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Chair

Mr. Joe Preston

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• (1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): Let's get started, please. This is the meeting of the Standing Committee on Procedure and House Affairs. We are meeting in public today with video recording.

We have with us today Mr. Rob Walsh, former Law Clerk of Parliament. Mr. Walsh, I haven't been with you in a long time. It's great to have you back before our committee.

Mr. Gregory Thomas is also here today.

We'll give you each a chance for an opening statement.

Mr. Walsh, would you like to go first, and then we'll ask questions after that?

Mr. Rob Walsh (Former Law Clerk and Parliamentary Counsel of the House of Commons, As an Individual): Thank you, Mr. Chairman.

In my time at the House as law clerk, I worked with and for the Board of Internal Economy. I saw it in its good times and in its bad times.

I'm pleased to see the House take on this review of how its internal financial and administrative affairs are managed. In the course of its study, I would hope the committee would keep in mind two important considerations about the House of Commons. First, the House is where our democracy plays itself out between elections. Partisan politics is an inherent feature of the House and must be accommodated in any administrative restructuring. Second, administrative independence is essential to the constitutional function of the House and to its political credibility as a parliamentary institution.

I expect what drove the House to launch this review is the recognition that Canadians generally are increasingly concerned about the spending practices of parliamentarians and want to see more transparency and accountability in the management of the internal financial and administrative affairs of both the House of Commons and the Senate.

In my time at the House I found the board generally acted responsibly in its management of the financial and administrative business of the House. I attribute this to the fact that the House, as an elected body, is hard-wired, as it were, for serving the public interest and for accountability, though partisan interests or collective self-interest sometimes seem to influence the business outcome.

From time to time, it seemed to me that a party's political agenda, some current political conflict, or the government's political agenda were allowed to interfere with the business of the board, and that caused matters to be unnecessarily delayed or left unresolved for protracted periods of time or simply not addressed. To some extent, this is understandable and unavoidable, but it should not be allowed to cause the board to become dysfunctional and the internal affairs of the House, as an institution, poorly managed.

In my view, the public interest of greater transparency and the House's interest in more efficiency in its internal governance will be better served by establishing a more arm's-length relationship between the House and the board, but not by establishing an outside body as the governing administrative authority for the House. To this end, I would make the following suggestions, which in the interests of time I can only itemize here in point form; there are six of them: one, that the name of the board be changed to reflect its function in contemporary language—this is an obvious one; two, that the composition of the board not reflect party standings in the House but that the recognized parties in the House be represented equally on the board; three, that ministers and other House leaders, other than whips, not sit on the board, and that appointments to the board be made by each caucus; four, that board meetings be held in public, with its agendas made public the day before, subject to the usual limitations for privacy, but that the board establish two permanent subcommittees on financial and administrative matters respectively that would meet in private but present their reports publicly to the board for consideration and approval; five, that the board table its minutes in the House no later than the first sitting day immediately following the next board meeting; and finally, six, that at the end of each Parliament, other than those of less than a year, the Auditor General audit, or in some manner review, the financial decisions of the board and the spending of House leaders, members of Parliament, and each caucus, with enforcement measures in place to recover any funds found to have been wrongly spent.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Walsh.

Mr. Thomas, we'll hear your opening statement, please.

Mr. Gregory Thomas (Federal Director, Canadian Taxpayers Federation): Thank you, Mr. Chair.

We thank the committee for inviting us, and we're grateful to the House of Commons for undertaking this very worthy initiative. We appreciate the initiative of the official opposition for moving this comprehensive motion and the initiative of the Liberal Party leader in coming forward with suggestions for more transparency.

We also hearken back to the Federal Accountability Act of 2006, which we think provides a template. We think this is the most important scandal-fighting initiative ever adopted in Canada, and we think it provides a strong template for future reform.

We applauded in 2006 the initiatives taken by the government in the wake of the sponsorship scandal, and our 84,000 supporters, who very regularly communicate with all of your offices, have a keen interest in seeing the practices of both houses of Parliament updated, modernized, and reformed. We'd like to play a constructive role with all of you in making this happen, and we have a few suggestions that follow on the initiatives of the Accountability Act.

It's important to quickly review a couple of those important initiatives: the creation of the office of the Parliamentary Budget Officer; the establishment of the office of the Director of Public Prosecutions; beefing up of the powers of the Auditor General and the Ethics Commissioner; and the expanded protections for whistle-blowers.

I know it's all the way back to 2006, but it's important to remember that these key reforms that we take for granted today were initiated by this government as its first act in office. So what we're calling on the government now to do, and all parties in the House, is to continue to embrace the spirit of those reforms and bring some of those reforms home to the House of Commons. Perhaps, through your initiative, you can set a good example for your colleagues in the Senate as well.

• (1110)

The Chair: Thank you very much. We'll go to questions.

Mr. Lukiwski, you're up first, for seven minutes, please.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Chair, and my thanks to Mr. Walsh and Mr. Thomas for being here.

I'll start with Mr. Walsh. I have a couple of questions. One will connect to one of the six recommendations you made. I'd asked this question of Madam O'Brien when she was here. She rendered an opinion, but she was a little uncertain of the legal ramifications.

My question was this: if the Board of Internal Economy, BOIE, held its meetings in public, would the members of that committee have the same privileges as members on a standing committee or members speaking in the House? In other words, would they have the immunity provided to most members? If not, it might be somewhat restrictive on members if all the discussions were held in public.

You've identified a couple of ways to get around that by having subcommittees of financial and legal matters, and others that might be required to have meetings in camera. But first things first. From a legal perspective, would public pronouncements by members of the Board of Internal Economy be covered by parliamentary privilege or immunity?

Mr. Rob Walsh: Let me approach that question this way: the answer is partially yes. The committees of the House, such as this committee, are fully covered by privilege, regardless of what they're talking about.

With the board, it would enjoy the protections and privilege according to what it's talking about. The privilege it would have the protection of is the privilege the House enjoys to administer its own internal affairs. It can administer its internal affairs publicly or privately, but if it's a matter within the ambit of that privilege of managing its internal affairs, then it would have privilege.

I can only remind you of the decision in 2005 of the Supreme Court of Canada, where the House took the position that administering all its employees was within its internal affairs. The court said no, it didn't go that far. In other words, how the House might deal with the clerk as an employee is one thing, but how it might deal with somebody working outside on the grounds might be another. The court didn't really draw the line as to where the line is, but somewhere in there is a line.

In a similar fashion, the board would have to address its mind to what is the ambit of internal affairs. My own hunch would be that, by and large, most of the business discussed by the board would be within that privilege.

I would just add, if I may, that the absence of privilege, in my view, should not discourage the board from meeting publicly, insofar as the board is a body created by statute. It's not a parliamentary committee. Its responsibilities relate to the financial and administrative affairs of the House, which is a public institution. So, arguably, the matters it's discussing are not ones that need to have the protection of privilege, such as free speech, which of course is designed to enable members in debates to be able to speak freely and not to be impeded in doing so by legal considerations about defamation. The same, arguably, wouldn't apply to the board, so there may be less need for concern about privilege in a public meeting of the Board of Internal Economy.

Mr. Tom Lukiwski: Thank you. That's helpful.

One of the things that I was somewhat concerned about is that even though, you're right, all members have the ability for free speech and debate in the House or in debate, we are still governed by the *sub judice* convention, and I assume that same spirit would be reflected in any discussions held at the board.

Mr. Rob Walsh: That's correct.

Mr. Tom Lukiwski: Let's go into what dealings these subcommittees that you're recommending would have. In your experience with the board over the many years that you were law clerk of this Parliament, given that you're suggesting that the subcommittees deal with in camera discussions on matters that should be in camera, what percentage...? I don't want to make an unfair question for you, but I'm trying to get a sense of what you experienced over the many years dealing with the Board of Internal Economy. What percentage of the discussions and the substance of the board's discussions would be required to go in camera? How much would be in public? There's a perception that so much of what is done by the board is completely in camera. It's a secret, behind closed doors operation.

So what are we talking about if, on a normal basis, we say it's going to be public except...? How much of the discussions on, say, a normal board meeting would be held in public as opposed to how much, in your experience, would be necessitated to be held in camera?

Mr. Rob Walsh: Mr. Chairman, perhaps I could just back up on that question a little bit and explain what I said here. There is some talk out there that everything should be public, and then there's the other extreme, if you want to call it an extreme, which you have now, where everything is private. I'm proposing something in between. It is to have the subcommittees meet in private, all business, on all matters. That's to allow the members of the board sitting on the subcommittee to have a free and full and frank discussion without the glare of publicity upon them. In a sense, it's like talking about the House's administrative and financial dirty laundry, if you like. It's just not necessarily something the public is well served to hear about, and indeed wouldn't hear about, even if they were to go public.

The report to the board, however, would be public and the discussion by the board about that report would be public, and a decision of the board, obviously, would be public.

Now, I'll go back to your question about how much of the board business would be in camera. Frankly, it's virtually little, in the sense that you can use the same criterion for what goes in camera as you might use in a House committee, and that is, privacy concerns. Maybe the House committee sometimes wants to have an in camera business meeting to talk about their agenda, and the board might have usually gone in camera in the past to talk about its business agenda. But basically the point about public board meetings is that the financial and administrative business of the House as a public institution is arguably something the public should be able to watch being administered, short of all the nitty-gritty detail that goes into a lot of the considerations the board has to deal with, in which case, I think, leave it to a subcommittee to sort that out, and then they publicly report to the board and the board deals with it publicly.

•(1115)

The Chair: Mr. Lukiwski, you have 30 seconds left.

Mr. Tom Lukiwski: Only 30 seconds? Then perhaps we'll get back to it in a subsequent round.

Thank you, sir.

The Chair: Thank you.

Mr. Julian, seven minutes, sir.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you very much.

Thank you, Mr. Walsh, and thank you, Mr. Thomas.

I'm very interested, Mr. Walsh, in your proposal where you're talking about a more arm's-length relationship for the BOIE but still looking at it being internal.

I'll come back to the issue of caucus representation, but I'd like you to take a moment to look at the possibility of something being independent...which is certainly what I think the public would demand. They don't expect that MPs will be policing themselves. That's something I hear about regularly in my riding.

If you're willing to make the move to an arm's-length relationship, would it not be better to have in place an independent body that is policing MPs' expenses, for the simple reason that, for the public, they would get a sense that you have that independent, autonomous look at MPs' expenses, and it's not a group of MPs policing themselves?

Mr. Rob Walsh: Mr. Chairman, if I may, I hear the member expressing a point of view that is sensitive to public expectations about the House—and presumably the Senate these days as well—but I think one has to look at this, frankly, in terms of what's best for the institution as a public institution and not simply to serve public expectations.

That's what I've tried to do here by suggesting that some greater distance be between the board and the House. Right now the board, in its composition and structure, too closely parallels and mirrors the House; you know, it is the House in another hat. I think if other members had a role there, it might be helpful to give that distance.

But I also suggest that the Auditor General, at the end of each Parliament, look at the spending practice of members, caucuses, House leaders, and in some manner give each Parliament a review that would be of interest to the public.

More directly to the point...and this is hard to express, okay? I'm very jealous—if I may, not being a member of Parliament, still say that—about the democratic or political function of the House of Commons. As I said in my presentation, the House is where our democratic politics play out between elections. You have to be careful that you don't so regulate the House in financial administrative matters—and, as you are suggesting, Mr. Julian, an outside body—that you are in fact creating impediments to our politics being free to exercise itself in a robust fashion.

Politics, as you well know—better than I, certainly—is an unpredictable activity, but it serves the public interest writ large. There is no public interest writ larger, arguably, than the political life of the country. I'd be very nervous of an outside body.

Having said that, there's an intermediate suggestion that you have the board as I'm proposing it—I didn't include it in here because I wasn't sure there would be an opportunity or if it would be a welcome idea—but you have lay members, something that other boards have, as you know. They have a certain number of positions available for persons from the public to sit on the board.

Now, you could arguably have here three public representatives on the board who don't outnumber the number of recognized parties in the House, appointed by the Speaker without consultation with the House leaders, on application from the public. A qualifying condition is that they have at some point served in an elected public office.

I do believe, as someone who once held elected public office, there is no experience like sitting in an office to which you've been elected by the public. That teaches you something that no amount of theory can tell you. I think there's something to be said for all board members being cognizant of that.

I'm not so sure I'd give these public representatives a vote on the board, because I think the responsibility for the House has to remain with its members. They're accountable. But these lay members, if you want to call them that, would have an opportunity to represent the public and speak to board members publicly at public board meetings about those concerns that they see the board ought to address more closely on behalf of the public.

● (1120)

Mr. Peter Julian: Thank you, Mr. Walsh. That's an interesting second proposal. This is a lot of meat you're giving us to chew on.

I'd like to follow up with two questions. One is that Madam O'Brien, the Clerk of the House, testified to us earlier this week that we've moved from what was a consensus at the BOIE to a situation where now there can be votes. That is disturbing to me, because of course in a majority Parliament that means the majority ends up getting its way.

I'm wondering to what extent you'd be concerned about that as perhaps not being in the public interest, where you now have a vote that determines decisions, with the vote taken in a majority.

Secondly, I'd like you to comment—just briefly, because I have only a few minutes left—around proposals like those we get from Manitoba and the United Kingdom, which are proposals that are independent. In Manitoba, of course, it's a commissioner who makes those decisions so that members aren't policing themselves.

Perhaps you could answer those two questions: your perception of those independent models and the concerns that arise from Madam O'Brien's comments.

Mr. Rob Walsh: Well, I obviously have enormous respect for the views expressed by Madam O'Brien, but I suspect that her suggestion arises out of the fact that she saw many times that the board wasn't able to move forward with business on a consensus model.

I would tend to go against a vote regime. It's always available theoretically, but it seems to me that what's important with the board is that it get outside of its partisan politics and look at financial and administrative matters without being governed by the partisan differences between them. That's why I suggested that political parties be equally represented. Then you have to sit down and you have to come to a consensus more forcefully, because you don't have numbers on one side versus the other, which you would have in a vote.

I would resist going to a voting system. I think consensus is the way to go. What I am proposing is with that in mind.

Your second question was about...?

Mr. Peter Julian: Manitoba and the United Kingdom.

Mr. Rob Walsh: Yes. I'm not clear on what those models are off the top of my head, but the idea.... In mentioning that, and in your earlier question, you both times used the expression "policing" members. Now, in using that expression, you're loading the question, in the sense that you're suggesting members of Parliament need policing, that they can't be trusted to look after their affairs because somebody has to be the enforcer of the law against them.

I don't share that view nearly as much. I didn't see in my time at the House a basis for taking that attitude. But I appreciate that public confidence is suffering in recent years and that some credibility has to be brought to the regime that shows that the members of Parliament are not simply serving their collective self-interest when they look at financial and administrative matters.

The Chair: Thank you, Mr. Walsh.

Thank you, Mr. Julian.

Mr. Lamoureux, you have seven minutes.

For others who want to put their name on the list, please let us know that you'd like to speak.

Mr. Lukiwski will go back on the list.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Thank you, Mr. Chair.

I want to pick up on the Manitoba example. I was present as an MLA representing the Liberal caucus when in fact we adopted the principle of the commission. I think it's actually worked quite well.

The primary purpose of it was actually that we did not feel that MLAs—or in this particular case politicians—should be setting their own pay or determining what their pensions were going to be. We wanted to ensure that there was an independent appeal mechanism. There are individuals who are not a part of the recognized party system, so it was felt that it would be more independent by having a commissioner designate it.

I'm wondering if you would acknowledge that there could be value to having that independent commissioner, who is actually appointed after an election takes place. Do you see any merit to that sort of a bringing in...? It appears to be working in Manitoba.

● (1125)

Mr. Rob Walsh: Again, I don't know the Manitoba model myself, nor what the composition of that commission is. You were on it as an MLA—

Mr. Kevin Lamoureux: Yes.

Mr. Rob Walsh: I don't know whether it is made up entirely of MLAs or—

Mr. Kevin Lamoureux: It is.

Mr. Rob Walsh: It is? Okay. Well, that itself is in principle acceptable, but when you identify pensions and pay, obviously those are two areas where one might think that members should not be deciding for themselves. The board takes care of a variety of other matters.

To look at this question with the focus simply on those issues, I would suggest, is to consider the question too narrowly. That said, it may well be that those particular matters ought to be designated, perhaps by legislation, to an outside commission—those particular matters you mentioned. But there's a variety of other things the board does that require a much closer understanding of the institution and that necessarily have an impact on the workings of each of the caucuses, the parties. They need to be at the table discussing these things. With some outside voices there, you might find a balance, so that they're not quite so cozy in terms of serving their own interests.

Mr. Kevin Lamoureux: Mr. Walsh, one of the interesting things that I thought you said was about the makeup of the Board of Internal Economy: no ministers. Did you also say no House leaders and no government House leaders? Is that universal? Is it your recommendation that the House leadership of the respective caucuses not be allowed to have membership on the committee?

Mr. Rob Walsh: Other than the whips; I would think whips should be allowed to sit on the board. They don't have to, but they're eligible to sit on the board—but not House leaders and not ministers.

Mr. Kevin Lamoureux: Can you extrapolate as to why you think that would be best?

Mr. Rob Walsh: In terms of ministers, it is to ensure that the board acts independently of the government. The House is an independent parliamentary institution. Obviously, the government is here politically with its majority and its ministers, and that's perfectly appropriate and that's our system of government.

This is a statutory administrative body on financial and administrative matters. It represents a separate and as it were non-political assignment responsibility, but within a political context, so I think the government should, as it were, stay out of it in terms of ministers.

Mr. Kevin Lamoureux: Finally, if I were to attempt to simplify your suggestion that we have these subcommittees, what do you think of the idea that anything that goes in camera has to go through the subcommittee, and that's only for a recommendation that would go before the full committee of the Board of Internal Economy, or whatever the name of that board might be?

Mr. Rob Walsh: I didn't want to go into too much detail of an operational nature, but I meant to suggest that financial administrative matters would first go to a subcommittee before arriving at the board, and the subcommittee would look at these matters that come to them in camera. Then their report to the board is public and the board's consideration and treatment of the report is public.

Mr. Kevin Lamoureux: Mr. Thomas, I did want to get your thoughts. One of the initiatives we've been espousing has been that we want more transparent accountability, more of a proactive disclosure, similar to what ministers use in terms of issues like travel and hospitality. I'm not too sure if you're familiar with the proposal, but if you are, perhaps you could provide a comment. I know it's not all-encompassing, but do you think this is the right direction we should be moving toward?

Mr. Gregory Thomas: Yes. I think Mr. Trudeau's motion to institute proactive disclosure along the same model as was introduced by the previous Liberal government for ministers was a positive and necessary reform. We would have liked to have seen that motion adopted. It seemed like a no-brainer to us when he proposed it in the spring session.

To be clear about what's going on with the proactive disclosure that we see now, we have spending by ministers disclosed proactively, then news organizations and citizens groups immediately file access to information requests, and then there's a lengthy procedure before documents are finally produced that give life to the disclosure. In the Bev Oda situation, it was a routine disclosure. She had been to London, England, and had spent thousands of dollars. It wasn't until access to information requests were filed and documents

were produced that we got to the fact that she was occupying two hotel rooms simultaneously, ordering expensive orange juice, and driving a limo back and forth between the two hotels. And she blew enough money that week-end at an immunization conference to immunize 18,000 African children. So the proactive disclosure was a pale summary of what was really going on.

We know that in the city of Toronto...and in the province of Alberta now, if you are interested in what Alison Redford is doing, where she is going, you can go online. You can click on a link to see what flight she took, you can see what she paid the taxi driver, you can see the tip she gave the taxi driver, where and who she ate with, what everybody ordered. You know, there are no expense scandals in Alberta anymore because it's all out there.

• (1130)

The Chair: Mr. Lamoureux's time is completed.

Mr. Lukiwski, four minutes.

Mr. Tom Lukiwski: Thanks.

I have simply a point of clarification here. If there's a difference of opinion about what we heard from Madam O'Brien, I'm sure the transcripts will bear me out when I say—despite what Mr. Julian was saying, Mr. Walsh—that Madam O'Brien was not advocating for more votes. She was a firm believer in consensus. In fact, if my memory serves me well, she said that during her eight years as clerk there has only been one occasion where it went to a vote. The Speaker is loath to have votes; they actively try to encourage consensus to be the model they follow. Let's make sure we're clear on that, and I think you will enforce that.

My question now is to Mr. Thomas. You're saying that the Alberta and the city of Toronto examples of disclosure are what your organization would advocate, and I assume that is because of the further level of detail they provide, as opposed to what is currently being provided in the House of Commons. Am I correct in that characterization of what you've said?

Mr. Gregory Thomas: Yes. We believe the current practice in Alberta is the gold standard in Canada at this point.

Mr. Tom Lukiwski: Okay.

I assume you're not as intimately involved or familiar with the workings of the BOIE as Mr. Walsh and Madam O'Brien are. I would point out to you that in Madam O'Brien's presentation two days ago, on Tuesday, she showed us how far the BOIE has come in requiring disclosure from MPs.

When they started many years ago, the categories were very large, and almost all the information was lumped into single categories. Now they're starting to parcel out some of the information within each of those categories, so it's far more transparent than it ever has been.

Are you familiar with how all of the government departments, not only ministers and deputy ministers but MPs, are currently providing their information? You've seen the financial statements, summary statements, for example, on travel and hospitality. You're thinking they don't go far enough. Is that your contention?

Mr. Gregory Thomas: Yes. We're saying that there's a former—

Mr. Tom Lukiwski: If I may, because we have only a couple of minutes, let's deal with the travel.

As you know, there's a travel points system. Each MP is given 64 travel points, x amount for travel between his or her home constituency and Ottawa, so many special travel points and so many travel points for dependants, designated travellers, that sort of thing.

If I am filing a report, in your Utopian world, your perfect world, saying that I'm travelling from my home constituency of Regina to Ottawa return, beyond stating the fact that it will cost x amount of dollars, what other information would be necessary to ensure the transparency you're looking for?

• (1135)

Mr. Gregory Thomas: Only the financial information. I don't think—

Mr. Tom Lukiwski: That currently is being given. So you're okay with that.

Mr. Gregory Thomas: Yes. We think that each ticket... If you buy books of tickets or whatever... It's just so your constituents can figure out whether your flights are being booked in a responsible way and whether the individual flights are...

Mr. Tom Lukiwski: You may be right. But right now, I'd point out, it's fairly easy for constituents to find that out.

I'm not saying this to embarrass my friends in the Liberal Party, but both Mr. Goodale and I travel the same route, from Regina to Ottawa and back, and in the last posting of travel and hospitality expenses, over the course of the fiscal year that was reported, my air travel was \$38,000; Mr. Goodale's was over \$122,000.

So right now we're giving that transparency. If anybody wanted to ask Mr. Goodale why his expenses, for the same flights I took, were three times as much, they should be able to ask that.

The Chair: Thank you.

We'll go to Madam Turmel.

[Translation]

Ms. Nycole Turmel (Hull—Aylmer, NDP): Thank you, Mr. Chair.

Mr. Lukiwski referred to Ms. O'Brien's comments. She said that there had only been a vote once. However, Mr. Walsh, you said that the decision making is very slow with the way things are done now. That really is an obstacle.

As we know, there's a part that involves expenses, but there are also special cases that come up that quite often slow the process.

In your proposals and the steps you've taken, have you thought about creating an independent external committee that would also include MPs?

[English]

Mr. Rob Walsh: Mr. Lamoureux just mentioned that the commission in Manitoba, apparently, is comprised entirely of sitting members of Parliament. In that sense, the representativeness is there. The head of that commission may not be a member of the legislative

assembly; I'm not sure. It all depends on how you frame it, legislatively, setting it up.

As it relates to your comment and question, and also to the previous comments raised by Mr. Lukiwski, I should like to draw attention to the fact that it's one thing to have disclosure of costs in terms of, as he mentioned, some flight costs, or how one spent money in a variety of ways, but that is only half the problem. The other half of the problem is, was what it was spent on within the parliamentary function of the member? Believe me, that is a nettlesome question sometimes when the issue of expenditures by members comes up for consideration, whether at the administrative level or later at the board. What is the parliamentary function of a member? What does it include? What does it not include?

In the revisions to the bylaws done before I left the House, the definition of parliamentary function was looked at very closely. I think the definition was improved to make the boundaries clearer. That is the *pierre angulaire* of the bylaws, parliamentary function. Members are given resources for their parliamentary functions, not for other purposes. Some activities are clearly outside that, but some are borderline.

As to various expenditures in the public scene, some might object to a certain tip here or an orange juice there or whatever; we all have different views on the value of a glass of orange juice. But was the occasion on which that money was spent part of a parliamentary function or was it not? That is the more difficult issue.

I think you have to be careful that this is not handed over to outsiders who don't understand what you guys do on behalf of your constituents.

[Translation]

Ms. Nycole Turmel: Since I only have a minute, I'll try to be brief.

Mr. Thomas, you spoke about protecting whistleblowers, but you did not expand on that. However, as we know, that protection doesn't really exist in the public sector. It's a major problem.

Could you please tell us a little more about how we could help people working internally who want to disclose wrongdoing related to certain activities in order to help the public?

Mr. Gregory Thomas: Clearly, the protection given to public servants is not enough. That was really obvious in the case of Allan Cutler, who was the first whistleblower within the Department of Public Works and Government Services.

At the start of the scandal, Mr. Cutler revealed all the activities of Chuck Guité and was persecuted because of that. It is not at all clear

• (1140)

[English]

The Chair: Sorry, but we've gone over Madame Turmel's time. Hopefully we can get that thought finished.

Mr. Butt, you have four minutes.

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Mr. Chair.

Thank you both for being here. Welcome back, Mr. Walsh. It's nice to see you.

I have a question for each of you. I'll start with Mr. Walsh. You did say in your opening address that the reality is this is a partisan place. That is part of our role. Most of us are elected to serve under a political party system. Obviously we have loyalties to our parties, and we understand that.

One of my concerns, and I would like you to comment, about all BOIE meetings being open, like most of the standing committees, is that the BOIE could possibly wind up becoming a very hyperpartisan committee, versus the way it has been operating, as I understand it, which is generally by consensus, generally by MPs of different political parties agreeing.

I have a sense, and I would like your view on it, that one of the reasons why that has happened is that the meetings are not open to the public, televised, whatever, and that the partisan nature of it doesn't get as heated because the meetings are all in camera.

Do you have any fear about the partisanship on whatever a revised BOIE might look like if all the meetings were open to the public?

Mr. Rob Walsh: Well, if the scenario you're describing were to emerge in public meetings, it would represent a profound failure on the part of the board members to discharge their public duty in the public interest.

Having said that, yes, the partisan atmosphere is the air that members of Parliament breathe; it's all around them. I'm suggesting that the partisanship could be handled at the subcommittee level, sorted out there. Then, when you got to the meeting of the board, there'd be no need for that sort of thing. Those issues might have been resolved.

If I may borrow from what my friend Mr. Thomas has said regarding the Alberta disclosure regime, where having made all this disclosure becomes a non-issue, I would suggest to you that once you got into a public practice with board meetings...frankly, who'd want to see them? They'd be boring as hell. So the interest would shrink. But because they're behind closed doors all the time, the media is just breathless with questions because they think there are all kinds of things going on that they'd be terribly interested in. Frankly, I don't think that's true, but they do want to know what happens, and they want to know what the decisions of the board are, and those should be made public.

I don't have the fears you're expressing, but I understand where they're coming from. I do think there's a place for partisan differences to be expressed, but in my regime I'm trying to allow for that at a subcommittee level, while allowing for public disclosure by having the actions of the board made public.

Mr. Brad Butt: Thank you. That was very helpful.

Mr. Thomas, is the Canadian Taxpayers Federation concerned about the level of transparency that currently exists regarding how members of Parliament are spending money, both in their office budgets and the ancillary hospitality and other things? Is the issue about the level of transparency, or do you have a greater issue with what the money is being spent on and the specifics of how an expenditure that I might make in my constituency, or here in Ottawa,

directly relates to my role as a member of Parliament? Or is it a combination of both?

I'm trying to come up with a system. I have no issue with full disclosure. I have no issue with that whatsoever. I'm trying to find out what the public is looking for. What are they not getting now that members of your organization, my constituents, and others want to know more about?

The Chair: Thank you for asking the question of Mr. Thomas, but you've asked it with absolutely no time left for him to answer.

We'll move to Mr. Hyer for four minutes.

● (1145)

Mr. Bruce Hyer (Thunder Bay—Superior North, Ind.): Thank you, Mr. Chair.

I have a small preamble. First of all, I'd like to thank the committee for your indulgence in inviting us to be here today. However, independents often need, not just today but more often, opportunities for input into all of the standing committee business, especially after we've seen the recent assault on independents' rights at report stage in the House. We really hope and expect that in the future there will be more and better opportunities like this one.

We need to recognize that there is a difference between independents and the parties, but also within the group of independents and small parties. To have one person try to represent the interests of nine people is hard, to be candid. So I hope we can continue to deal with this in a better way.

I thank both gentlemen for coming, as I have learned a lot here today.

Mr. Walsh, I was most impressed with your delivery. It was knowledgeable, succinct, clear, and I actually understood it. That's a wonderful thing at these committee meetings when you understand what's going on. I like your idea that recognized parties have more equal standing on the committee. I think that's a great idea, especially given that we don't really have a majority here in Canada, unlike most western democracies. We have what I call a "false majority", where you can get the appearance of a majority of the seats without a majority of the national electorate.

I'm not asking you to comment on that, but do you have thoughts on how independents and smaller parties can best be represented on the Board of Internal Economy?

Mr. Rob Walsh: There are two points I would say in response to that, Mr. Chairman.

One is that there's a certain commonality to be presumed, and correctly so, for the board's business—financial administration—between the interests of the independent members and the interests of every other member. You're all members. The Speaker is there to see that those interests are represented and fairly considered. That stands as a policy matter. You are there. You're not there in person, but you're there because you have the same function as others.

The second point is to say that I think the Speaker has traditionally this responsibility to see that all members' rights are respected, such as they are. I think the avenue to the board by independent members is through the Speaker, or perhaps by some other member of the board, or indeed if there were to be so-called lay members on the board, through those lay members as well.

There are a number of doors you might conceivably use to gain access to the board, but certainly the Speaker would be the primary one to see to it that an injustice perhaps is not done to an independent member by a decision of the board.

Mr. Bruce Hyer: I do like your idea about lay membership. That may help improve the situation.

My second question is to both of you. My budget is inadequate. It's been frozen since before I became a member. The PMO budget has gone up astronomically. I can't imagine how I could ever misappropriate any money from my budget. For several years I actually had to go over budget and spend out of my pocket in after-tax dollars just to do my job properly. So I'm not too worried about it.

Building on that, aren't there dis-economies of scale here if we start to spend \$10 to save \$1? I'm finding now that the controls are quite adequate for parliamentarians, especially for a backbencher with a limited budget. I am concerned that we are going to make things more difficult and actually more expensive with the way we seem to be proceeding here.

The Chair: A short answer; we're a bit over time.

Mr. Gregory Thomas: On behalf of the Taxpayers Federation, we salute you for your principled stance on the gun registry, and we regret that you were not able to stay in your political party and represent your constituents. That is a travesty.

Sorry, but I had to sneak that in.

The Chair: Do the rest quickly.

Mr. Gregory Thomas: In this day and age, you can slap a document on a scanner, upload it to the Internet in no time, and your constituents can have a look at your expenses. A couple of senators and a couple of MPs are doing it. It's very beneficial. I can expand on a couple of these real-life examples.

• (1150)

The Chair: Okay. Thank you.

Madam Groguhé.

[*Translation*]

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Thank you, Mr. Chair.

Canadians expect much more transparency from us. Ensuring accountability is essential. It's at the heart of what the House does. The possibility of an external body conducting audits seems to be a significant and coherent step. In fact, the Board of Internal Economy is both judge and jury.

In your opinion, which main aspects should we consider and propose in order to move toward establishing an external auditing body?

[*English*]

Mr. Rob Walsh: I recognize the sensitivity about accountability, but that can be overstated, in a sense, as the previous member, Mr. Hyer, was saying, about counterproductive costs. In the area of accountability, we're seeing reports from the public service about how they're spending so much time meeting the rules that have come in with accountability that they're just not getting their job done. They're not doing what they could do in their jobs because they're afraid of all the accountability they have to document. There's a point when accountability can become counterproductive.

But to go to your point about accountability relative to the business of the House, you are already accountable, and indeed, arguably, you will see some brush-off onto the House of Commons from events in the Senate in terms of accountability. It feeds the same appetite. It feeds the same desire by the general public to want to have a sense of controlling its elected members.

On the other hand, you're sent here to do a job on behalf of your constituents and you've got to be given sufficient latitude to represent their views, and to do so without, as we say in a legal context, fear of reprisal or hope of advancement. You simply do your job, and be careful with accountability, so you don't end up undermining your function on behalf of your constituents as members of Parliament.

[*Translation*]

Mrs. Sadia Groguhé: Mr. Thomas, what do you think?

[*English*]

Mr. Gregory Thomas: We'd counsel against the creation of a separate auditing function for the House of Commons. We think the Auditor General can do a good enough job.

We also favour total proactive disclosure on financial transactions and letting your constituents be the auditors. We take kind of a Libertarian approach, that members should be allowed to spend whatever portion of their budgets they choose on whatever they choose, as they deem fit, provided that every transaction is documented for the examination of their constituents.

[*Translation*]

Mrs. Sadia Groguhé: You were talking about some other legislative bodies or provinces that have a transparent system. In your opinion, which aspects of these systems would you recommend?

Mr. Gregory Thomas: Two examples are Toronto and Alberta. Citizens can use the Internet to find information on any member of Toronto's municipal council or any member of the Legislative Assembly of Alberta and look at the elected members' expenses. Technology these days makes it fairly easy to put receipts, documents and contracts on the Internet for that sort of audit.

I would like to share a brief story about Mr. Rathgeber.

[English]

He put his phone bill on the Internet for his Ottawa residence and the bill went to his constituency office in Edmonton. The phone bill from Rogers had been on the Internet for five hours or something, and a constituent noted that this bill was addressed to the constituency office. Mr. Rathgeber had no entitlement to have his home phone in Edmonton covered by the taxpayers. He had to go online and say, "Well, actually, it's for my Ottawa place."

That's the level of scrutiny that members get from their political opponents and constituents, and it does a terrific job of policing those expenses.

To Mr. Lukiwski's point—

• (1155)

The Chair: I'm going to have to stop you here.

Mr. Thomas Gregory: Sorry.

The Chair: We're at five minutes on a four-minute round.

Mr. Richards, four minutes from you, please.

Mr. Blake Richards (Wild Rose, CPC): Thank you very much.

Mr. Walsh, I think I understood this in your presentation and in response to some of the questions you were asked, but I wanted to clarify. Obviously you made a proposal of some suggestions that you felt would be helpful in terms of the Board of Internal Economy improving its operations. I think I also understood, in that you felt it... In the premise of the motion that created this study we're undertaking is an idea that the Board of Internal Economy would be looked at as being replaced by some kind of outside body. My understanding, I believe, from what you were saying is that you don't really feel that an outside body is a wise idea to contemplate. Is that a correct characterization of your comments?

Mr. Rob Walsh: Yes, Mr. Chairman. That was the view I expressed. I'm not saying the world would fall apart if you did that. I just think it would put the business of the House and the operations of the House at risk, which would not be desirable.

I personally am not prepared to throw in the flag and say that members can't be trusted to look after their business. They are accountable. If you just open up the windows a bit so that people can see what you're doing, it would become quite apparent.

Mr. Blake Richards: One of the suggestions you had was this idea of members of the public...but you suggested that you felt they should be people who had an elected office previously. I assume the rationale behind that was looking to take some of the partisanship out of the board.

If you would give me a yes or no answer to that question first, then I will proceed.

Mr. Rob Walsh: No. It was to diminish the partisanship, in the sense of allowing the public view that's not attached to a partisan interest being expressed. The elected office idea—and it could be school board, city, provincial, territorial, federal—was to sensitize the public lay representative to the context in which members of Parliament work.

Mr. Blake Richards: Okay.

You may have addressed what I was getting at there. I wondered about them having elected office. You were indicating that it could have been a municipal office or a school board. I wondered. Obviously, with anyone who has sat in this parliament or in any of the provincial legislatures, there'd most likely be some level of partisanship.

Mr. Rob Walsh: I did suggest they be appointed by the Speaker, from applications, without consultation with the House leaders. So there's no input to the Speaker from the House party as to which ones should be selected. He makes his judgment.

Mr. Blake Richards: I appreciate your clarifying that.

I understand that when you were law clerk from, I believe, 1999 to 2012—I do remember that you appeared before some committees that I sat on during my time in Parliament, certainly—you did sit in on meetings of the Board of Internal Economy during that time. Would you have regularly attended the Board of Internal Economy? Would your appearance there have been when there were specific legal matters, in that role of providing legal advice on legal matters? Would that have been the reason for you attending, or did you regularly attend?

Mr. Rob Walsh: I attended when there was a matter that had legal applications—certainly legal matters, but also other matters that had legal dimensions. As it turned out, I was there quite often.

Mr. Blake Richards: So you were quite often at the meetings. In terms of the meetings the board would have held in that time, what would you say the percentage of the meetings you would have attended would have been on those types of matters, roughly?

Mr. Rob Walsh: It varied from one season to another.

Mr. Blake Richards: If you averaged it out over that 13-year span, what would you say it was?

Mr. Rob Walsh: Fifty per cent.

Mr. Blake Richards: Fifty per cent of the time...?

Often when you were there, I assume those would have been matters that then likely would not have been able to be dealt with in public meetings, that they would have been in camera types of meetings. You're suggesting that with the two subcommittees, they would probably be matters that would generally be held in camera in those subcommittee meetings, if it were to move to that model. Am I understanding that?

Mr. Rob Walsh: As you know, Mr. Richards, clients don't take their legal advice publicly. But I have on occasion given legal advice publicly at committees like this when I was law clerk. So yes, it depends on the matter in respect of which the advice is being given, and it might be something that's better given to the subcommittee in private rather than publicly. There could be matters on which the board is comfortable in receiving legal advice publicly. It all depends on the matter that's the subject of the advice.

• (1200)

The Chair: Thank you.

We go to Mr. Opitz, and we'll finish with Mr. Scott after that.

Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, Mr. Chair. I'm going to split my time with Mr. Butt because he had a question he wanted answered now. I'll just take the last two minutes.

Go ahead.

Mr. Brad Butt: Mr. Thomas, did you want to answer that earlier question I had about the level of transparency, what you're not getting now that you think you should be getting in the disclosure of MPs' expenses, no matter what the item happens to be?

Mr. Gregory Thomas: Yes. Our view is that MPs should not be policed or supervised in the way they allocate their budgets. What may work for Mr. Richards in a humongous rural riding in Alberta might not work for you in Mississauga. And if Mr. Goodale wants to ride in the front of the plane or what have you, that's his prerogative. As long as those plane tickets are public and his political opponents can point out that he's spending almost triple what Mr. Lukiwski is spending to get the same job done and he can get re-elected, more power to him.

As I outlined with the example of Mr. Rathgebar's phone bill, the constituents are fully capable of parsing all the data that Parliament can throw at them. We just want all the documents there: the leases, the employment contracts, how the member spends the money. Let the member be accountable for his or her decisions.

Mr. Ted Opitz: Mr. Walsh, just in terms of the in camera versus in public on the board, the issue of liabilities is what I want to talk about right now, just quickly. If MP "A", for example, appears before the board in public and accuses MP "B" of improprieties and improper spending, and he's wrong, what liabilities do you think that individual would then face? Is he immune from any form of prosecution, lawsuits or anything, for appearing before a board and giving testimony in that respect?

Mr. Rob Walsh: I don't think the privilege of free speech that protects members from lawsuits or defamation would apply in most contexts in a board meeting. I've never heard a member do that in a board meeting, by the way. But to take your example hypothetically, were it to happen, no, I would not expect that the member in doing that would be legally protected under parliamentary privilege.

Mr. Ted Opitz: So if it were in the public, it would be in the public interest even if that did happen? I know it's never happened.

Mr. Rob Walsh: Every time a member of Parliament steps out of the House and talks to the media, he faces the same sorts of concerns, and presumably he or she is speaking to the media in the public interest but accepting that restraint. So it would apply at a board meeting as well.

Mr. Ted Opitz: Thank you.

The Chair: You have a minute left. We'll save the time. We'll put it into next week, where I'm already short of time.

Mr. Scott, you have four minutes.

Mr. Craig Scott (Toronto—Danforth, NDP): Mr. Walsh, I was just wondering if you could give us the benefit of your insight into how the process of consensus worked or maybe changed over the time you were law clerk.

I think people might have gone away from the last session with the false impression that consensus means unanimity, whereas consensus can mean different things. In some forums, it simply

means that those who've kind of lost out in the discussion don't object and they don't force a vote.

My understanding is that in the Board of Internal Economy a fair bit depends on the chair, who is the Speaker, about how consensus is determined. Is that correct? Has it changed over different periods of time?

Mr. Rob Walsh: Mr. Chairman, I've seen three Speakers playing the role of chair of the board. They were each quite different from the others, and arguably some were more effective than the others. I don't want to go into comments about the various Speakers and their effectiveness. Obviously the chair of any meeting is in a position to bring a meeting to a consensus. Some are better skilled at that than others.

To go back to your earlier point that consensus may just mean that a decision is taken with some people losing out and not actually having a vote, that is true. But what you're doing with that consensus regime is preventing anyone from having a veto, in effect—as in the House, where unanimous consent is required and one member can prevent that piece of business going forward.

It's in the interest of every member of the board, in the consensus regime, not to act as if they have a veto and frustrate the finding of a consensus by the chair, because it will work against them as much as it will work for them. Even though some members might express objections to what's proposed, a consensus is found and the board moves forward without a vote. To use your phrase, that member would have lost out, but on other occasions the member manages to see a piece of business go through over the expressed objections of another member.

It's the old saying: you pick the hill you want to fight on. I think Mr. Lukiwski referred to Clerk O'Brien mentioning one occasion where a vote was taken, and it may be the same occasion I recall being at a board when that happened once. It was recognizably exceptional at the time. I'm not saying there weren't others, but I remember one time when it happened. Generally, the board worked well with consensus.

The problem, however, is that if they bring their political conflicts into the room, that makes life more difficult for the board in getting on with business.

● (1205)

Mr. Craig Scott: I was just wondering if I could ask a question of Mr. Thomas.

Mr. Thomas, last session the chief financial officer indicated that he felt that the proposal that MPs emulate the current ministerial disclosure approach would actually be a regression. He felt that we had evolved to the point that we had more sharply tuned and appropriate categories here in the House, so far.

Then you proceeded to tell us something that I think is very important, which is that if one uses that regime, at the moment we don't have the same rules in the House that apply to ministers in terms of people being able to go and make access to information requests. There's nothing about the regime proposing to use ministers that includes the full disclosure you cited as part of that regime.

I just want to make sure that we're on the same point here, that the proposal coming from the Liberal Party ended up producing line items with not the same level of disclosure that you get with ministers.

Mr. Gregory Thomas: That's right. The guts and the really effective element of proactive disclosure at the ministerial level is the

ability under the Access to Information Act to get the documents. A refinement on the Liberal proposal would be proactive disclosure of the source documents, as it's done in other jurisdictions now.

Mr. Craig Scott: That squares the circle.

The Chair: Thank you, Mr. Scott. That concludes our full line of questioning today. We thank both of our witnesses for coming and sharing their information with us. I thank the members for staying reasonably within time and doing their jobs.

We will suspend for a couple of minutes while we go in camera to do committee business.

[Proceedings continue in camera]

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