. Does the implied consent regime work? I think it's problematic. But is there a better law out there right now? I don't see it. I think our law is working as well as any other data protection law at present.

**Mrs. Patricia Davidson:** Thank you.

In your presentation this morning, it says:

The purpose of PIPEDA is to balance the individual's right of privacy with an organization's need to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Who defines reasonable, and how do you define it?

**Mrs. Elizabeth Denham:** Most of the time the commissioner is a reasonable person.

**Voices:** Oh, oh!

**Mrs. Patricia Davidson:** Okay, so it's left to the discretion of the commissioner?

**Mrs. Elizabeth Denham:** The reasonable person, that's a legal concept. Reasonable safeguards.... The law is full of the word "reasonable". There has to be a reasonable balancing, and that's really what we were striving for in our negotiations on street-level imaging. Is it a perfect resolution? No. Is it a reasonable balancing between an innovative technology that is very popular and individual privacy rights? We tried to get there.

I don't think that conversation is over yet. If we had a complaint and we did a full-on investigation, the company might argue an exception for journalistic purposes, an exception to the consent requirement. I don't know where that would go. What we tried to do was find a reasonable balance. Our law is based in e-commerce. It's supposed to balance commercial interest with individual privacy, and that's what we strive for.

• (1000)

**Mrs. Patricia Davidson:** Further on in your presentation, and I'm just picking up on what Mr. Siksay had asked previously, you were talking about the implications of behavioural advertising, cloud computing, and geospatial technology on privacy. Could somebody please define those a little more broadly and less technically, please?

**A voice:** Reasonably.

**Mrs. Patricia Davidson:** Okay, reasonably.

**Mr. Carman Baggaley:** The easiest way, for example, to explain cloud computing is that the term "cloud" is really a metaphor for the Internet. Instead of information being stored on your own computer and you having to purchase the software to manage that information, you store information on a server and you don't even know where it is. The software is purchased or rented, in a sense, from the service provider. It's very popular, for example, with businesses. They don't have to invest in the software and they don't have to worry about securing the information. That raises privacy concerns, because the organization, the business in this case, no longer controls the information at its business site; it may be managed by a third party.

With respect to the reference to deep packet inspection, in the current communications environment, information is sent in what we call "packets". It doesn't matter whether it's a telephone conversation or music, it's sent in individual packets and your conversation gets mixed up in various packets and then reassembled at the end.

For example, an ISP, or for that matter a law enforcement agency, has the ability to look at those packets as they go through a certain point. There are many uses for that, which are perfectly legitimate, to ensure that no one is trying to hack into that information as it's flowing past that point. However, the concern is that potentially people can inspect this information. They can look at it to hunt for key words, for example, which they may then want to use for marketing purposes. That's where the privacy concerns come in.

The reason it's called deep packet inspection is because it goes down to that level where you get a sense of what people are communicating about, the key words they're using.

I hope that helps explain, at least to a degree, those two concepts.

**Mrs. Patricia Davidson:** Thank you.

**The Chair:** I think we're there.

All right, Monsieur Desnoyers, please.

[Translation]

**Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ):** Thank you very much, Mr. Chairman.

Welcome.

First, unless I'm mistaken, three provinces are not covered by your report: British Columbia, Alberta and Quebec. Is that correct?

[*English*]

**Mrs. Elizabeth Denham:** That's correct. There are substantially similar private sector laws in British Columbia, Alberta, and Quebec. Intraprovincially, our law, PIPEDA, doesn't apply. It applies in the rest of Canada, and it applies to data flows across provincial borders.

[*Translation*]

**Mr. Luc Desnoyers:** Consequently, the statistics we have concern only the other provinces.

This issue is indeed fascinating, and I agree with Ms. Davidson. We're talking about preserving confidentiality, information. We know that Canada exchanges a lot of information with the United States.

Are you consulted in those various exchanges, to determine whether there are confidentiality aspects? It's often said that the United States has more information on Canadian citizens than Canada does. Perhaps those are gratuitous statements, but it still intrigues me.

• (1005)

[*English*]

**Mrs. Elizabeth Denham:** I want to add one more thing to your question about the application of the laws. PIPEDA applies in the other seven provinces, but it all applies to federally regulated industries, such as banks and telecommunications and railways, no matter where they operate. I just want to clarify that.

I will ask my colleague to address the second part of your question.

[*Translation*]

**Mr. Daniel Caron:** The act imposes obligations on organizations to ensure, to the extent that the information is exchanged or sent to a country such as the United States, that individuals are informed of the fact that their information may be subject to the laws of another country.

**Mr. Luc Desnoyers:** So all Canadians concerning whom information has been transmitted by the Canadian government to the American government are informed.

**Mr. Daniel Caron:** We're talking about exchanges of information between private organizations. The act covers the exchange and use of information in the context of private sector organizations. We're not talking about exchanges involving the Canadian government. An organization that would like to enter a client's information in a server located in the United States would have an obligation to inform that client of the fact, under PIPEDA and a confidentiality policy, and to inform that person that his or her information could be subject to the laws of that country.

**Mr. Luc Desnoyers:** So you aren't consulted by the Canadian government concerning those exchanges of personal information.

Are the governments entitled to exchange information with each other?

**Mr. Daniel Caron:** I believe that agreements have to be established first. However, in the case of exchanges of information between governments, it's the Privacy Act that applies. That's a completely different act. The act we're discussing today applies to private organizations.

**Mr. Luc Desnoyers:** So strictly to businesses.

**Mr. Daniel Caron:** Yes, precisely.

**Mr. Luc Desnoyers:** All right.

In your report, you state that a complainant can go directly to an organization or business to obtain information. If people are unable to make that kind of request, do you help them take the necessary steps when they file a complaint with you? Do you tell them where to go, what they have to do and how they have to proceed, or do you let them do it by themselves?

[*English*]

**Mrs. Elizabeth Denham:** Our refer-back process is discretionary. Obviously if we felt that somebody were going to have a difficult time going back on their own, we would definitely help them. If it were an employee who has had a difficult relationship with their manager and wanted to file a complaint, we might not force them to go back to the organization in that circumstance. So we do have discretion in our refer-back policy. It's a very good point.

• (1010)

**The Chair:** Thank you.

Mr. Poilievre, please.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** Thank you.

On page 3 of your presentation you state:

I would like to address a common misconception that some companies have about photographing people in public places. If an organization takes a photograph of an individual in a public place for a commercial purpose—for example, when a company, in the course of photographing a streetscape captures an identifiable image of a person and the image is unloaded onto the Internet, for a commercial reason—Canadian privacy law still applies.

Would you agree that the most common exception to this rule would be the media, because of the specific exemptions written into the law?

**Mrs. Elizabeth Denham:** I absolutely agree with you. If the capture of the image is for a journalistic or artistic purpose, and no other purpose, then consent is not needed and the publishing of that photo can go ahead.

We haven't had that argument put before us by a company to look at whether or not cartography is an artistic purpose. On the surface, I would say it doesn't look that way to me, but we'll see what happens. If we get a complaint, we will look at that thoroughly.

**Mr. Pierre Poilievre:** In his June testimony, Jonathan Lister of Google testified that he felt "there's an argument to be made" that digital photography initiatives, the kind his company has pursued, have a certain artistic use rather than a commercial one. Do you accept that argument?

**Mrs. Elizabeth Denham:** I would like it to be put to me directly, and we would consider it, but the act says it's for journalistic and artistic purposes and no other purpose.

**Mr. Pierre Poilievre:** What harm would be caused by allowing companies like Canpages and Google to have the same exemptions as media and artistic initiatives have?

**Mrs. Elizabeth Denham:** I suppose it's because they could be using the data for other purposes.

**Mr. Pierre Poilievre:** What kinds of purposes would concern you?

**Mrs. Elizabeth Denham:** They could build, from this application, other applications. They could retain the data and use it for other purposes.

**Mr. Pierre Poilievre:** What kinds of purposes would be harmful?

**Mr. Carman Baggaley:** Let me take that.

One of the reasons that Google doesn't trouble us as much as other types of surveillance is that their surveillance is at a certain point in time. If you allow Google to use the argument that it's a journalistic exercise, then it's perhaps a small step for a company, instead of taking images at a point in time, to install cameras at some location and to catch people going past that point 24 hours day, 365 days a week. Then I think you can maybe see potential harm, because then you could discover that a particular person goes by that point every day at that time.

**Mr. Pierre Poilievre:** I'm just asking if you can give me some laws—

**Mr. Carman Baggaley:** Well, if you're looking at children—

**Mr. Pierre Poilievre:** —because laws and interdictions exist to prevent harm.

What harm would Canadians need to worry about in particular?

**Mr. Carman Baggaley:** A potential harm would be if the images that are being captured are of young children or certain other types of vulnerable people. There's the potential harm of humiliation if the images are continually capturing, in certain cities, some people who are intoxicated for whatever reason. The images would reflect badly on them or humiliate them and cause them various types of personal harm.

That's the type of potential you would have if you allow Google to use a journalistic exemption; it would open the door to other types of surveillance.

**Mr. Pierre Poilievre:** If I could just pick up on that point, could the same kinds of humiliation, as you've described, not exist with present journalistic exemptions? If someone is in the streets and is intoxicated, they could be photographed and put in a newspaper or on the evening news. So what's the difference?

I'm just looking for a clear reason why we would say... And believe me, I agree with the journalistic exemption and think it's necessary for freedom of speech. But I'm trying to get the exact distinction between why we would allow that, but not—

• (1015)

**Mr. Carman Baggaley:** Newspapers do have certain codes of standards. There are voluntary bodies to try to deal with those issues. Certainly in some cases there have been people who have successfully challenged that in the province of Quebec, where, admittedly, the law is different. But in the province of Quebec there have been cases where individuals have taken successful action with

respect to newspapers. I know that our office and commissioner are very interested in the fact that individuals in those kinds of situations do not necessarily have the recourse they should perhaps have to protect their privacy and dignity in situations where PIPEDA doesn't apply because there is no commercial activity.

**Mr. Pierre Poilievre:** You've raised the concern of someone who is perhaps intoxicated in the street and would therefore be susceptible to humiliation were their images to be captured and spread through digital cartography. Would such a person be visible to the naked eye on the street?

**Mr. Carman Baggaley:** Yes, but there is a significant difference between what I may observe walking down the street in that very momentary glimpse and what is permanently captured in an image that can be seen not by a handful of people, but by thousands of people, or in fact by millions or tens of millions of people when the image is put on the Internet.

In fact, that's one of the challenges posed by these types of technologies. We all observe things in passing and we probably forget about them, but when that image is collected, retained, and can be seen in perpetuity by tens of millions of people, suddenly the privacy balance shifts dramatically.

**Mr. Pierre Poilievre:** Can I just ask one very short question?

**The Chair:** I know that you can. The issue is whether you may.

**Mr. Pierre Poilievre:** May I?

**The Chair:** Please.

**Mr. Pierre Poilievre:** Thank you, Mr. Chair. Now I'm not sure if I can.

All right. So you believe that when someone is in a public place on the street, they are giving consent to be seen by other people in the same place, but they have not given consent to be seen all around the world. Is that what you're saying?

**Mr. Carman Baggaley:** I wouldn't quite put it in terms of consent. Perhaps something like "reasonable expectation" is a better way of putting it. If I walk down the street, I reasonably expect that other people will observe me. I may be wearing an ugly tie and some people might note that. Whether—

**Mr. Pierre Poilievre:** I think it's a very handsome tie you're wearing.

**Mr. Carman Baggaley:** Whether I want that image of me wearing an ugly tie to be captured on the Internet—and I can think of much more harmful examples—I think that's the difference. It's more reasonable expectation, I think, than consent.

**The Chair:** Mr. Siksay, please, for five minutes.

**Mr. Bill Siksay:** Thank you, Chair.

I want to come back to the question of Facebook and social networking. You've mentioned the report the commission undertook. Can you tell me about the genesis of that report on social network site privacy?

**Mrs. Elizabeth Denham:** I enjoy telling the Facebook story. In 2008 we received a complaint from CIPPIC, which is a legal clinic based at the University of Ottawa. It was a comprehensive complaint. I think there were 24 allegations about all aspects of the Facebook experience and it landed, thump, on our desks.

It took us about 14 months to complete the investigation. It was a very challenging investigation, because Facebook makes changes almost daily to its site, so trying to investigate.... We're used to investigating a static application or a static policy. Well, as you know, Facebook is a shape-shifter, as I call them, because they do shift their policies, their practices, and, during this investigation, even the look of their site.

We negotiated with them for, as I say, 14 months. There were four major outstanding issues that they did not agree to change. One of the two significant issues for us was the openness of their platform to third-party applications. Third parties offer games and quizzes, such as: "If you were a Muppet character, which Muppet character would you be?" That's a third party operating in one of 180 different countries around the world. They have access to your profile page and data flows, with very little control, and that includes the data of your friends on Facebook.

So there was the third-party application issue and the over-sharing of personal information that was a significant issue for us, as well as the long-term retention of accounts that individuals wanted to deactivate. In our privacy law, individuals have the right to be forgotten. If you want to pull your data off a social networking site, we believe that it should be deleted.

Those were the two major outstanding issues. At the end of the day, Facebook agreed with all of our recommendations and committed to retrofit their entire application platform globally. They're making these changes globally as a result of our report.

• (1020)

**Mr. Bill Siksay:** When you say they agreed to all of the recommendations, are you referring to all 71 recommendations of that report?

**Mrs. Elizabeth Denham:** I think there were 71 recommendations; I'm trying to remember. I think there were 24 allegations, but yes, we had numerous recommendations. At the end of the day, we resolved everything. We didn't have to go to court. Facebook has agreed to again let us back in at the end of the one-year period that it's going to take for them to rebuild their platform so that we can look under the hood and make sure it's fixed to our satisfaction.

**Mr. Bill Siksay:** So there is a significant international impact of the work that the commission has done here in Canada.

**Mrs. Elizabeth Denham:** That's right. We've heard from data protection commissioners in Europe that they're using our report as a road map to help them in their dialogue with other social networking sites. There's never been a case in which we heard from so many ordinary Canadians who picked up the phone or sent us an e-mail to say thanks for the good work of the commission.

What we had to do here is find a reasonable balance, knowing that it's a business model that operates for free on the Internet—because it really is based on serving advertising—between that and the reasonable expectation of privacy. So really, a lot of our recommendations were about knowledge, transparency, safeguards, and all of the issues we've been talking about today.

It worked, and other social networking sites.... I had a meeting with another major social networking site this week that again is

using the report and consultations with our office to make changes to their service.

**Mr. Bill Siksay:** The report talks about a comparative analysis of six sites, but most of the conversation has been about Facebook. What were the other sites involved? You mentioned one that you're negotiating with now, but have the others been as open to making these changes as Facebook has?

**Mrs. Elizabeth Denham:** Just as a clarification, the report on Facebook was as a result of a complaint, so it was a full-scale investigation. We also issued recently a comparative analysis of the six most popular sites with Canadians, and the report compares the privacy and security settings of those six sites. It was one of those services that came to see us, so far.

**Mr. Bill Siksay:** Out of that process, are there any areas for which you believe legislative changes are required, or have you been able to accomplish this within the existing legislation?

**Mrs. Elizabeth Denham:** I feel we've been able to accomplish it through our existing law, which is flexible and neutral.

**Mr. Bill Siksay:** And that's through PIPEDA, not necessarily the Privacy Act. So earlier, when you were saying that we have good legislation, you were referring to PIPEDA. I know the commissioner has said that there need to be changes to the Privacy Act and probably would have different comments about the Privacy Act, as distinct from PIPEDA. Am I right about that?

**Mrs. Elizabeth Denham:** You're absolutely right. She would have a different view on the Privacy Act. All of my comments were tied to PIPEDA.

**Mr. Bill Siksay:** Thank you.

**The Chair:** Mr. Poilievre, you may speak.

• (1025)

**Mr. Pierre Poilievre:** Thank you very much.

You mentioned that there had been one or two inquiries from Canadians since the launch of Street View imaging on line. How many inquiries did you have from regular Canadians?

**Mrs. Elizabeth Denham:** We've had fewer than a dozen inquiries.

**Mr. Pierre Poilievre:** And how many complaints have you had?

**Mrs. Elizabeth Denham:** We have had the one complaint I referred to, earlier this spring, which was resolved. It was a complaint about an individual who felt his image had been captured.

**Mr. Pierre Poilievre:** Right. I think you went through that.

**Mrs. Elizabeth Denham:** I went through that. But since the launch of Facebook, we've had inquiries about how to get—

**Mr. Pierre Poilievre:** Facebook?

**Mrs. Elizabeth Denham:** I'm sorry; Google Street View.

Since Google Street View went live on October 7, we've had calls from individuals who've asked how to get their image off Street View.

**Mr. Pierre Poilievre:** And have all those been resolved?

**Mrs. Elizabeth Denham:** We have sent them to the company, and none of them has come back to us as a full-scale complaint.

**Mr. Pierre Poilievre:** So since the launch, which just happened this month, there have been no complaints?

**Mrs. Elizabeth Denham:** That's correct.

**Mr. Pierre Poilievre:** What does that tell you?

**Mrs. Elizabeth Denham:** I don't really want to speculate. Nobody has complained to date. Canadians obviously enjoy the service. But I expect we will receive a complaint. I think there's a lot of dialogue out there, and we could receive a complaint from an advocacy group.

There are people who are concerned about it. I was speaking at a conference last week on street-level imaging and I certainly heard comments from privacy advocates.

**Mr. Pierre Poilievre:** Do you have an estimation of how many images are up on Street View right now?

**Mrs. Elizabeth Denham:** I don't.

**Mr. Pierre Poilievre:** How many cities are there?

**Mrs. Elizabeth Denham:** I think there are nine Canadian cities, and I think 14 countries.

**Mr. Pierre Poilievre:** Out of nine Canadian cities, we must be talking about—I'm just going to guess, but I imagine.... Let's put it this way. We're talking about millions of people represented by the cities that have been photographed. And it's been up now for—how long: three weeks, four weeks?

**Mrs. Elizabeth Denham:** It is since October 7.

**Mr. Pierre Poilievre:** So it is almost three weeks, and we've had no complaints. I think that's a very interesting fact.

Do you believe that the blurring policy of Google lives up to the standards of the commercial privacy laws in this country?

**Mrs. Elizabeth Denham:** No, I think they could do a better job in the blurring technology. We were told by Google that their blurring technology was 98% effective; that was before the images went live. But we've seen for ourselves that there are many instances in which individual faces are not blurred. Google is committed to continuing to improve the blurring, which is one of the reasons they want to retain the images for one year. They're working on improving their blurring technology.

**Mr. Pierre Poilievre:** Are you satisfied with that one-year timeframe?

**Mrs. Elizabeth Denham:** I am satisfied with the one-year timeframe. I think it's a reasonable retention period.

**Mr. Pierre Poilievre:** You mentioned earlier, Mr. Baggaley, that you believe someone who is on a street should have a reasonable expectation of being witnessed by other people who are also on that street, but that he might not have a reasonable expectation that he will be witnessed by people all around the world. Is that correct?

**Mr. Carman Baggaley:** Yes, that was the way I put it.

**Mr. Pierre Poilievre:** Okay. Do you believe that as this technology becomes more popular and well known, when it becomes a household tool that people use on a regular basis, reasonable expectations will change and people will start to realize that their photos could be taken and sent worldwide?

**Ms. Carmen Baggaley:** I think it's possible that our expectations of privacy will change, and I think they have changed. At the same time, however, I think we all have a certain comfort level.

Let's use this example. Yes, I expect to be observed, if I'm walking down the street. However, I would be troubled by, and I think most of the people here would be troubled by, someone following me wherever I went in the course of a 24-hour day. It's not simply a case of expecting to be observed; it's really the degree to which you're observed, and how that information is being used, and how you might expect it to be used.

Yes, expectations of privacy will change. In fact, that's one of the problems with using them as a kind of legal test: that expectations of privacy do change and are not necessarily the same for every person. I might be more troubled than someone else is. One of the difficulties with using that concept in the law is that everyone's expectation is not exactly the same.

• (1030)

**The Chair:** Thank you.

Madame Freeman.

[*Translation*]

**Mrs. Carole Freeman:** The Personal Information Protection and Electronic Documents Act, which we're discussing today, doesn't cover British Columbia, Alberta or Quebec. The provincial acts take precedence over the federal act in those provinces. Consequently, Quebec is not covered by this act.

We know that the problem is currently global in scope. We can't all work in isolation. How do you interact with those three independent jurisdictions, which are not subject to the federal act?

[*English*]

**Mrs. Elizabeth Denham:** It's a very good question, and my answer is yes indeed.

You'll see that all of the provinces signed on to our "captured on camera" fact sheet. So it was issued by our office, the Quebec commissioner, the B.C. commissioner, and the Alberta commissioner. We have a memorandum of understanding among all of us about our joint work.

We have conducted joint and parallel investigations, because the jurisdiction of various companies is shared. We have a very good working relationship with all of the commissioners. We have many examples of joint guidance and a very good working relationship. We even have a formal meeting with the commissioners every six weeks. We've issued joint statements, etc.

The point of all this work is precisely as you said. We want harmony as much as possible and consistency in our rulings. We want consistent guidance for businesses, so if they operate in four provinces they know what the fix to the problem will be and there won't be contradictory advice and rulings.

[*Translation*]

**Mrs. Carole Freeman:** I congratulate you on your harmony, your ability to speak with three independent jurisdictions that have separate acts. Your cooperation is very edifying.

I'd like to ask a question that was raised earlier. I would like some clarification. A number of servers are installed in the United States. The data is captured and retained in the United States. This was raised earlier, but it's not clear in my mind. There is some question of American security laws, such as the US Patriot Act.

What are the consequences with respect to all the data, the information that is stored? There are data bases and all kinds of things in which data that has flowed are stored. It's there. Once it's in the jurisdiction, people are very vigilant: does the data transmitted no longer belong to us. Does the US Patriot Act intervene at that point?

This was raised earlier, but I didn't get an answer that was clear for me. Could you clarify it further?

**Mr. Daniel Caron:** I'll try.

Yes, in certain circumstances, when the data, the personal information of Canadians, winds up, for example, on a server in the United States, the government may have access to that information through the US Patriot Act, for example.

Canadian organizations that make these kinds of information transfers to American servers still have an obligation under the act to ensure the protection of that information and to inform the individuals concerned. The organization therefore has a responsibility or obligation to inform the individuals that, if they consent to the collection of their personal information, that information may wind up in the United States. It therefore has a duty to tell individuals that they must be informed of that fact so that they can make an informed decision.

• (1035)

**Mrs. Carole Freeman:** Let's go back to Google Street View: everything was kept in the United States. In view of that fact, there's an enormous amount of private information that can be stored. No one has given any informed consent for it to be transmitted to the United States and for it to be the American act—the US Patriot Act, among others—that applies. There hasn't been any consent, and Big Brother is there.

**Mr. Daniel Caron:** The same situation is also arising with Facebook: there's a lot of personal information.

**Mrs. Carole Freeman:** I could cite a litany of all the—

**Mr. Daniel Caron:** Exactly.

**Mrs. Carole Freeman:** I'm talking about the problem, not the scope.

**Mr. Daniel Caron:** Ultimately, the organizations that use personal information in the United States are subject to the Canadian act. There are still principles that apply—

**Mrs. Carole Freeman:** There are principles, but that's not the practice.

**Mr. Daniel Caron:** The organizations have an obligation to ensure—

**Mrs. Carole Freeman:** Yes, but Facebook and all that are in the United States. So they hold the information.

**Mr. Daniel Caron:** I don't know what to add.

**Mrs. Carole Freeman:** US authorities therefore have access to all our personal information since they are not governed by our acts.

**Mr. Daniel Caron:** I think it's possible that the American government may have access to that information in certain circumstances.

**Mrs. Carole Freeman:** That's just a possibility.

**Mr. Daniel Caron:** That depends on the circumstances.

**Mrs. Carole Freeman:** That answers my question, but the fact that all this information is stored in the United States and that the federal act and our provincial acts have absolutely no power over the data sent to the United States is an extremely serious problem. They hold the entire data base because you have no power.

[English]

**Mrs. Elizabeth Denham:** We do have jurisdiction. Whether we can enforce Canadian law at the end of the day is a different question. We haven't gone there because Facebook complied with our recommendations.

This is a global problem that everybody is working with. So on your comment about working together with other data protection commissioners, there's a global dialogue going on right now, because the reality is that personal data is stored all over the world.

[Translation]

**The Chair:** You have time to ask a final question.

**Mrs. Carole Freeman:** Since you cooperate with the Canadian provinces, which are not part of your area of jurisdiction, and you cooperate with other countries, have you begun an open and specific dialogue with the United States on this matter? I'm speaking specifically about the United States?

[English]

**Mrs. Elizabeth Denham:** We have an ongoing dialogue with the Federal Trade Commission in the U.S. Under the PIPEDA review we've asked for an extension of our ability to share information with other data protection authorities to deal with the problem you've identified here. So we need to be able to share information and work together with other regulatory authorities that deal with data protection matters. It's a very good point.

We've asked for that power. We don't have it yet.

[Translation]

**Mrs. Carole Freeman:** You don't have it, but you're just talking.

[English]

**Mrs. Elizabeth Denham:** That's correct.

• (1040)

**The Chair:** Thank you.

Mrs. Denham, Mr. Caron, and Mr. Baggaley, the discussion has been very useful. I'm sure that the members would like to be kept apprised of developments.



Mrs. Denham, you described how PIPEDA is not a prescriptive piece of legislation; it has principles more than anything. You talked about the spirit in the guidelines and reasonable interpretation that allow us to address these things on an ongoing basis. We have to continue to assess whether there are changes that can be stretched that far. It becomes a problem when you start talking about spatial issues and the technology of accessing information, interfering with it, modifying it, or stealing it in a mode that we can probably only dream about right now.

I want to thank all of you for coming. We certainly appreciate your thoughtful answers to the members' questions. We look forward to seeing you, your colleagues, and the commissioner in the very near future about the government response to the quick-fix issues on the Privacy Act. I understand that November 5 is our scheduled date, and an invitation has been sent to the commissioner. We look forward to having that discussion with you at that time.

Thank you kindly. You're excused. We have another matter of business to deal with.

At the last meeting a matter was raised about a motion that did not have the prescribed 48 hours of notice. That timeframe has now been satisfied. That motion has been circulated to you

The member has the right to present the motion to the committee, so I'm going to—

**Mr. Pierre Poilievre:** Mr. Chair, I have a point of order.

**The Chair:** Mr. Poilievre, on a point of order.

**Mr. Pierre Poilievre:** My point of order relates to Standing Order 108(3)(h)(vi). This motion is clearly out of order, as it falls outside the mandate of the committee, as stated in the earlier-mentioned standing order, where the committee is mandated to look into the “proposing, promoting, monitoring and assessing” of information and privacy “across all sectors of Canadian society and to ethical standards relating to public officer holders”. Based on your own rulings on this standing order, Chair, you must rule that this motion is out of order, as it exceeds the scope of the committee as set up by the House of Commons.

In regard to public office holders, the definitions that you used in the previous discussions on Elections Canada in this committee clearly ruled out investigation of those who are not public office holders. As members know, public office holders are cabinet ministers, secretaries of state, parliamentary secretaries, as well as Governor-in-Council appointees. So this particular motion does not pertain to public office holders.

Some others might make arguments about whether or not there's overlap between members of Parliament and public office holders, but what we have here in this motion is public funds by “Conservative members of Parliament”. There's a difference between members of Parliament and public office holders. So, as written, this motion is out of order and it is outside of the competence of the committee that we are charged with running. I ask you to consider that point of order.

• (1045)

**The Chair:** Okay. Do you have any comments on the point of order?

Mr. Wrzesnewskyj.

**Mr. Borys Wrzesnewskyj:** I'd like to thank our colleague Mr. Poilievre for bringing this up. I'd like to make a friendly amendment to—

**The Chair:** Sorry, you're out of order. You can't make a motion on a point of order. We're now on a point of order.

**Mr. Borys Wrzesnewskyj:** Okay.

**The Chair:** Okay.

On the point, the member is quite right in terms of the applicability of our mandate. I have ruled on this many times in the past, and we can only deal with public office holders as defined.

Some members of Parliament are public office holders, but not all members of Parliament. The reverse, though, is public office holders who are elected—ministers and ministers of state, parliamentary secretaries—are all members of Parliament. Because the last part refers to meeting the ethical standards from public office holders, that standard can't be applied to members of Parliament who are not public office holders.

Technically, I think it's workable, but it would have been maybe desirable to include, after the words “members of Parliament”, the phrase, “who are public office holders”. That would have resolved it.

I'm going to allow the discussion to carry on, since a simple clarification would be possible, but there is no question that should this matter proceed it would only relate to the incidents that involved ministers, ministers of state, or parliamentary secretaries. All other members of Parliament would not be party to any of the discussions.

On the point of order, I'm not going to sustain the fact that the motion is out of order or outside our mandate, pending resolution of the point that the member has raised, which can be simply resolved.

The member has put this motion before us. Do I have to read it into the record, or should we just assume everybody has it? Okay.

Madam Freeman, are you prepared to move your motion this morning?

• (1050)

[Translation]

**Mrs. Carole Freeman:** Yes.

[English]

**The Chair:** All right. I invite you to make appropriate comments to introduce your motion.

[Translation]

**Mrs. Carole Freeman:** Thank you, Mr. Chairman.

I think it's extremely important that we parliamentarians are now looking at the ethical problem currently raised in the public sphere.

The ethical question is being addressed everywhere, whether it be here, in Parliament, or elsewhere. We're talking about how politicians behave. We're currently witnessing absolutely unacceptable behaviour which parliamentarians must examine. I'm talking about the partisan use of public funds by Conservative members of Parliament. They sign, in their own name or in that of the Prime Minister, a number of cheques, sometimes bearing the Conservative Party logo, when public funds being used involved. Taxpayers, people and citizens are therefore being misled. There's a kind of confusion.

Twelve ministers are involved. We're talking about 223 cheques representing \$594 million, which were publicly represented as cheques from a party, often signed by a minister or the Prime Minister, whereas these were government subsidies. They came from taxpayers, from the public Treasury, not from a political party. I think rules of ethics must be examined by this committee so that we can see how people should behave in these kinds of situations and further evaluate the kinds of practices of parliamentarians.

That's the question I want to raise this morning.

**The Chair:** Thank you, madam.

[English]

Mr. Wrzesnewskyj, and then Mr. Siksay.

Just for my clarification, Madame, you refer to "partisan use of public funds" in the motion. Can you clarify for me, and maybe for the other members, what funds?

[Translation]

**Mrs. Carole Freeman:** If you write a cheque, in law—

[English]

**The Chair:** The picture of a cheque.

**Mrs. Carole Freeman:** Yes.

[Translation]

There is an act and it's called the Bills of Exchange Act. It's a federal act that concerns the use of cheques. So when you write a cheque and you state the name of the addressee—

[English]

**The Chair:** If I may, you're talking about, for instance, a big sign that looks like a cheque—

[Translation]

**Mrs. Carole Freeman:** Yes.

[English]

**The Chair:** —and it has \$3 million on it.

**Mrs. Carole Freeman:** Yes.

**The Chair:** And those are the funds that you are suggesting—

[Translation]

**Mrs. Carole Freeman:** No, these cheques are governed by the Bills of Exchange Act.

[English]

**The Chair:** But the funds you're referring to are the \$3 million—

[Translation]

**Mrs. Carole Freeman:** If you write a cheque, and you enter an amount of \$3 million and you sign your name, Paul Szabo, under the Bills of Exchange Act, you have written the cheque. It's as though you, Paul Szabo, were giving out \$3 million for infrastructure; it's as though you were being really very generous. That's what that means. That means that public funds are being used in a partisan manner.

If you enter the amount and your name, it's as though you had paid it out of your pocket.

• (1055)

[English]

**The Chair:** Now listen carefully. I need to know this. Listen. I'm familiar with the cheques, the signs that look like cheques. And they have numbers on them: some are for \$100,000; some are for \$1 million. Those are the funds you are referring to here. Is that correct?

[Translation]

**Mrs. Carole Freeman:** In other words—

[English]

**The Chair:** No, Madame, answer the question. If there's one example that shows a cheque payable to this municipality, and it says \$4 million.... When you say the "partisan use of public funds", you're referring to the \$4 million. *C'est correct?*

[Translation]

**Mrs. Carole Freeman:** That's correct.

[English]

**The Chair:** Is that everyone's understanding?

[Translation]

**Mrs. Carole Freeman:** That's fine.

[English]

**The Chair:** Thank you.

Mr. Wrzesnewskyj.

**Mr. Borys Wrzesnewskyj:** With a \$4-billion infrastructure fund, where time was of the essence in getting that money out the door, the expectation could be that mistakes would be made and subsequently the public accounts committee would look at it. But what we see here is something that appears to show a clear pattern of abuse. This money does not belong to the Conservative Party of Canada. This money does not belong to Conservative members of Parliament, public office holders, or MPs. This money belongs to the taxpayers of Canada. Canada is not a third-world dictatorship, where the country's national flag and emblem is replaced with a party emblem.

When the commissioner appeared on Tuesday before our committee, she made it clear that although ethics is part of her title, it's not part of her mandate. She stated to us that while "ethics" appears in her title, it does not appear in either the act or the code, so it's quite unclear as to the extent to which her mandate extends into ethical issues that are not expressly referred to in either the code or the act. She concluded by saying that in fact one would wonder whether it extends there at all.

So we have three options in respect of how to investigate what appears to be a pattern of abuse of taxpayer dollars. First option: the Ethics Commissioner will be looking at this, but she has sent a clear signal that it's outside her mandate. Our second option is PCO. If we go back to this spring's testimony of the Information Commissioner, we can see some of the problems we have with the PCO—the access to information requests of MPs and journalists being red-flagged, requests sent by departments to the PCO, requests being blocked by the PCO. It is evident that we have a serious problem with access to information, and the PCO is actively engaged in this. So if PCO were to investigate ethical concerns of this sort, there would be real and serious questions surrounding how they would go about it.

So we're left with one option to look into this issue—the elected representatives of the people. Timeliness is important. I believe that Canadians expect us to come clean on this, that this should not be an investigation behind closed doors. This isn't complicated. It's quite evident what's gone on. We should investigate the public office holders, have them appear before this committee to explain themselves. We need to know how this occurred.

The commissioner will have her report. When it lands, she'll most likely state that it's outside her mandate. We can use that for recommendations, so that in the future it does fall within her mandate as an ethics commissioner.

We'll be supporting Madame Freeman's motion.

**The Chair:** Thank you.

Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Chair.

This issue is one that I and my NDP colleagues take very seriously. I think it was a New Democrat who first raised the issue last week about the way some public office holders, some members of the governing party, were using these public announcements of government spending and attributing them to the Conservative Party or to themselves personally. It is a very serious issue.

I don't think anybody would deny the government the ability to promote the work that it's doing and the spending that it is putting into communities, but I think a line is crossed when that's directly attributed to a political party or to an individual public office holder or MP. That's not to deny that those folks don't have a role in advocating for government spending in their constituencies and have often played a role in ensuring that some of that money flows that way. That's all entirely appropriate, but to attribute it directly to the efforts of that individual or that political party specifically right down to the dollars and cents has crossed a very serious line.

I'm pleased that my colleague Peter Stoffer raised this last week with regard to some of these incidents that happened in his home province of Nova Scotia and that he raised it with the Ethics Commissioner. It is one of the complaints she has received and one of the reasons she is beginning her investigation.

I think there are some issues that need to be clarified in the motion, however. You pointed out the one issue, and the parliamentary secretary did as well. We need to be clear that we're dealing with public office holders. I think that phrase you mentioned should be included in the resolution after the phrase “Conservative

members of Parliament”. I think we should add “who are public office holders” to that, to be absolutely clear.

You also highlighted the phrase “partisan use of public funds”. I think that's an interesting one, because it is confusing. For me, it's the issue of partisan attribution of public funds. I would be much happier if the word “use” were replaced by “attribution”, although there may be issues with the use of public funds to prepare these partisan mock cheques. I have heard allegations that some of those props were actually produced through parliamentary resources. It may be that we need to say “use and attribution” in that phrase.

Chair, I also want to speak to another issue, and that's the issue of confidence in the ability of the Conflict of Interest and Ethics Commissioner to undertake this investigation. I'm concerned that for us to undertake this investigation or study immediately would reflect on our confidence in her ability to undertake the investigation that she's already told us she is engaging in. I am concerned that we not show any lack of confidence in her. There may be concerns about her mandate. There may be concerns about the extent of the legislation under which she has to operate and her ability to operate under that. But I do believe we should allow her to do her job before we undertake that and see what she comes up with. We'll see if she is able to come to a helpful conclusion to that investigation and see that there is a remedy she has available to her, given the complaints she's received. I know she has raised the point that she doesn't have a broad ethical mandate, but she does have some specific powers, and she has accepted the complaints she's received and announced that she's doing an investigation. It seems to me she does believe there is some area for her to be interested in in this situation already.

With all of those things in mind, I'm going to propose an amendment. I'd like to propose that in the phrase where it says “partisan use” that it be amended to add “and attribution of public funds”, so it would read “the study on partisan use and attribution of public funds”.

After “Conservative members of Parliament”, I'd like to suggest that we add “who are public office holders” at that point, so it would read “Conservative members of Parliament who are public office holders”.

• (1100)

I'd like to add at the end of the resolution the following:

In recognition of the investigation currently under way by the Conflict of Interest and Ethics Commissioner, that this study not commence until such time as the commissioner has reported her findings.

**The Chair:** The member has listed a variety of amendments. In the interest of the committee, rather than deal with each element separately, I will read the amendments as a comprehensive amendment, all as one motion to amend.

With regard to the amendment, is there debate?

I have Ms. Davidson.

• (1105)

**Mrs. Patricia Davidson:** No, I don't have a question on the amendment.

**The Chair:** We have an amendment that means we're going to have two votes, but that does not restrict your input solely to the amendment, because the amendment has to be dealt with in the context of the fuller motion. We normally would not restrict your comments as long as they're at least on the global subject matter.

Would you like to say some words now?

**Mrs. Patricia Davidson:** Yes, Mr. Chair. I was going to propose an amendment as well, so I will wait until we have dealt with the amendment.

**The Chair:** It would be a subamendment.

**Mrs. Patricia Davidson:** I realize that, so I will wait until we have had a discussion on this amendment.

**The Chair:** Okay. Mr. Allison.

**Mr. Dean Allison (Niagara West—Glanbrook, CPC):** Since there are amendments on the table, I'm going to save my comments for later.

**The Chair:** Mr. Rickford.

**Mr. Greg Rickford:** Mr. Chair, I'll speak to the amendments if that is what I must do.

With respect, Chair, I caution this committee that this motion is vague and imprecise on a lot of levels. By the very fact that we're talking about a number of amendments, I think the committee deserves the opportunity to look with more clarity at what a motion would look like. It's not going to be amended; it's going to be transformed, in effect.

There are a number of serious implications about the language of this motion that the particular member who's tabled it may not be concerned about, but I share the concerns of the NDP member. There are a lot of good reasons why we should invest confidence in the commissioner to work through this process within the scope of her duties and respect that position. Then we can, as a committee and as many have done before, build on the recommendations she might have flowing from her decision. That seems to me to be a better way to conduct our investigation in the broader context of all members of Parliament, instead of turning this into the circus it could become when the language in this motion as it stands unfairly impugns a specific party. There are a lot of issues that are "ethical" that may be opened as a result of this. Its loose language is unacceptable from my perspective.

**The Chair:** Thank you for your thoughtful input.

Mr. Wrzesnewskyj.

**Mr. Borys Wrzesnewskyj:** I do not have difficulty with the first two parts of the amendment; however, with the third part I do.

There is no inference in the committee dealing with the issue at hand expeditiously that we don't have confidence in the commissioner herself. Absolutely we do have confidence in the commissioner; that's why we have her appear before us to testify. In her testimony she made it clear that it's not an issue of the commissioner, it's an issue of the act. The act does not even include the word "ethics", although her title does. She made it quite clear, and I've already read it into the record, that she wonders whether her abilities extend at all to be able to deal with the issue. She's obviously going to look at it.

Having the commissioner say that she doesn't have the confidence that the act allows her to look into this puts the onus on us. We can't slough it off, especially after the commissioner has stated quite clearly that she doesn't believe the act's mandate allows her to act on this.

I'd just like to make it clear that we have absolute confidence, but at the same time we have an absolute responsibility to the taxpayers of Canada to look into this matter and to do it in an expeditious fashion. I liked the first two parts because I think they provided greater clarity to the motion. Unfortunately, I would not be able to agree to the third component of the amendment.

• (1110)

**The Chair:** Madam Freeman.

**Mr. Pierre Poilievre:** On a point of order, which list are we reading from? It appears that we're reading from the speakers list for the motion itself and not the amendment. I know that right after the amendment was provided, my name would have been the first on that list.

**The Chair:** You're next.

Madam Freeman, please.

[*Translation*]

**Mrs. Carole Freeman:** When Ms. Dawson appeared, I asked her questions specifically on her role as Conflict of Interest and Ethics Commissioner. My questions were well prepared. I wanted her to tell us specifically what her role was, in view of the fact that she has to administer the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons.

However, the word "ethics" appears nowhere in the act or code that form the basis of her mandate. She herself said so. When she was asked what her mandate was with regard to ethics, the answer was vague. It is possible to consult the notes on that subject. She clearly said that the notion of ethics is very vague, very subjective. She clearly has no act on which she can rely as such. Of course, complaints can be filed in various places, but you have to know whether the people you speak to are empowered to respond to them as part of their mandate. She has no ethical mandate as such under the act.

It is also urgent that parliamentarians examine the question. By that I don't mean that I don't trust what the Commissioner might do or say. We can hear her recommendations, but that doesn't prevent the fact that, in the context of this committee, we as parliamentarians take precedence over the rest. I think we can conduct a more in-depth study and determine the exact situation with regard to what certain members are doing. I don't think we have to wait.

I'd like to introduce a subamendment. The idea is that, first, we take into account the wording of the first amendments that have been made. The subamendment would mean that we delete the second part proposed by Mr. Siksay and vote on that subamendment.

[*English*]

**The Chair:** Thank you.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I think that Mr. Siksaya raises a lot of good arguments in his presentation. It's already on the record that I don't believe that this is a motion that falls within the mandate of this committee, but I respect the fact that the chair has ruled to allow the debate to proceed even though I think he had some sympathy with my observation.

All of that being said, if the purpose of this motion is to ensure that public funds are not used for partisan purposes, I think that we can be consistent by ensuring that the resources of this committee are not used for strictly partisan purposes.

I would like to propose a subamendment that would remove the word "Conservative" and add "public office holders past and present". So after the words "public office holders" you'd have "past and present". The purpose would be that we would study the actions of all public office holders, not just those today.

Now, that doesn't exclude the possibility that Conservatives could be invited.

• (1115)

[Translation]

**Mrs. Carole Freeman:** I have a point of order, Mr. Chairman.

[English]

**The Chair:** No, I want to hear the subamendment in its totality.

[Translation]

**Mrs. Carole Freeman:** There's already a subamendment.

[English]

**Mr. Pierre Poilievre:** The subamendment would remove any reference to the words "Conservative" or "Conservative Party" where you see the word "logo" and it would be replaced by "of a political party".

I'm not proposing that we would remove a discussion about party logos on cheques. I think that's a discussion that clearly Ms. Freeman wants to have, and I'm not proposing that we would remove that. I'm just saying let's make it about all party logos on all cheques.

The second part of the amendment would be to remove the word "Conservative" where it appears as an adjective after "funds by". Then, where you see "members of Parliament", you would put "public office holders, past and present".

I know that the Liberal members of the committee have already indicated they're not supporting the subamendment. I expect further that they will not want to have any scrutiny of the behaviour that occurred under a past Liberal government, so I suspect that they will be ferociously opposed to the idea of having a fair and balanced motion that's non-partisan. But for other members of the committee who are interested in having an open discussion about what public office holders have done and continue to do, this amendment allows the discussion to go forward and at the same time opens the door to ensure that it is fair and balanced.

That's my subamendment.

**The Chair:** The subamendment, as I understand what you've just said to me, is that we drop the word "Conservative" after the words "funds by" and we incorporate after "members of Parliament"—

**Mr. Pierre Poilievre:** No, sorry: "members of Parliament" would be replaced by "public office holders, past and present".

**The Chair:** You want to delete "members of Parliament"—

**Mr. Pierre Poilievre:** Right, because we agree that members of Parliament are not public office holders.

**The Chair:** —as opposed to adding the phrase "who are public office holders". Okay. So we're going to drop the word "Conservative", and the words "members of Parliament" are going to be replaced by "public office holders, past and present".

**Mr. Pierre Poilievre:** Yes.

**The Chair:** And that is the subamendment.

**Mr. Pierre Poilievre:** Yes.

**The Chair:** Just so that the members will understand, the motion that was moved by Madam—

**Mr. Pierre Poilievre:** Chair, you missed one part of my subamendment. That is, that you remove the words "Conservative Party" from "logo of the Conservative Party" and just put "any party". That does not exclude the discussion.

**The Chair:** Just a moment.

**Mr. Pierre Poilievre:** Okay.

[Translation]

**Mrs. Carole Freeman:** Mr. Chairman, I have a point of order.

[English]

**The Chair:** I will get to it; there's no hurry here. I want to make sure we have the correct wording. It's important.

The changes I will consider to be one compound motion for the three items. Where we are right now is that the subamendment now takes precedence over all other things. So we deal with the subamendment in relation to the original motion. It has nothing to do with Mr. Siksaya's; that has not been dealt with yet. We're dealing with the original motion, changed only by these three elements that are included in the subamendment.

• (1120)

[Translation]

**Mrs. Carole Freeman:** Mr. Chairman, I have a point of order.

[English]

**The Chair:** Madam Freeman, what is your point of order?

[Translation]

**Mrs. Carole Freeman:** Thank you for listening to me. I would like the clerk to enlighten us on one point. Can we proceed with a second subamendment if a first subamendment has already been introduced? I would like to get that information before continuing.

[English]

**The Chair:** No.

[Translation]

**Mrs. Carole Freeman:** We can't get the information.

[English]

**The Chair:** You can have an amendment and a subamendment; you cannot have a second subamendment.

[Translation]

**Mrs. Carole Freeman:** I've already introduced a subamendment. That's been the subject of my point of order since earlier. I've been making a point of order on this subject for five minutes.

[English]

**The Chair:** I understand that, but you made no motion.

[Translation]

**Mrs. Carole Freeman:** Yes, I introduced a subamendment.

[English]

**The Chair:** I heard your debate. I'm sorry, Madame, but I did not hear "I would like to move the following subamendment". I did not hear that.

[Translation]

**Mrs. Carole Freeman:** Yes, I moved a subamendment that Mr. Siksay's part be deleted.

[English]

**The Chair:** Give me a moment, please.

[Translation]

**Mrs. Carole Freeman:** Check the verbatim.

[English]

**The Chair:** I did not hear it, but we can resolve this.

Mrs. Freeman's intervention was basically that she would not like to have the last element of Mr. Siksay's motion, to wait until after the Ethics Commissioner made her decision and maybe investigated. It would be to add that phrase "who are public office holders" and also to add the words "and attribute", so use "and attribution".

I always like to keep harmony within the committee as much as possible. The member is telling me that her intent was that that was a subamendment and therefore I could not receive a further subamendment from Mr. Poilievre. So what I propose to do is to stand down your subamendment temporarily.

**Mr. Pierre Poilievre:** Can I address that on a point of order?

**The Chair:** She's got the point of order; we're in the middle of a point of order.

**Mr. Pierre Poilievre:** On the same point.

**The Chair:** On the same point?

**Mr. Pierre Poilievre:** Yes.

**The Chair:** All right, I'll hear your argument on the point of order.

[Translation]

**Mr. Pierre Poilievre:** I heard Mrs. Freeman say that she wanted a change, but I did not hear her move a subamendment.

I'm not questioning you; I'm simply saying that I heard something else. I didn't hear the expression, "I move the following subamendment," for example. I never heard that. Perhaps I didn't hear correctly, but that's what I perceived. That's the problem.

You actually have to move an amendment. You can't simply say "I wish there were an amendment" or "I would like to see an amendment"; you actually have to say "I propose the following amendment".

[English]

**The Chair:** We can approach this in many ways, and in fact everybody's ideas and amendments can be moved at any time. After we have disposed of everything on the table, they could come back again. So if we know we have the tools to be able to make all amendments that people can possibly think of, eventually we'll deal with each and every one of them.

In this case here, the member has made a representation. I did not recall hearing—although I must admit I am trying to do some administration and things and I may have missed it.... The member indicates that she made a subamendment and I'm going to take her at her word. We have the presumption of honesty of members. I am going to stand down Mr. Poilievre's subamendment, so that I can deal with this one first. Then once we dispose of that subamendment then another subamendment could be proposed.

That is my decision.

• (1125)

**Mr. Pierre Poilievre:** I have a point of order on that, Chair.

I just want to say that I disagree with your decision, but in the interests of making the committee work, we'd be prepared to go along with it.

**The Chair:** Okay. So what we could do to expedite this is, as I think everybody understands that this is not new information, this is just a three-part amendment or a two-part amendment.... That's ultimately where we're going.

I want to deal with the question of Madam Freeman's subamendment, which effectively modifies the original motion that she put: that after the words "partisan use" would be added the words "and attribution", and after the words "members of Parliament" would be added the words "who are public office holders." There are two elements in one motion.

Is that correct, Madame? Okay.

I'm going to put the question.

**Mr. Pierre Poilievre:** That's not true, though. That's not what it actually does.

**The Chair:** That is what she wants to do, though.

**Mr. Pierre Poilievre:** What she is actually doing is taking something out of Mr. Siksay's amendment. She's not putting something into the original—

**Mr. Greg Rickford:** On a point of order—

**The Chair:** Order. Hang on.

**Mr. Pierre Poilievre:** It's a subtraction, not an addition.

**The Chair:** No. In her words she said she agreed with Mr. Siksay except for the last point, so she wanted to make an amendment that makes the first two changes but not the last one.

**Mr. Bill Siksay:** On a point of order, you can't amend an amendment that hasn't been adopted—

**The Chair:** I understand that, and that's why I explained at the very beginning of this and before we even got involved. I said that when you have a subamendment, the subamendment is to the main motion, not the main motion as amended by a proposed amendment. It's the piece of paper you have, clean and pristine, and Madame Freeman's subamendment is trying to change that, so that her—

**Mr. Pierre Poilievre:** No, that's not true.

**Mr. Bill Siksay:** Can I make a suggestion that might help us out of this mess? Could we deal with my amendment *ad seriatim*, each of the three pieces of it? That way we can deal with Madame Freeman's two suggestions and then we can deal with the third part and vote on that, and in that way we'd deal with all the content of the original and we'd deal with Madame Freeman's concerns as well. Rather than dealing with it as a group, as you suggested, if we deal with those three parts *ad seriatim*, then we can move on to the Conservatives' amendment.

[Translation]

**Mr. Luc Desnoyers:** I would like to clarify what Mr. Poilievre and Mr. Siksay said. When we have a main motion, you move an amendment by saying that you want to be at church at six o'clock for the meeting, and we have a subamendment that states that it's eight o'clock instead of six o'clock. So we discuss the amendment to determine whether everybody accepts the change. If it's accepted, we move on to the next subamendment and to the amendment. I don't know whether you understand what I mean. That's the procedure.

[English]

**The Chair:** The member is saying that the subamendment should be dealt with as a proposal to amend the amendment, not the main motion.

**Mr. Pierre Poilievre:** That's right.

**The Chair:** Okay. In trying to make it a little easier, I've probably made it a little more complicated.

We have a subamendment proposed, which is to amend the proposed amendment of Mr. Siksay. Basically it is to drop the proviso at the end, which is to wait until the commissioner has reported her findings. This is very clear. I don't think we need a lot of debate on the explanation of the subamendment. It's basically not to wait until the commissioner has reported.

Does anybody really want to debate that? Does everyone understand it? Everyone does? Then I'll put the question.

Madame Freeman's subamendment would delete the reference to the last addition in regard to "waiting until such time as the commissioner has reported". That would be deleted from the amendment.

I want a recorded division, please.

(Subamendment negatived: nays 6; yeas 4)

**The Chair:** We now move back to the amendment by Mr. Siksay.

•(1130)

**Mr. Pierre Poilievre:** What about my subamendment?

**The Chair:** Would you like to move that subamendment again?

**Mr. Pierre Poilievre:** Yes.

**The Chair:** We have an amendment to Mr. Siksay's motion. Mr. Poilievre is going to remind us of his amendment. We'll consider it to be a compound amendment.

**Mr. Pierre Poilievre:** It removes the word "Conservative" before "members of Parliament". It replaces the words "members of Parliament" with "public office holders past and present". After "logo of the Conservative Party", I would replace the adjective "Conservative" with the adjectives "any political".

On that last point I would reiterate that it does not exclude the possibility of looking at the Conservative Party logo on cheques. It does not subtract anything from the motion. It only adds to the motion by broadening the discussion to any political party that may have used this.

If there are representatives here who believe that their parties have never put their logos on a cheque, then they will be delighted to vote for my amendment, because they would not have to worry about their logos being a matter of discussion. I'm sure that we will be able to adopt those amendments unanimously in that case.

Thank you.

**The Chair:** Go ahead, Mr. Siksay, on a point of order.

**Mr. Bill Siksay:** Mr. Chair, I'm concerned that the subamendment includes something that's already in the amendment. It's the phrase about public office holders. That's just confusing.

I think if it is limited to dealing with the issue of the specific mention of the Conservative Party, it would be in order, but when you put in the phrase about public office holders, you confuse it all. That's not amending the amendment, because it's already in the amendment.

**Mr. Pierre Poilievre:** Can you read the amendment unchanged, as it would read?

**The Chair:** The amendment...?

•(1135)

**Mr. Pierre Poilievre:** Yes.

**The Chair:** Since nobody has submitted these things...

Mr. Siksay's amendment was, after the words "partisan use", to put in the words "and attribution", and after the words "members of Parliament", to add the phrase "who are public office holders".

**Mr. Pierre Poilievre:** My subamendment would just remove the word "Conservative" and before "public office holders" would put the three words "past and present", so that you would have: "members of Parliament who are past or present public office holders".

I think we understand that the other part of my amendment replaces "Conservative" with "any political party". That's the other part of the subamendment.

**The Chair:** Bear with me. Part of this is amending the amendment, and some part of it is amending the main motion, because the last part is not in the amendment.

**Mr. Pierre Poilievre:** You can subamend by adding.

[Translation]

**Mr. Luc Desnoyers:** Mr. Chairman, you can't change the meaning of a motion. You can amend the motion with respect to the number of persons or times, but you can't change the meaning of the main motion.

[English]

**The Chair:** I'm going to accept the subamendment, because the intent is clear.

When you get into compound amendments, it's only to save us a little bit of the time spent having several debates and several votes. But I'm not going to accept any more compound ones after this. There will be no more compounds.

We have a subamendment by Mr. Poilievre, and I'll accept it, that we are going to drop the first reference to the word "Conservative" before "members of Parliament". After "public office holders" in the amendment, we are going to put "past or present". In the last area, of reference to "logo of the", it will read "logo of any political party" instead of "logo of the Conservative Party". That is the subamendment by Mr. Poilievre.

We will entertain any debate, if anybody needs it, but I would put the question.

Mr. Wrzesnewskyj.

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

What we are dealing with here is a \$4 billion infrastructure fund announced in Budget 2009 and with cheque presentations as this is being rolled out. It's continuously being rolled out, so we're dealing with a current and ongoing situation.

I can understand our colleague Mr. Poilievre's interest in going back in history. Perhaps the Library of Parliament can be helpful, going back to the times of Sir John A. Macdonald and going through government after government, but I really don't think that the public is interested in a historical lesson. Perhaps it's time for him, if he has such an interest, to privately study this; he has the resources, through the Library of Parliament. I'm sure there are historians who have looked into these issues of previous prime ministers and what they have conducted.

We have a serious issue at hand and before us at the present time: a \$4 billion infrastructure fund that's being pushed out the door. We're not talking, as I said, about problems that may arise because of the speed with which this is being done. That's for a later time, for the public accounts committee to take a look at. It's a pattern of abuse of an ongoing, unprecedented \$4 billion infrastructure program; this is what needs to be looked at. This is what Canadians expect us to do at the present time, not go back into history. We are to do work that's of current relevance.

I will not be supporting the subamendment.

• (1140)

**The Chair:** Thank you.

Mr. Poilievre.

**Mr. Pierre Poilievre:** Mr. Wrzesnewskyj says that we're only studying today—the here and now—and that we ought never to look

into the history of what public office holders in the previous Liberal governments have done, because that's history, and history should simply be forgotten. While I remark upon the convenient nature of that argument from a Liberal standpoint, I'll assume that it is made dispassionately and therefore will proceed to dismantle it in an equally dispassionate manner.

If we are speaking only about the here and now, then the discussions around the Conservative Party are also history. They are more recent, but they are also history. I believe the most prominent example that has been put in the newspapers was from this summer or earlier, so it's in the past as well. We're not going to be debating what somebody is going to do with their cheque this afternoon; we're discussing what has been done and what we can learn from what has been done.

If the nature of this study is really to analyze the ethics of the way public office holders make announcements, then we ought not to be simply pointing the finger at one party but ought to examine how public office holders have done it throughout time. We study things that have gone back into history for years. Mr. Wrzesnewskyj was instrumental in the public accounts committee in igniting a study on the RCMP and its activities. Almost everything that we studied was from history, from the past. Thank goodness we did that. To credit Mr. Wrzesnewskyj for his work on that, we learned a lot of valuable things. We looked back over the Mounties' activities under two successive governments, not just under one.

To suggest that we can't do that in this situation is erroneous. I would encourage all members.... Some might argue that none of the other parties has ever done anything improper in the way they have presented cheques and that therefore a study of their activities would be futile. I would suggest that if that is the case, then my amendment is like a belt and suspenders, and that it's better for the motion to be a little wider, to capture any potential information that is relevant to the debate, than too constrictive, so that it becomes nothing more than a narrowly targeted partisan tool.

In the interest of having a broad and an open study on the subject, I would ask that members vote to make this motion non-partisan, so that all public office holders, regardless of their political stripe, be subjected to the same committee scrutiny.

Thank you.

**The Chair:** Madam Block, please.

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** Thank you very much, Mr. Chair.

My comments will completely support what my colleague has just said. For the member across the way to suggest that this motion was intended to address the stimulus fund is a bit of a stretch, I think, because it's not mentioned. It talks about funds; it wasn't specific to the stimulus fund that was implemented through the action plan.

Neither do I think that this is truly the spirit of what this committee is intended to do. We have the ethics commissioner, who is already doing a study specific to complaints that have been received on the matter of which he speaks. If this committee wants to honour what we were established to do, it would be to look at this issue in a broader context such as my colleague has indicated.



Thank you.

• (1145)

**The Chair:** Mr. Wrzesnewskyj.

**Mr. Borys Wrzesnewskyj:** I'd like to thank Mr. Poilievre for his compliments on the RCMP pension insurance scandal, which we looked at in the public accounts committee. It was a specific scandal, involving the pension insurance funds, that was ongoing for a period of time. That's why it entailed our looking back to a certain point in time. We didn't look at everything going on within the RCMP and at other scandals, etc., but at that specific situation, and were able to draw conclusions from that particular investigation. That's what we're hoping to do here. That's what Canadians expect us to do here.

We had a \$4 billion infrastructure fund announced in Budget 2009 that's been referenced in the debates around this motion from the beginning. Everyone knows what we're looking at here: it's the ongoing \$4 billion infrastructure fund. It's good that we've had the opportunity to catch this as it's being rolled out, so this pattern of abuse will come to an end. The onus is upon us to do this expeditiously at this time. Of course, as I said before, we could go back in history and look at all of the previous governments—Conservative, Liberal, etc.—in time. That's not the intention of this particular motion. It's quite clear, from what's happened this last week, what we'd like to look at and what Canadians expect us to do. It deals with the \$4 billion infrastructure fund announced in 2009.

**The Chair:** There's a point of order from Mr. Rickford.

**Mr. Greg Rickford:** It's a clarification point of order.

**The Chair:** A clarification?

**Mr. Greg Rickford:** You said I had to say "point of order", and then you would—

**The Chair:** I'm not sure a clarification is a point of order. In fact, it's not a point of order, but—

**Mr. Greg Rickford:** That's what was on the list you gave me.

**The Chair:** I understand that you—

**Mr. Greg Rickford:** That was on the list you gave me: a clarification point of order. There were about six.

Okay, fair enough.

**The Chair:** Clarification is basically when you need some information. It's like asking a question; it's not a point of order. I say this just so that we don't run into it again.

**Mr. Greg Rickford:** Sure.

**The Chair:** But I will acknowledge you and give you the floor to pose your question.

**Mr. Greg Rickford:** I want to go back to what my colleague said here. Several times we've heard the member, Boris Wrzesnewskyj, mention a specific fund. And then we heard him talk about a specific inquiry that he participated in at another committee.

That's not what's contained in here, clearly.

**The Chair:** Thank you, Mr. Rickford. That's debate; it's not even a question, but you got it in.

We have to be careful, colleagues. This meeting is going to be over in ten minutes. If the members want to dispose of this item, I think we should deal with it; if not, you can talk it out and it will be

filibustered forever and a day. I guess it will become clear really soon.

In any event, members have the right to speak and to say whatever they want, as long as it is relevant to the discussion. It doesn't have to be accurate; that's not a prerequisite. Members at their own peril will say things.

**Mr. Pierre Poilievre:** Motion to go to vote.

**The Chair:** Well, we don't have to....

There being no further people on my list, I'm going to put the question on the subamendment posed by Mr. Poilievre where, after the words "public funds by", we dropped the word "Conservative"; and after "members of Parliament", we had the words, "who are public office holders, past or present". And near the end, where it reads the "logo of", you replaced "the Conservative" with "any political". So it would be "the logo of any political party".

Does everybody understand the subamendment?

• (1150)

**Mr. Pierre Poilievre:** So we've voting on the subamendment.

**The Chair:** We are voting on the subamendment, the Poilievre subamendment, the Conservative subamendment—without a logo.

**Mr. Pierre Poilievre:** No party logos on the big amendments.

**The Chair:** Okay, is everybody comfortable that they understand what we're voting on?

**An hon. member:** Yes.

**The Chair:** I want to put the question and I would like to again have a recorded vote, so that the members are clear.

(Subamendment agreed to: yeas 6; nays 4)

**The Chair:** Now we have the Siksay amendment.

**Mrs. Carole Freeman:** It doesn't make sense.

**The Chair:** It can still make sense. The reference to public office holders is already there by the subamendment.

The attribution is not there. It needs to go in.

**Mr. Bill Siksay:** Yes, but the phrase about public office holders needs to go in as well. We've amended it, but we still haven't voted on including it.

**The Chair:** Okay, "past or present". And the final proviso is that it "not commence until such time as the commissioner has reported her findings." Is that correct?

Does everybody understand the amendment as amended?

**Some hon. members:** Yes.

**The Chair:** Okay. I'm going to put the question, then, on the amendment as amended by the Poilievre subamendment.

(Amendment agreed to: yeas 6; nays 4)

**The Chair:** Now, colleagues, we have one last vote. It is on the motion as amended.

Does everybody understand what we're voting on?

**An hon. member:** Understood.

**The Chair:** Please call the roll.

Five yeas and five nays. I had anticipated that it was going to come down to this, colleagues.

I have to tell you, there are a number of elements of everything that has gone on and how this all came up that caused me some discomfort, most of which I think relates, however, to Mr. Siksay's reasoned argument that the commissioner has unconditionally stated that she will be looking at this matter, at least the matter of the original motion, and to make an indication that we would like to do something in parallel may very well be viewed as being judgmental in terms of her ability to do that job.

I think we might get some more information. It might be helpful. This matter can always come back to us again. But rather than simply stay the discussion, I'm going to vote no.

(Motion as amended negatived: nays 6; yeas 5)

• (1155)

**Mr. Bill Siksay:** Mr. Chair, may I ask a question about your decision or raise a point of order on it?

Chair, the motion as amended included the direction to not engage the study until after the commissioner had reported.

**The Chair:** This is debate.

I don't have to explain myself. But I can suggest to you that in the context of the original motion—that is the part, obviously—we changed it to broaden it up to other parties, other years, other persons, and way beyond. Ultimately, the committee and the members should take from this a lesson that motions should be very clear and carefully thought out. In this particular case, since we have really made some significant changes, I think it's a motion, even as amended, that the committee still is not very comfortable with and that I'm not comfortable with. So I'm voting no, with the full knowledge that any member of the committee can bring this back at any time with 48 hours' notice.

I hope that what has happened today, members, we'll take into account.

Thank you.

We're adjourned.

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