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Chair

The Honourable Larry Bagnell

Standing Committee on Procedure and House Affairs

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•(1105)

[English]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Good morning. This is meeting 28 of the Standing Committee on Procedure and House Affairs in the 1st session of the 42nd Parliament. The meeting is being held in public.

We have Pierre Paul-Hus here for a little bit, and then the regular member will be back.

I have a couple of items of business to mention first. Our report on making the House more family friendly will be tabled tomorrow, hopefully. The West Block tour will likely be on Tuesday, June 21. For that, the clerk is going to pass around a sheet asking for your boot size. The pants, safety vests, and hard hats will all fit everyone, but for boots, we need to know your size. She'll just pass this out now so that you can fill in your boot size. There will be a 10 to 15 minute orientation on Tuesday the 21st, a week today.

Mr. Blake Richards (Banff—Airdrie, CPC): On Tuesday? So we're sitting next week?

The Chair: Yes.

Mr. Arnold Chan (Scarborough—Agincourt, Lib.): It depends on when we get to Bill C-14.

The Chair: The meeting on the West Block will be at this time, 11 a.m., as far as we know.

Madam Clerk, did you hear anything about the briefing?

The Clerk of the Committee (Ms. Joann Garbig): Overall, I think it's going to be one and then the other.

The Chair: The clerk is going to find out. She's not sure yet.

So stay tuned, we'll get you an email on that. But it looks like it will be Tuesday at committee time, maybe for both the tour and the briefing. But the clerk will get back to us as she finalizes that.

In my understanding, there's general agreement to go ahead with David's motion.

Arnold, did you want to...?

Mr. Arnold Chan: Yes. I was going to yield the floor to David.

What I proposed, David, is that we simply withdraw both your version and my version of the motion. We'll read in the amended version that will be moved by you.

Mr. David Christopherson (Hamilton Centre, NDP): Perfect.

Thank you, Chair, and thank you, Mr. Chan.

I just want to compliment Mr. Chan and members of the committee. You'll recall that I created quite a little kerfuffle at the beginning when we were setting up the rules and we set this aside to let us adopt all the other rules. We've been negotiating ever since, because words matter in these kinds of things. I would remind members that we had a huge problem in the last Parliament with the government of the day consistently using motions to go in camera with no excuse and no debate, but just going straight into camera where they would do whatever they wanted. So this is an attempt to provide some structure that creates thresholds as to when this committee is legitimately entitled to go in camera, and a couple of related matters to it.

So again, thanks to everybody. I think we've got agreement, but we'll see.

Chair, my intent would be to read the motion. I formally withdraw all of my former documents in relation to this, and I assume Mr. Chan will do the same. We've got a clean slate, and there's been consultations with the government and with the official opposition. My hope is that we finally can get this cleaned up before we rise. So here we go.

The Chair: Hold it, David. Hold it.

Mr. David Christopherson: Sorry. Yes, I agree.

The Chair: Do I have unanimous agreement to withdraw all the previous motions on this?

Mr. Arnold Chan: Agreed.

The Chair: Okay.

Mr. David Christopherson: Thanks, Chair, I appreciate that.

The motion is as follows:

That the committee may only meet in camera for the following purposes:

- (a) to consider wages, salaries and other employee benefits;
- (b) to consider contracts and contract negotiations;
- (c) to consider labour relations and personnel matters;
- (d) to consider a draft report or agenda;
- (e) for briefings concerning national or parliamentary security;
- (f) to consider matters where privacy or the protection of personal information is required;
- (g) when conducting an inquiry pursuant to the Code of Conduct for Members of the House of Commons: Sexual Harassment;
- (h) to receive legal, administrative or procedural advice from the House of Commons' Administration; and
- (i) for any other reason, with the unanimous consent of the Committee.

That the Chair may schedule all or portions of a meeting to be in camera for the reasons listed above;

That any motion to sit in camera shall be subject to a debate where the mover, and one member from each of the recognized parties, be given up to three minutes each to speak to the motion; and that the mover shall then be given one minute to respond.

That's the motion, Chair.

• (1110)

The Chair: Okay.

For this motion on the debate...is that for the move to go in camera for all these reasons above?

Mr. David Christopherson: Yes.

The Chair: Is it still debated?

Mr. David Christopherson: As per the last paragraph, yes, it is, for three minutes.

In the past, what happened was you got a motion to go in camera, and the chair... When I was the chair of Public Accounts, I had no choice but to accept the motion and move straight into the vote. This provides some discussion, again, giving the opposition a chance to raise the alarm if they think the government is trying to pull a fast one.

The Chair: Okay.

Is there any discussion?

Arnold, go ahead.

Mr. Arnold Chan: I have nothing to add, other than that I am prepared to proceed on unanimous consent, unless the official opposition has anything to add.

The Chair: Okay.

Are all in favour?

(Motion agreed to)

Mr. David Christopherson: Finally, some real democracy.

Mr. Chair, I have one last thing to add, if I could.

I didn't want to raise this as part of the debate, but verbally... The rule that we have adopted now... By the way, I am hoping that other committees will now look at this as a template. If they have something better, fine, but if they can't reach this bar, hopefully they

would go to it, because this committee plays a leading role in Parliament.

I wanted to mention to you, Mr. Chair, that the motion says

That the Chair may schedule all or portions of a meeting to be in camera for the reasons listed above;

I only hope that, when you do that, you would show in the notice which clause it is that we are going in camera for, so the public—as well as we—knows what part of this motion gives us legitimacy for you to schedule us directly in camera.

Other than that, I want to thank colleagues.

For those of us who lived through the last regime.... I won't go on and on, except to say that democracy really was left at the doorstep. This is a real breath of fresh air. I want to thank the government. They said that they were trying to do things differently. It took us a little while to get here, but we did, and I thank the government for their willingness to consider this and to bring more democracy to our proceedings. It is a credit they deserve.

Thank you.

The Chair: Mr. Chan, go ahead.

Mr. Arnold Chan: I also want to thank Mr. Christopherson for working collaboratively with the government on this. At the end of the day, we meant what we said.

I would simply agree with Mr. Christopherson as relates to the final point he made—that the chair should note which provision he would be relying on in terms of going in camera. I think that would be an appropriate disclosure before we actually go in camera.

The Chair: Thank you.

Mr. Richards, go ahead.

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

As all members of the committee would know, I've brought notices of motion for a number of motions in regard to our study on the premature disclosure of the contents of Bill C-14.

For context, I'm going to read the motions I have. Then I'll be moving one of the motions, Mr. Chair.

The first of those motions would read as follows:

That, in relation to its study on the question of privilege related to the matter of the premature disclosure of the contents of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) and pursuant to the Handling and Safeguarding of Classified and Protected Information and Assets guidelines, and the requirement to maintain a distribution list of all SECRET information, the Standing Committee on Procedure and House Affairs request that the Government provide a full distribution list of all persons who had access to any copies of the legislation on Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) prior to its introduction, to the Committee no later than June 21, 2016.

The other motions are as follows: That the Procedure and House Affairs Committee invite the Minister of Health to appear no later than June 21st, 2016, to answer all questions related to its study on the question of privilege related to “the matter of the premature disclosure of the contents of Bill C-14...”. The motion goes on to cite the rest of the title of the bill.

Also: That the Procedure and House Affairs committee invite the Chief of Staff to the Prime Minister to appear no later than June 21, 2016, to answer all questions related to its study on the question of privilege related to “the matter of the premature disclosure of the contents of Bill C-14...”.

Also: That the Procedure and House Affairs Committee invite the Leader of the Government in the House of Commons to appear no later than June 21, 2016, to answer all questions related to its study on the question of privilege related to “the matter of the premature disclosure of the contents of Bill C-14...”.

Finally: That the Procedure and House Affairs Committee invite the Director of Communications to the Prime Minister to appear no later than June 21, 2016, to answer all questions related to its study on the question of privilege related to “the matter of the premature disclosure of the contents of Bill C-14...”.

Now, I just wanted to make sure to read all of those into the record so there would be context to the motion that I will move, Mr. Chair, and I appreciate your indulging me on this.

I wanted to take a few moments to explain this. I think it's easier for members to understand the rationale behind all of the motions prior to moving the first one. Then we can have some discussion about that and, hopefully, proceed with our proper study of the matter to ensure that we are doing our due diligence here.

It was made quite clear when the justice minister appeared before us and mentioned numerous times that her department was certainly not the only department or agency that in fact had disclosure of the contents of the bill prior to it being tabled in the House of Commons, of course. That's not really any great surprise, but she did mention very specifically a number of times the Minister of Health and that department, and also the Prime Minister's Office. Those were two that she made quite clear.

To that, I've added also the Leader of the Government in the House of Commons, simply because obviously we're all aware that the House leaders and their offices have the direction or control in terms of what happens and comes forward in the House of Commons. Obviously, they would be consulted and would be in the loop on these things in everything that is coming forward in terms of the government's legislative agenda, so this seemed like a logical one.

I do believe that when she was appearing before us the minister also once or twice mentioned the Treasury Board president, but when we're looking at this, I feel that the Prime Minister's Office seemed to be the one that was indicated most often. Also, in all honesty, in looking at who would be most directly involved in this, obviously it would be at Health and in the Prime Minister's Office, outside of Justice, where the most involvement in this bill would have been.

Also, I think that when we're looking at dealing with the media or journalists, the most obvious place would be a communications shop, I suspect, as it would often deal with the media and be looking at communication strategies. So if there were a deliberate strategy to leak this, it would often come from those departments.

●(1115)

That is the reason there is no indication by me or anyone else in the official opposition that these specific individuals were the source of the leak, but certainly there are people who are answerable for those departments, and much like the Minister of Justice, it would be appropriate for them to answer for whether any kind of determination was made, any kind of investigation done, as to whether the source of the leak came from their specific ministry, department, or agency. That is the reason for choosing to call those specific witnesses.

The minister indicated a number of times that a number of individuals had access to the legislation prior to its being released. If you look at the guidelines for the handling and safeguarding of classified and protected information and assets, which would obviously include bills prior to their being released to the House of Commons—if you look under section 502 of those guidelines, a number would be indicated for each copy as one of the criteria for handling secret information. They would have to show the copy number on the face of each copy and maintain a distribution list. Clearly a distribution list is maintained for these documents, and that is why we believe it is appropriate for that list to be released to this committee so the committee is aware of who else might have had access.

Obviously, our job that we've been tasked with by the House of Commons through the Speaker is to try to do our very best, to do all the due diligence that we possibly can, to ensure that we determine the source of the leak and to try to ensure that we prevent this kind of thing from happening again and take any measures necessary to do that. It is important that we do our best to determine who would have had access to these and to have the people who are answerable—for what anyone being honest would have to admit would be the most likely sources—testify, given that they would be the people who would be dealing most with the media. We would certainly call them, much as we did with the Minister of Justice. The government side agreed to have the Minister of Justice here, and the same principle would certainly apply.

I can't understand why anyone wouldn't want to have these other departments and agencies that had full access to the contents of the bill come here to defend the actions of their department or ministry and make sure they have shown an accounting for any efforts they have made to investigate and determine that there was no source of the leak. I would think that no one on the government side would want to have that cloud hang over the Prime Minister or the Prime Minister's Office, or the Minister of Health either, I'm sure, and so for us to do anything but bring someone to be accountable for the Prime Minister's Office, the Minister of Health, and their departments and their ministry offices, we all, including the government side, would want them to have the opportunity to come and ensure that they have given us all an accounting for what due diligence, what types of investigation, they have done.

If we were to do anything else, the effect would be to leave some kind of a cloud, or cast some kind of doubt over the Prime Minister or the Prime Minister's Office and the Minister of Health's office. We certainly wouldn't want to see that. No one would want to see that, and we want to ensure we do our best due diligence to ensure that doesn't happen. If there is nothing to hide of course they would be more than willing to appear, and I would certainly hope that would be the case.

Mr. Chair, we'll move these motions one at a time as that's required, but the one that needs to be moved first would be the motion to ask that the distribution lists be provided. Would you like me to read that one back? It's been read into the record. It's been provided on notice. Do I need to read it again?

● (1120)

The Chair: No, it's okay. Everyone has it.

Mr. Blake Richards: Everyone is well aware of the idea contained in that motion, so I'll be moving that motion. As I've already explained, it is important that this committee be aware of the disclosure list so it can determine how best to do its further investigation.

It was quite clear when the Minister of Justice was here. She indicated on numerous occasions during her testimony and during the question and answer session of her hour here that a number of other agencies and departments had access, particularly the Prime Minister's Office and the Minister of Health. It would seem very logical, as was indicated at the committee at the time, that those would be our next steps. However, knowing the full distribution list would make our work much easier in this committee. That is why I move the following motion.

The Chair: Okay.

I have a list, with Mr. Chan and Mr. Schmale, but before I go to the list, I forgot to say in regard to the tour on Tuesday that because it's a construction zone, they do not want staff to come, so it's only the committee members and Joël. They don't want a big group in the West Block.

Mr. Chan.

Mr. Arnold Chan: I want to thank Mr. Richards for his explanation of the five motions that are before the committee. I'll provide the government's response with respect to the motions.

I understand your position. I've stood in your shoes in the past, Mr. Richards, as a member of the opposition. When you get referred something like this, it's a lot of fun. It's an opportunity to.... Notwithstanding the fact that we take this extremely seriously, I understand your desire to go on a fishing expedition.

Mr. Blake Richards: On a point of order, Mr. Chair, I find that particularly disconcerting, to say it very mildly.

Mr. Arnold Chan: I'll withdraw that.

Mr. Blake Richards: I would think that the member would not want to characterize this as somehow fun. It certainly isn't fun for us in the opposition or for anyone on the government side to leave a cloud cast over the Prime Minister's Office.

The Chair: Okay.

Mr. Arnold Chan: I will withdraw that comment.

Mr. Blake Richards: We're just trying to do our job here, and I find it very disappointing that the member is referring to it as fun. This is us trying to do our jobs as a committee, and I would hope the government would be wanting to participate in doing just that.

● (1125)

The Chair: Okay. This is not a point of order, though.

Mr. Chan.

Mr. Arnold Chan: I'll withdraw that comment.

I apologize for also not being present last Thursday. Unfortunately, I was not available last Thursday when the Minister of Justice and the Attorney General appeared. I actually want to thank Mr. Christopherson's colleague, Murray Rankin. I had to get back to my riding to do a town hall with Murray on medical assistance in dying, and because I can't fly, I needed the time to get back. I apologize that I wasn't able to join this committee on Thursday during the minister's presentation and question and answer session. I did have the opportunity to review the transcript and also see the proceedings on CPAC while it was proceeding.

This matter has been before this particular committee now for five meetings, since the matter was referred to PROC. We've heard not only from the Minister of Justice and Attorney General, but also from the acting clerk and the law clerk and parliamentary counsel. I haven't seen any evidence to date to suggest that there was a premature disclosure of the actual bill in advance of its going before the House of Commons.

That's exactly the point I'm getting to, Mr. Richards. The only person who knows for a fact whether they had the content of the bill is the reporter from *The Globe and Mail*, Laura Stone, whom you haven't chosen to call, for whatever reason. She would, in fact, have actual knowledge of whether she had the bill or not.

As I say, we're going about it in a roundabout way to try to get to the question of whether the bill had been disclosed before it was tabled in the House of Commons, after the bill had been given notice of motion.

I've taken this position from the get-go, that in order for this to be a breach of member privilege, the actual substantive content of the bill had to have been in the possession of somebody not authorized to have it before it was tabled in the House of Commons.

As you heard from the Minister of Justice's testimony, based upon the actual article in *The Globe and Mail* written by Laura Stone, it could have been an educated guess. In fact, some of the reporting was not necessarily an accurate reflection of the actual contents of the bill. She had indicated that the Department of Justice had followed very strict protocols with respect to the bill, and that from her department, there had been no breach reported.

We have no proof from my perspective to date that there has been a premature disclosure. I find these motions to be something that I can't support at this time.

I also want to raise particularly, as it relates to two of the motions, the ones that are calling for both the presence of the chief of staff to the Prime Minister and the director of communications again, that I strongly object to calling of any staff unless there is direct evidence that they are somehow implicated. They're not the ones, at the end of the day, who should be answerable. It has to be those within the political wing who would be answerable. I feel that those two motions are completely and absolutely inappropriate.

On that basis, I can't support these motions at this time.

The Chair: Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Well, I'm disappointed to hear that. I appreciate your comments, but I'm a little disappointed. I know you weren't here, but these motions were drafted directly as a result of the testimony given by the Minister of Justice.

I think we're fairly satisfied that she was not the source of the leak, but she gave us direction, pointing us in a direction where we should look further. I don't think it's acceptable to say "The justice minister said no, it's not her. Okay, end of story, let's move on." I think we need to keep going, especially based on this testimony. She basically said there are more people who have this document than us.

We accept that. Let's see the list. Let's see where else we can go. As a former reporter, this language in the article is fairly straightforward. She's using language as a statement of fact, not journalistic speculation. To me, that tells me she had a conversation with someone, and as a former reporter, usually it was in the communications department. We accept that there is one minor error in the article, but that could have been, as Mr. Reid pointed out—and I know you weren't here, Mr. Chan—very easily journalistic error. That part of the article could have been put down in error, especially if the reporter in the case was taking notes by hand during that conversation.

Looking at the article, what I think is more evident is that the reporter was stating facts about the bill, details that were not in the legislation, which to me means that you have a lot more detail than journalistic speculation. Somehow the reporter got this information, and it looks.... As I said, these are facts that were not in the bill, that the bill was excluding. That is very significant detail. That's a different style. So clearly there is something here.

The minister said she wasn't the one. Okay, let's take her at that, so who else? She said there's a list. Let's find out who's on that list. Maybe this is nothing, maybe it's something, but I think to have this referred to us and to say well, one witness is good enough, we'll just pass it along, I don't think that's acceptable. I think there's more to look for here. You look at what we're dealing with, and to leave it and not go a little further, to me there's something very dangerous there. We need to find out if privilege was breached. Clearly by the language, something is here.

I don't think stopping the investigation by the government sends the proper message, especially after one witness. Let's see who has the list and make a decision, based on that list, where we should proceed from there. But to say, no, we're done, that's not getting to the bottom of things. That's not finding out if there's a breach.

Let's find out. This is very serious. I think I'd be very troubled if the government voted this down. This is supposed to be a serious investigation, so let's treat it as such. Let's do the proper investigation and have the proper witnesses, and let's see if there's something there. But to leave it and to say we're done after one...I think that would be a serious fault.

Thank you.

● (1130)

The Chair: On the list now, we have Mr. Richards, Mr. Reid, Mr. Christopherson, and Ms. Sahota.

Mr. Richards.

Mr. Blake Richards: I'd like to respond to some of the comments made by the government side.

It seemed as though there were three arguments being made to oppose any effort by this committee to do the job that we're tasked with, which is to take a full look at a matter of privilege and make sure that we're doing our due diligence and taking the matter seriously. I don't get that sense, especially listening to them talk about having fun with it and these kinds of things. They're obviously not taking this seriously, and that's a concern to me.

There seem to be three arguments being made by the government side. The first argument was—and I will come back and respond to each of these points—that there was no evidence of premature disclosure of the substantial contents of the bill. As my colleague, Mr. Schmale, has just indicated, there certainly had to have been even a greater amount of knowledge to have been able to disclose, very specifically, what wasn't in the bill. That would require an extensive knowledge of what's in the bill, and so it's somebody that would have the knowledge and information. That's why it's so important to follow up to see if we can conclude what did happen.

The second argument the government seemed to be making was, "Well, the Department of Justice has followed the protocol." It sounds like that may well have been the case, but the minister was clear when she was here that there were other agencies and departments. She specifically mentioned the Prime Minister's Office a number of times, and the Minister of Health and that department. I'm not sure why we wouldn't want to give them the same kind of opportunity to take away the cloud that hangs over their heads. The only reason I can conclude that the government would want to avoid that—and I can't imagine any other reason—is that there is something to hide. I would like to believe that's not the case, and I think all Canadians would like believe that's not the case. If the government doesn't want to try to do its best to get to the source of the information and try and determine what happened here—that's our job, that's what we're tasked with doing—and if they're not willing to do that, and if they're not willing to give the same courtesy to these people in the Prime Minister's Office, or if the government has an issue with its staff members being called, then we can always have the Prime Minister come, if that's what they'd prefer. Somebody needs to be answerable for those departments and agencies, and to do otherwise leaves a cloud hanging over them, giving the impression to people that there is something to hide. That's the only thing it can possibly do.

The third argument that seemed to be made—and it wouldn't apply to the specific motion that we're debating now, but in terms of the other motions that I indicated it would potentially be a part here as well—was that the chief of staff, or the director of communications for the Prime Minister's Office, shouldn't have to come here to answer questions. I think someone would need to come on behalf of the Prime Minister's Office to answer. As I indicated in my previous comments, the communications shop in a ministry, or the Prime Minister's Office, would be the most likely individuals to be dealing with the media, so that would be the reason for asking them, and the chief of staff is answerable for what happens in the Prime Minister's Office.

We felt it was probably appropriate to call the chief of staff rather than to ask the Prime Minister. We understand his busy schedule and that there are a lot of things to worry about. If the government would prefer to have the Prime Minister come—they indicated it needed to be someone on that political level—then the only other option would be the Prime Minister. If that's what they'd prefer over the chief of staff or the director of communications, then we can agree to that, if the Prime Minister needs to be answerable.

I would hope that the government wouldn't want to leave a cloud over the Prime Minister's head or over his office, without giving someone or him the opportunity to come before the committee to answer for his office and to ensure that there was some investigation or due diligence done to determine whether the source of the leak came from that office. If there is no effort made there to determine that, then it would seem as though there is something to hide, and I don't think anyone would want to see that cloud hanging over the Prime Minister's head.

I want to go back over those things and spend a little time to refute them.

•(1135)

The first point is that there had been no evidence of premature disclosure. Well, looking at *The Globe and Mail* article, there are a few specific passages that talk very specifically about things that are not in the bill, the first being, and I'll quote it exactly, that it is “a bill that will exclude those who only experience mental suffering, such as people with psychiatric conditions”.

Now that was one of them. There's a couple of others, but I'll talk about that one briefly first, because the Minister of Justice did address this when she was here. She felt that the bill didn't actually specifically exclude those. I think there were many who would argue that although that may be technically correct, the practical effect would be this. That was actually one of the reasons why some people opposed the bill. Generally, I think this would be what a journalist would do in an article, namely, to discuss the practical effects of something, because that's what Canadians would want to know. That's what a journalist would talk about, and it could have been an interpretation made by the journalist based on that, or it could have been something that was very explicitly indicated to the journalist by whoever the source of the leak was.

The other two points in the article were these:

The bill also won't allow for advance consent, a request to end one's life in the future, for those suffering with debilitating conditions such as dementia. In

addition, there will be no exceptions for “mature minors” who have not yet reached 18 but wish to end their own lives.

The third was: The government's bill is set to take a much narrower approach than recommended by a joint parliamentary committee it struck to study the issue over two months this winter.

In addition, there was an article by the CBC on *The National* the next day that mentioned some specific details that were not yet available to parliamentarians, but which also said that the government's plan would put the tough issues off before it studied those who suffer from psychological but not physical illness.

Again, that would maybe indicate that there might have been something broader than just one conversation. It may have been a bit of a strategy, and that's again why I point to communications people, because a strategy dealing with the media would obviously be implemented, or conceived of, or carried out by, or all of the above probably, by communication officials, whether those be the Prime Minister's Office or not. The justice minister was quite clear when she was here that the Prime Minister's Office had a very direct hand in this. She was quite clear about that, so it would seem to be a logical assumption that they may have had a very direct hand in the communication strategy around it as well. If this were a deliberate leak, it would probably have been part of that strategy, at least unofficially, and someone would have information or knowledge of that. The most likely person would be the director of communications in the Prime Minister's Office, or at least that would be the person who would be answerable for the employees or officials who would have been engaging in such activities.

I explain these points only to further reiterate the ones made by my colleague, Mr. Reid, when the justice minister was here, but also by my colleague, Mr. Schmale, today when discussing this motion, that in order for someone to have such an intimate knowledge of what isn't in the bill... And this isn't just a shot in the dark, some kind of a guess. These are very specific points of things that aren't in the bill. That would indicate that someone would have to have knowledge of what was in the bill, and obviously to have had knowledge of what was in the bill they would have had to be part of the distribution list, or have had a copy of that leaked to them. As all of those copies are marked and numbered, so that we know whose copy they were, it would be obvious that it would be traceable. We would be able to know whether it were done that way. We would be able to trace the copy. If it were done by someone speaking with a reporter, we would be able to at least have some determination of whether there was any kind of effort made to determine whether that had in fact occurred by someone in the Prime Minister's Office, or had in fact occurred by someone in the Minister of Health's Office, or in the case of the one motion also the government House Leader, whose office would obviously have knowledge of the bill as well.

●(1140)

But that said, in order for us to fully determine who would have had access, this motion is important. I notice that the government didn't really address this actual motion in any of those comments in terms of why they would have any issue with the committee taking a look at who the distribution list would have been so we have some sense as to whether there is any chance of really being able to get to the bottom of it and determining who might be possible witnesses to call, what avenues we should go down, and in what direction we should look. I would certainly hope that they will change that direction and want to try to do the best to show openness, show accountability, show some transparency, and make an effort to try to determine what happened here.

This is a very serious matter. It's a matter of privilege, and it's been determined a prima facie case by the Speaker of the House of Commons. It's a very serious matter, and it's not one to be taken lightly and to be laughed off, as the government seems to be trying to do, or one that needs to be brushed aside, as the government seems to be trying to do.

The Minister of Justice was called and asked whether there had been any diligence done on her part or her office's to try to determine whether there had been any source of a leak. She then indicated, "Well, yes, it was done," but she was very clearly pointing this committee where it needed to go next. Now, why would the government not want to follow that direction? Obviously she would have been trying to make sure that she was protecting herself, but I would think that we would want to extend the same courtesy to the other people who she mentioned and potentially implicated by giving them that same courtesy and that same opportunity.

For the government to do anything else would certainly cast the impression, I think, to any reasonable Canadian watching that the government would have something that they're trying to hide. I don't think the government would want to give anyone that impression, unless they actually do have something to hide. I would hope that's not the case.

It's just seems really difficult for me to understand why they wouldn't want to see the distribution list produced, why they wouldn't want to give some of these people the opportunity to have that same courtesy extended to them.

The government did indicate that it had some trouble with the chief of staff, or with the director of communications being called, and indicated it should be someone political. Obviously, the only person who could then be called would be the Prime Minister.

I would certainly be willing to entertain an amendment, or a motion on their behalf, to call the Prime Minister in place of the officials in his office, but somebody certainly should be answerable in the Prime Minister's Office to the same questions that were asked of the Minister of Justice. Who that would be? I'm open to having a conversation; I'm open for discussion about who that would be, but it should be somebody. Surely the government wouldn't want to give the impression that the Prime Minister's Office is not looking to be open, transparent, or accountable with Canadians. So we'll certainly give them every opportunity to prove that would be the case, and I

hope they will do that. I don't think they would want to leave that impression with anyone. I would sure hope not.

I think it really is not a reasonable statement for anyone to make that, "Well, gee, we had one witness come in, the Minister of Justice, and she indicated that her department had done its due diligence, and therefore we should just drop the matter." Why bother making any kind of an effort? It's just an opportunity for the opposition to have some fun. No one here finds this fun or funny, at least on this side.

This is a very serious matter and it's one that we need to take seriously as members of this committee and do our job to the best of our abilities. For anyone to say, "Well, we had the one witness come and, even though she very explicitly indicated there were other people we would obviously want to call and give the same opportunity to answer those questions," that somehow we've done our job, when the Minister of Justice mentioned very explicitly, a number of times, both the Prime Minister's Office and the Minister of Health....

●(1145)

It would seem that it would be a pretty obvious conclusion that the next step would be to call those same individuals and ask some of those same questions. If there is nothing to hide, then they will simply answer that they have done their investigation, their due diligence, and they can have their names cleared as well. Otherwise, there will always be this black cloud that will hang over their heads, this doubt that Canadians will have about their integrity and honesty. It would appear that there would be something to hide. I can't imagine why the government would want that cloud of doubt and suspicion about the integrity of the Prime Minister to be left to sit over Canadians, and that same doubt over their colleague, the Minister of Health. I would really hope that they take another look and give us a second thought because it does not, in any way, seem as though they are taking this seriously at all. That is a really big concern. If you want to talk the talk about being open, transparent, and accountable, you have to walk the walk, and that is not what we are seeing from this government right now. I certainly hope they will reconsider their opposition to our doing our job as a committee and give us an opportunity to take that shadow and that cloud away from the Prime Minister and his office, and from the Minister of Health and her office.

The Minister of Justice has indicated that her office has done its due diligence and made every effort. I certainly think that most people were fairly satisfied that this might be the case. Why would we not want to have that same opportunity for the Minister of Health, the Prime Minister's Office, or the Prime Minister himself to clear up any suspicion there is? I just cannot imagine any reasonable reason why that would be the case.

I want to come back again to that idea of the chief of staff and the director of communications, and how the government members indicated that we shouldn't be calling them. Mr. Chair, although I would like to keep the floor, maybe I will ask the government side, Mr. Chan or someone else on that side who wants to respond, whom they would suggest we call from the Prime Minister's Office to give the Prime Minister's Office an opportunity...? If it is not the chief of staff, and if it is not the director of communications, they are saying it needs to be someone political. The only person that would be, that I can think of, would be the Prime Minister. Are they indicating they would like to see the Prime Minister come before the committee? Whom would they suggest we have come, to make sure we give the Prime Minister and his office the chance to clear their name?

Does anyone on the government side—if I can ask and still keep the floor, Mr. Chair—want to answer that question and give us some indication as to who should be answerable for the Prime Minister's Office, if not the chief of staff or the director of communications at the department where it would leak? Do they want the Prime Minister to come? Does anyone on the government side want to answer that?

• (1150)

The Chair: Do anyone want to answer now?

Or do you want to wait until you get to your turn on the list, Mr. Chan?

Mr. Arnold Chan: No. There is a general list.

Mr. Blake Richards: The silence makes it clear that maybe the objections were not so much to the individuals but more to the idea of the Prime Minister and his office being accountable for anything that may or may not have happened. For anyone to conclude anything other than.... I guess what I would say is that it would be reasonable for someone to conclude that there would be something to hide, unless we have someone answer. I don't understand, for the life of me, why the government would want to leave that doubt or that suspicion.

Maybe I will conclude there, for the time being. Why would the government want to leave doubt, suspicion, or any question in Canadians' minds about the integrity of the Prime Minister of Canada or his office, and of the Minister of Health or her office, unless there is something to hide. I cannot understand. I really hope the government will reconsider, so we can have the opportunity to have that name cleared or for this committee to get to the bottom of what did occur. Otherwise, there will always be doubt and suspicion in the minds of Canadians about the integrity of our Prime Minister.

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Kingston, CPC): I want to talk to you about why I think this motion is important and why I think the members of the committee should support it.

Let me start by going back to what the Speaker indicated in his ruling that there was a prima facie case of privilege. When he made his ruling in April he was responding to a matter of privilege that had been raised on April 14 in response to the leak of the story on April 12 to Laura Stone at *The Globe and Mail*. The Speaker made a point of indicating that the issue of “provenance”—that's the term he used—meaning where the leak came from, finding the source of the leak,

ought to be the focus of our investigation, not what we are now focusing upon.

About halfway through his remarks he said, dealing with an earlier case, that “no doubt existed as to the provenance of the leak”, referring to a previous leak that had occurred back in 2010. He's emphasizing that the source of the leak is of key importance. Looking back at previous Speakers' rulings, I find that in dealing with a similar situation back in 2001, Speaker Milliken also emphasized the importance of seeking out the provenance, the source, of the leak. Once again, this was at that time a piece of legislation, Bill C-36, the anti-terrorism act.

Mr. Chair, you were in the House when that arose, as I was.

It was a matter of equal importance from the point of view of Canadians at that time to the stature that Bill C-14 has in the public consciousness today. Some of the content was leaked. The member for Winnipeg—Transcona, at that time it would have been Bill Blaikie, argued that the Speaker ought to investigate.

The Speaker, while he appreciated this input, corrected Mr. Blaikie in the following words:

The hon. member for Winnipeg—Transcona in his remarks tried to assist the Chair by suggesting that it was for the Chair to investigate the matter and come up with the name of the culprit and so on. I respect his opinion of course in all matters, but in this matter I think his view is perhaps wrong. There is a body that is well equipped to commit acts of inquisition, and that is the Standing Committee on Procedure and House Affairs.... Accordingly, in my view this is a matter which ought to be sent to the committee.

Of course, he then went on to rule that a prima facie case of privilege having been found, the matter should be further investigated by the procedure and House affairs committee, by this committee.

The point to be emphasized is there is a body that is ideally suited—I wish he had not used the phrase “commit active inquisition” because, clearly, our goal is not to be the Spanish Inquisition—to inquire, to engage in matters that require further inquiry.

We are the body that does inquiries. Doing inquiries for the purpose of discovering the source of leaks is what we do when leaks of legislation have occurred. To further emphasize how important this was, I am once again turning back to Bill C-36. I wonder if I could also draw the attention of members of this committee to the words spoken by Don Boudria, who at the time was the Liberal House leader. To be clear, the Liberals were in government, he was the House leader, legislation of his government had been leaked out.

• (1155)

He made the following comment prior to the Speaker making his ruling. He said, with respect to Bill C-36, that:

On Saturday I saw extracts from the bill in the media. They were not all factually correct but enough of them were that it caused me to be as concerned as the hon. member

—he's referring to some other member who'd raised the matter—when raising this question in the House. I cannot say much more other than to apologize on behalf of whoever is guilty of this. I use the word guilty because that is what comes to mind, given the respect that I have for this institution. Anyone who breaches that respect is guilty of an offence in my book. The problem is that we do not know who it is.

So here we have the government House leader, who has just seen a leak occur on his watch, making it very clear that he thinks it's appropriate to determine the identity of the individual.

That's the first point to be made. It is our job to find the individual. It is our job to find the individual because the privileges of the House have been breached. It is not part of that investigation to try to predetermine whether or not the leak was deliberate or unintentional. I have my own views on that subject. I've shared them with the committee in the past. This looks far too much like the kind of information that I would have included in a deliberate leak had I been in the business of deliberately leaking information. That is to say, it very neatly shaped the story that came out of the media. The focus was on the bill not going far enough as opposed to the bill going too far. That is the kind of thing one does when one is trying to engage in leaking for the purpose of redirecting conversation and shaping public discourse.

That being said, that does not, as yet, point us in any particular direction. We do know, based on the testimony we heard from one witness, the Minister of Justice, that she has firmly and absolutely... In response to my question, when I simply asked her, "Are you the source of the leak?", she said no. We take her at her word. I take her at her word; I thought the rest of her testimony actually indicated very clearly.... I should be careful what I say here; it indicated to me, in a way that satisfied me, in my subjective judgment.... That's a bit different from being clear, but it was subjectively satisfying to me that she was not the source of the leak.

Indeed, I think her willingness to appear here, at a time when she really is arguably the busiest person in Canada, indicated to me that she was anxious to clear her name and make a point—i.e., that whoever else is the source of this, I am not, and I don't have information as to who is; that is to say, it was not leaked by somebody else with my sign-off, active or passive.

I accept that, but that doesn't mean that the acceptance, active or passive, of other individuals was not involved. Indeed, that is the likeliest scenario. I think when we see a reluctance to allow anybody else to come forward, or indeed to explore which individuals might be responsible, be they officials or be they elected people, it indicates a desire to prevent the truth from being found.

Why would that be, Mr. Chair? Most obviously—indeed, it's the only plausible explanation I can have—it was a deliberate leak. Moreover, a search for the truth revealed that it was not a leak that can be pinned on some low-level individual. No low-level individual can be thrown under the bus and thereby end the story. When we can't find some enlisted soldier to use as a sacrificial lamb when one of the generals is implicated, we start stonewalling. That's what this looks like to me.

• (1200)

Now, I want to come back to a point that Mr. Chan had been making. Mr. Chan said that, well, the text of the bill was not actually leaked, that what we had instead was negative information, information about what wasn't in the bill. Therefore, previous rulings where we talk about the text ought not to be treated as being as important.

Just to be clear about this, I'm returning now to a ruling that Speaker Milliken gave on October 4, 2010. If one turns to page 4711 of the *House of Commons Debates*—I know we all have our copies with us right now—you'll be able to read Speaker Milliken having said: "It is indisputable that it is a well-established practice and accepted convention that this House has the right of first access to the text of bills that it will consider".

I think Mr. Chan is arguing that this convention should be understood very narrowly. As long as I don't use the words in the text when I'm making my leak, if I am, say, a minister of the crown or a communications person for one of the ministers of the crown, then no real breach has occurred because under this narrow and technical construction, the actual text is still seen first in the House. If I use words that are somewhat different or if I don't have them in the correct order, as they were in the bill, then I haven't leaked the text of the bill.

This narrow and technical construction, Mr. Chairman, of course is incorrect. The law can sometimes be interpreted narrowly and technically. That is not the interpretive doctrine that the Supreme Court currently, typically, uses, either for constitutional or ordinary textual interpretation, but it has been a respectable doctrine of interpretation in the past, in certain situations where the overbroad reading of the statute could result in an act of injustice.

I'm going to loop back here for a second, so you can see the point of the distinction I'm driving at. In one famous case from the 18th century that is cited in Blackstone, Parliament passed a law indicating that the death penalty was to be applied for any rustling or theft of cattle.

In the language of the 18th century—the English language evolved, of course, as did the French language and other languages—the word "cattle" sometimes was taken in the sense that we would use it today to mean cows, bovines, but "cattle" was also meant sometimes as a term for all livestock. Faced with the situation of an individual who had stolen or poached some other animal—I think sheep, but I'm not sure—the court chose to give a narrow and technical construction to the word "cattle" and said it interpreted the word "cattle" as narrowly as it could, to mean only cows. This was a sheep. This individual would not hang.

I'm not sure what happened to that individual. They probably got transported to Australia or something lesser, but nonetheless it was perhaps not desirable.

Then Parliament passed a new law saying in this act, the word "cattle" meant all livestock, thereby making it clear that they wanted people who poached anything to be hanged.

That general practice of using narrow and technical construction for criminal law, although it has been eroded to some degree in recent decades, remains a way of dealing with situations where the law could wind up causing acts of injustice were it interpreted by using the opposite practice, which is known sometimes as "large and liberal" construction—"construction" means "interpretation", by the way. The term the Supreme Court likes to use, "purposive" construction, that is to say we interpret this, whatever the words are, to bring fulfillment to the action that was intended.

That's the law. We're dealing here with a convention or practice. There is no such thing as a narrow construction of a convention or practice. It's all about intention. There is no looking at the letter of a convention and ignoring its spirit. It is all spirit. And interpreting the spirit of the law, or a practice or convention, inevitably means giving it a broad construction.

• (1205)

This gets expressed in a number of ways in House of Commons debates, particularly in rulings of the Speaker. The Speaker points out, for example, that you cannot do by the back door that which you cannot do by the front door. In the same way, if I want to address a question to the Prime Minister, I have to refer to him as “the Prime Minister”, not as “Prime Minister Trudeau” or “Mr. Trudeau”. I can call him “my honourable colleague”, “the right honourable gentleman”, and so on, as long as I don't use his name. That's the direct rule. But I can't get around it. I can't enter through the back door by saying, “Today's *Globe and Mail* says that Prime Minister Trudeau...”, saying that I'm quoting somebody else, so it's not me; it's them. I've tried to come through the back door when the front door was shut. I have tried to find a way of interpreting a practice narrowly, when it ought to be interpreted broadly.

All right. So now you can see the point I'm getting at. We have a practice, a convention, relating to the text not being leaked. It is a well-established practice. It applies to words that don't actually contain chunks of the text, but that have the same effect. I wanted to make that point very clearly, but I would actually go further. In regard to this talk of negative versus positive information coming out, unless the entire text of the relevant sections of Bill C-14 had been released to Laura Stone, it would have been impossible to summarize that which was being left out of the legislation, if you follow. This is all about, “Here's what the government won't be doing. Here's why people who feel very strongly that the legislation should go further ought to be upset. Here's why people who feel the legislation ought not go as far as the parliamentary committee had recommended ought to feel that the government is responding to their concerns”, which after all, is the entire communications exercise of the leak.

That can only be accomplished by indicating that which was absent from the bill. As I pointed out to the minister when she was here—and she made the same point about only negative information being contained—that actually was a greater disclosure of information. I can know only part of the government's plans and leak that positive information about what's in the bill. I could be someone who was only privy to one part of the legislation. But in order to say this or that is actually absent from the bill, I must be familiar with the entire bill, the whole of the bill.

I would make the suggestion to you that only relatively senior individuals in the government, be they people who are actually elected officials or people who serve those officials in a staff capacity, would have had access to all of this information. We haven't ascertained who those people are. It is not an infinite list. It is a finite list. It is a list the government could provide us with if we passed this motion. This is information the government would have to provide us with. And that, I suspect, is the real reason—although one should never attribute motives in this business—that the Liberal members of this committee have been instructed to try to ensure that

this motion does not pass. Their goal is, of course, to make sure that the “guilty” parties—to use the term that Don Boudria, Liberal House leader, used 15 years ago—are not found.

That, of course, leaves them at liberty to do the same darned thing all over again. If the approach is going to be that when these matters come before this committee, this committee then kills them quietly, then this committee effectively ensures that contempt of Parliament can happen, and those who engage in that contempt get away scot-free.

Once that pattern has been established, once it is clear that there is no punishment for acting in contempt of Parliament in this particular manner, then they can do it all over again the next time it serves their communications goals to act in contempt of Parliament and release information in this manner or in some similar manner. That's a very worrying thing.

• (1210)

Mr. Chair, I now want to turn to the question of whether this was a deliberate versus an accidental leak. As you know, I've already editorialized to some degree on this. I thought I would explore in a bit more detail why this is important, and the point I'm about to make emphasizes the importance of passing this motion.

I've pointed out that the very fact that the Liberals would like to shut this down suggests that it's someone higher up. It also suggests deliberate intent. After all, if it was an accident, we would be able to determine what the accident was and we could ensure that hole was plugged. Someone could say, “Mea culpa, I'm upset”.

They might say something similar to what Don Boudria said. Let me go back and give you a bit more of what Don Boudria said in 2001, because it is striking. He admits that he is not in complete control of what's going on and is frustrated by that fact. So on October 15, 2001 Don Boudria said, and I quote:

Last Friday afternoon I received a copy of Bill C-36. As is my role as Leader of the Government in the House of Commons, I do what is known as a review of the bill. I took precautions then and earlier with the minister and all of her staff to ensure that the bill was not in any way given to the media or otherwise. I was given that assurance by everyone I spoke to.

This is the part I quoted from before, but I want you to go back and look at what was said by the House leader at the time explaining how it works.

Is his role as leader of the government in the House of Commons, he does what is known as a review of the bill. At some point before it is released to the House of Commons, not way in advance, he gets to see a copy of the bill and, as is the case with Bill C-14, you're dealing with a piece of legislation that is both high profile and also urgent. It has been pulled together in a hurry.

He sees it a few days before it is released. Part of his job, which he stresses, is to make sure that nothing has been given to the media by the minister or any of her staff. The minister he's referring to is the then Minister of Justice, Anne McLellan, and, of course, her staff, and he was given assurances. The House leader was then and is now in possession of the assurances of individuals that they did not leak it. Unless, of course, somebody said they did leak it.

There are several possibilities here. Either, one, the House leader Dominic LeBlanc was given assurances from everybody that no leak had occurred, and one of them lied to him; or two, he was informed by one of them, but the others wouldn't have known that in fact a leak was going to happen or had already happened—it was in the works, and so he was part of it—or three, he and his office were themselves a part of the strategy to leak the information.

I don't know which of those three scenarios is correct. I do accept vis-à-vis the Minister of Justice and her officials, unless they are working behind her back, which I suspect is not the case, that they are not the source of things. But someone is the source of things because the leak exists; the leak was there in *The Globe and Mail* on April 12. It was a deliberate leak, unless some kind of scenario exists that I'm having trouble imagining, and the House leader is very likely to have known about it.

The House leader should be before this committee to clarify that and, just as we did with the Minister of Justice, we would take him at his word if he says he knew nothing. We would not say, “Minister, you're lying”. We all understand that, if he were lying, that would be itself a contempt of Parliament, and the kind of contempt of Parliament that ends a career if it's ever demonstrated to be the case.

● (1215)

The justice minister's awareness of the severity of deliberately and overtly lying to a committee of Parliament is one of the reasons I take comfort in her words. I take very seriously her words, because she is, as we all can see, a very intelligent person who is not going to do something that stupidly self-destructive.

He should be here. He will be on the distribution list, for sure. He should be here testifying before this committee. He could go further, I believe, than any other person in bringing clarity to where and when this deliberate leak was planned, who was involved in it, and what their strategy was. I guarantee that sunlight—and they say that sunlight is the best disinfectant—will bring an end to future leaks of this sort because no one will want to go through that again. That is the reason we want to have him and other people on the list here, or at any rate to know who they are so we can figure which of those individuals should come here.

Let me make one last point about the desire of the Liberal committee members, or the Liberal whip, to vote down this motion which is critical to actually determining the provenance of this leak. As we've found with the recent matter of privilege on the Prime Minister's physical contact with the member for Berthier-Maskinongé, the committee is in a position to make a ruling and to report back to the House on contempt of Parliament, whether we believe it happened or not, and, if so, how—that is, the details—and perhaps recommendations as to how to ensure that this sort of thing doesn't happen again.

We also have the ability to just say that no report is necessary. This was actually new information to me as of that meeting, and the record of my interaction with Mr. Christopherson in which I tried to determine what course of action we should have, and of my interaction with the clerk in which I tried to find out the rules in this matter, are a matter of public record.

The option of determining that there's nothing here to see not merely ends the possibility of reporting back to the House, but the possibility of dissenting opinions. It ends any investigation. As such, I would make the suggestion that it has the practical effect of giving licence, of saying to the government, “You got away with it. There was an insignificant little hearing, which produced no result and then got shut down through the simple act of the government exercising its majority to reject any new motions to bring forward witnesses.” That's all the punishment there is, so they may be able to get away with this.

I mean, the idea that a convention or practice is permanent and that it can never be eroded is incorrect. Normally the idea that conventions, whether constitutional conventions—and that's my area of specialization—usages, practices that exist in the House, are permanent and lock themselves in is actually not guaranteed. Normally, they do. Normally a convention or practice is an act of self-restraint that is not actually written down in the rules but is accepted as a norm of behaviour and is sanctioned by the overriding body, demonstrating its disapprobation. Normally these things become stricter and stronger with time. If you look at our day compared with 50 years ago, 50 years ago compared with a century ago, and a century ago compared with two centuries ago, you'll find that the conventions are becoming, on the whole, stronger.

● (1220)

These conventions impose restraints upon all of us to abide by the norms of civilized behaviour—or the norms of “respectful” behaviour perhaps is the right term to use—that cause us to restrain ourselves in ways that are not written down in the rules. Those norms become stronger with time, on the whole, but they can go in reverse. One of the roles of this committee ought to be to try and ensure they do not go in reverse and that we do not find ourselves chipping away at, or eroding, a convention, so that something that was not considered respectful behaviour or acceptable behaviour in the past comes to be tolerated in the present.

I would submit that if we're looking on the grand scale of things, then this erosion of self-restraint is one of the things we see happening, for example, in wartime. They always say “truth is the first victim in any war”. The need to shut down openness for strategic reasons becomes one of the victims of war even in the best and most civilized countries, and even when we are fighting for the most just of causes, as we were in the Second World War. In the midst of that war we did things that we are not proud of and that we now recognize were wrong. While I do not make an analogy here, the purpose of the analogy is simply to point out how conventions can erode. I do note that the way in which we acted toward one subgroup in our population at that time was unacceptable.

One could point to other conventions, perhaps at a more benign level, but let me make a clear example here of a constitutional convention in the United States. It was initiated by George Washington, and it developed over the decades, that no president ought to serve more than two terms in office. That was the convention that was respected by every president up to Franklin Roosevelt, who in 1940 ran for a third term because there was a crisis in the nation with an impending war. The United States was still not out of the Great Depression. Nobody thinks that Franklin Roosevelt was not a great man, but after he passed away, a decision was made and concurred with by two-thirds of the members of each of the two houses of Congress, as well as by the legislatures of three-fourths of the states, that in the future no person should be able to serve as president for more than two terms, and that was put into their Constitution.

There was a minor exception made for someone who had served less than half of a previous term of a previous president. Such an individual could serve two terms plus that half term, and Lyndon Johnson considered taking advantage of that in 1968 before announcing that he would not be contesting the 1968 presidential election.

The point I'm making is that conventions can be rolled back, and that what is true with a constitutional convention is also true with a parliamentary practice.

I think what we are seeing here is an attempt on the part of the government to roll back a practice and to say that a practice that has always been understood and interpreted robustly ought to be—"ought" is the wrong term, because it implies they think this is of value—or they can get away with, if they do the right things, restricting or narrowing a practice that is respectful of the House. They can say, "As long as it's not the text, it's okay, we can get away with it", or that, "If we get caught, then we'll just take this to committee, and we'll kill it quietly."

We have been given the task of looking for the "guilty" party, in Don Boudria's words, and seeking out the provenance, in Speaker Milliken and Speaker Regan's words, of the leak. Their words, the Liberal's words and Mr. Chan's words, are that this isn't necessary. The Speaker says it's necessary, or recommends it to us, but they say it's not necessary. Past practice has been to take this very seriously, but meh, they say it's not necessary because of a technical argument that there was no revelation of the actual text, even though, clearly, the leak is of a greater scope than if the text had actually been leaked.

•(1225)

Maybe they're right. Maybe they can get away with this. That's how it happens. People drop their guard, either because they feel it's an emergency, for example, in a time of war, or as with the Anti-terrorism Act, in a time of national crisis.

Returning to that bill, Mr. Chair, I voted against that bill. I voted against it because I held a constituency referendum, similar to the one I held on Bill C-14, and the majority of my constituents said to vote against it. They told me to vote against it because it lacked a sunset clause.

We said in a time of crisis that we were willing to suspend some of our traditional civil liberties in the pursuit of terrorists, in the pursuit

of those who are willing to do the kind of horrible thing that was done on September 11 and that, in another way, with another weapon, was done just last weekend in Orlando and has been done a thousand different times, a thousand different ways, in the intervening decade and a half. My goodness, those of us who lived through September 11 and those who are living through all of the subsequent horrors visited upon us—whether in London with the subway bombings, or in Paris with the nightclub attack, or in Orlando with this recent outrage against humanity, or any of the others that have slipped my mind because there are so many—can be sympathetic to that goal of saying that we have bigger fish to fry and we can set aside some of these safeguards we have put in place.

But even then, in rural, conservative, law-and-order Lanark County, a majority of people thought it was too much of a price to pay. So they instructed me to vote against that.

I voted not only against the government but also against my party. Four of us from the old Canadian Alliance broke party ranks and voted against it, along with the NDP caucus who also voted against it. I thought that was important.

There is no similar crisis driving this particular breach of the practices of the House. Don't misunderstand me. There actually was a looming deadline—now passed—on June 6, that if we did not have a new piece of legislation in place, the relevant provisions of the Criminal Code would cease to be in force and effect, and so there was an urgent deadline in that sense.

The urgent deadline having passed, we are not actually faced with the prospect of physicians euthanizing people in the streets, which some fearmongers seemed to be afraid was going to happen. But that wasn't what this leak was about. This leak wasn't about somehow assisting the government to deal with that impending crisis, real or artificial.

This was about trying to shape the debate. This was about manipulating public opinion. This was about manipulating the thoughts in peoples' heads. This was about misdirection. This was about the abuse of public discourse. This was about someone saying that he or she has a whole package of information and is going to selectively put out part of that information, going to put it out in a way so that nobody can confirm the truth or accuracy of it, going to put it out in a newspaper with national reach, going to put out this leak in a way that will get picked up by all media, going to shape this debate.

This is not information. This is misinformation. Although virtually every word in this is true, this is about misinformation.

•(1230)

It is striking to me, Mr. Chair, and it should be striking to any objective observer, that one of the minister's defences—and this should not be taken as being terribly serious—was that, after all, part of the leak is inaccurate. It's not correct, so that's okay as a defence. Now, I think you know my response to that. My response to that is that it would almost certainly have been a verbal leak. Laura Stone would have received an email or a phone call saying let's get together. I assume they either met somewhere or had a conversation over the phone with Laura Stone then taking notes, but she was not left with a copy of the legislation, and nobody wrote down or took dictation.

The likeliest explanation is that Laura Stone...and I could be wrong, because maybe she was and is an expert on the details of the ins and outs of assisted suicide, but even if she were, she very likely just made a slight wording error. But a minor correction to the wording makes this correct in every detail.

That is what happened, and it is most regrettable that we are being told that this is not important, that this is something we should just drop. Also, to be clear, this is something we can expect to recur in the future.

Turning now to the great poet, T.S. Elliot, do you remember he talks about how freedom dies when civilization dies, not with a bang, but with a whimper? It's a thousand little whimpers, our failing to respond vigorously. Our failing to try to keep committee meetings going when we're faced with the stone wall we see across the way here, that would be one of the whimpers. That is the reason, Mr. Chair, that we are attempting to exercise the only weapon we have on this side of the aisle, which is public opinion to try to draw attention by dragging out this debate to the fact that debate is about to be shut down; to the fact that open inquiry is about to be shut down; to the fact that silence is about to reign on how one deals with contempt of Parliament.

No one doubts that a contempt of Parliament took place. The question now is whether it's worthwhile taking the valuable time of this committee, or whatever the argument is, to look at this contempt. Matters of privilege are in fact the primary matter this committee looks at. Sometimes they're of a technical nature, sometimes they are not, but they're the primary matter and they take priority. That is a practice long established with us and written into our rules. It is done because we understand that the erosion of these privileges, a little bit at a time, and sometimes by someone who has a very high rating in the public opinion polls at that moment, nevertheless results in the stripping away of those norms of respectful behaviour that are the basis on which our success as an institution is founded.

The way you will have to deal with this in the long run, if the government gets away with this, is that at some point in the future you will have to take your norm of appropriate behaviour and write it into the rules. It's a hard thing to do because once you switch something from being a norm to being the black letter of the rules, it becomes highly mechanistic—a matter that we are all aware of—and something that we're dealing with consensually in the MP code of conduct with regard to issues like gifts and so on. An attempt was made there to put something into a formalized code. The need to be punctilious in our respect for every detail of that code has created its

own set of problems. But that is how you deal with it when you can no longer rely on the usages, the conventions, and the practices to provide guidance.

•(1235)

I didn't want to take up all the committee's time. I merely wanted to lay out the arguments. I thought it would be best to be as fulsome as possible.

Perhaps with that, Mr. Chair, I can terminate my remarks. I look forward to the contributions others may have to this discussion.

Thank you.

The Chair: Thank you very much.

Examples from history are very illuminating. I was very interested in hearing them.

Mr. Christopherson.

•(1240)

Mr. David Christopherson: I'll be supporting the official opposition's motions.

I wasn't particularly thrilled with the responses by the government. I think Mr. Richards's question of whether the government takes privilege seriously is a valid one. I've been around long enough to notice that it's usually the government that wants to downplay privilege and it's usually the opposition that wants to amplify it. It's simply because in opposition you don't have very many rights, and what few rights you have, you're going to defend to the ends of the earth.

One is the ability to be on a committee and convince the committee to pursue matters you think are important. I don't want to see this issue of privilege swept away. The chief government whip felt it was important enough, *prima facie*, to respond the way he did. Certainly the Speaker, in his comments, felt this was worthy of some review.

Given what came at the last meeting, rather than that being the beginning, it launched a whole lot of other questions. To reiterate one that I focused on, the minister kept talking over and over again about the number of people who, under the Security of Information Act, would have had their fingerprints on this. She raised that.

To me, that just raised the bar even further, suggesting that if there were a breach, there's a good chance it was done by somebody who had violated their oath. As well as members, staff take an oath when they're dealing with confidential matters in government. That's about as serious as it gets, taking your secrecy oath to Canada. You're pledging allegiance to the country and that promise to stay just on those issues.

For those reasons alone, at this stage I support the motions. I hope the government doesn't drag this out any longer than it needs to by agreeing to this. I get a sense that the official opposition is getting ready to settle in—I recognize the early stages of settling in for a filibuster. Perhaps the government could save us all a lot of grief by putting forward or entering into some discussions about who we might have, and can we come to some agreement? If the government is intending to just stonewall this, that's not going to be an answer for them.

Thank you.

The Chair: Thank you, Mr. Christopherson.

That was uncharacteristically short.

Mr. David Christopherson: Yes, it can happen.

The Chair: Ms. Sahota.

Ms. Ruby Sahota (Brampton North, Lib.): That was surprising.

Mr. David Christopherson: My staff are in shock.

Ms. Ruby Sahota: All jokes aside, I'd like to reiterate that it is a very serious matter. Given the fact that members' privileges are such a serious matter, we need to define what we are looking at. There needs to be some line drawn as to where we go on this. Was there actually a premature disclosure of a bill?

What we have before us—and even the minister testified to this very fact in her testimony that day—is that there was no premature disclosure of a bill.

The Conservatives, a few of the colleagues here, Mr. Schmale and Mr. Richards, have mentioned that perhaps the reporter had even more knowledge than one would have because she was able to deduce, or take rumours and turn them into what may or may not be in the bill, which was actually in fact inaccurate, in part. I would disagree. That does not qualify to be greater knowledge. If the reporter had greater knowledge of the actual bill, Mr. Chair, they would have included contents of the actual bill.

From what we have in both reports from the CBC and *The Globe and Mail*, we really don't see any of the contents of the bill that was tabled before the House. We have what may have been educated guesses, things that were talked about a lot previously in the media, or rumours and speculation. We don't have actual content.

I think it's important to bring up the fact that the minister did indicate that anybody who actually worked on that bill, or had that bill, would have had better knowledge than what was presented in the actual report. They would have known that the statement made about those suffering from psychological conditions was actually incorrect. They are included in the bill, and they're not an exception.

So on the point about having intimate knowledge, I would disagree. I don't believe this was intimate knowledge or the actual contents of a bill. I believe we should be taking this seriously in committee, but we shouldn't be heading down the road of a witch hunt or a Spanish Inquisition, if you will. Mr. Reid so nicely brought that up, and that's what it's starting to feel like to me here today.

Because it is so serious, I'd just like to reiterate that we should keep it to the premature disclosure of a bill and whether core parts of the legislation and anything substantive were mentioned. We don't have any of that before us here today. My position is that we need to be very careful about dragging in what could be hundreds of people, which would not lead to anything in the end. Right now, this committee has already had five meetings on this very matter, so I believe we have been taking it very seriously. We have not stonewalled the opposition by any means. We have not been unwilling to bring in the justice minister, the attorney general, the acting clerk, and the law clerk and parliamentary counsel. They have all been before this committee to talk about this very issue. So I believe we've been taking the matter quite seriously. However, we've

not been left with a lot of evidence at this point. So how can we justify going on when there are so many other important matters for this committee to address?

It really does seem like a wild goose chase. We are talking about a few rumours, some speculation that was in an article, nothing that was actually stated in the bill, and we're running with it and trying to figure out the hundreds of people who may have, at some point, had some knowledge of or access to the bill. But the fact remains that had a person with actual knowledge, who had access to the bill, leaked it to the media, we would have had a better source, we would have had actual information about the bill.

In conclusion, I'd just like say: what leak? There was no leak.

We keep stating that as if it were a fact. The opposition keeps stating that there was a breach as if it were a fact. Our job here, at this committee, is to find out whether there was a breach. This is a prima facie case, and we haven't come to any conclusion. We're trying to investigate this, not trying to accuse anyone or have an inquisition. We're trying to investigate, and, at this point, after five meetings, we have yet to come to any solid evidence of there being a breach, or being a leak.

•(1245)

Because this matter is so important, I would suggest that we treat it as such and don't get carried away with wasting this committee's valuable time on any more meetings that are probably going to lead to nothing, because we're at nothing right now.

That's all I have to say. Thank you.

The Chair: Thank you.

Mr. Chan.

Mr. Arnold Chan: I want to thank Ms. Sahota.

I may slightly disagree with you on a few points.

I don't think I was sufficiently clear in my opening statement, so I want to get back to some of the points that Mr. Richards made.

I want to thank Mr. Reid for his long dissertation. It reminded me of listening in one of my classes to Elmer Driedger on the interpretation of statutes. Your knowledge of history is always very illuminating, and I thank you for it.

I want to get back to what is really the issue before this committee. I think that's where I wasn't sufficiently clear, so I'm going to reiterate it.

The issue is not whether, in fact, there was an unauthorized disclosure of information. That's where I slightly depart from Ms. Sahota's point. The issue before us is whether there was, in fact, a breach of members' privilege, which is why, at the beginning, I suggested to this committee that we call the acting clerk and the law clerk and parliamentary counsel to establish the nature of the privilege. I think we know what that is, which is, were parliamentarians disadvantaged by having a premature disclosure of the bill before it was tabled in the House of Commons?

Then the next issue for me is getting to the threshold of crossing what is a breach of members' privileges. It has been our position from the get-go that in order for there to be a breach of members' privileges, it actually requires a substantive disclosure, that after the notice of motion was tabled in the House that Bill C-14 was coming forward, someone was in possession, on an unauthorized basis, of the bill before it was tabled by the Minister of Justice and Attorney General of Canada in the House of Commons. So far my point is that we have had no evidence to date that that had taken place. The article does not in any way indicate that happened.

The point I was trying to make earlier is that the only person who has actual knowledge of whether they had the bill is Laura Stone herself. She is, from my perspective, the only witness who really can answer that question, and it's a very simple question. She doesn't have to disclose her source, she simply has to disclose whether she actually had the bill itself.

I want to get back to the earlier point. When we were asking questions of the acting clerk and the law clerk and parliamentary counsel about the nature of members' privilege, I'll be frank, I don't think we got, necessarily, a satisfactory answer. I think this is where there is a disconnect between the official opposition and the government. Obviously, as Mr. Christopherson has suggested, you want to take a more expansive view of the rights and privileges that you have, particularly when you're in opposition, but it is my view, again, that we have to be very clear on what we're defining and what the nature of a member's privilege is.

From my perspective, the only way that you're going to have a breach as it relates to this particular issue is if the bill had been in the possession of somebody before it had been tabled in the House. That's been my view from the get-go, and that's why I don't, Mr. Richards, have any sympathy with respect to these particular motions. If Ms. Stone is prepared to answer the question, a very simple yes or no, "Yes, I had a copy of the bill", I might have some sympathy to these particular motions, some of them, but that's not the evidence before us, and that's exactly my point, which is why the government can't support it at this time.

I want to make it very clear that our role is to investigate the issue of whether there was a breach of members' privilege. From my perspective, that threshold has not been met yet. Once you meet that threshold, then we get to the question of what this committee's role and responsibility is, which is to investigate.

If you want to get back to the original motions that are before us, that's my point about why, from my perspective, you're going about it in a roundabout way. It's a fishing expedition rather than getting to the heart of the matter, which is, did the reporter have the bill? Did somebody, not authorized, have the actual substantive contents of the bill in advance of us, as members of Parliament? If the answer to that is yes, then these motions have some validity.

Thank you.

• (1250)

The Chair: Mr. Schmale.

Mr. Jamie Schmale: There are a couple of things I'd like to continue on.

I'm sorry—

The Chair: You have seven minutes.

Mr. Jamie Schmale: Perfect. It won't be up to some people's standards, but I'll see if I can start.

We're talking about whether there is something here. Let's look into this a little bit more. The minister said that when she went back at her department after this became public in the House, she asked her political staff whether or not there may have been a leak. She asked them: "Yes or no"? She sent her deputy minister to ask the people in the bureaucracy who had access to this bill if they were the source of the leak, and the answer came back as no. Okay, so the answer was no.

Back in a previous life when I was a little younger and in a bit better shape, I was a hockey referee. When I gave a penalty, no matter to whom, the player always said it wasn't them. I thought I was a pretty good referee. However, here we have a witness who will take the word of, I don't know how many, people that they were not the source. Then do we just give up there? I'd like to think we don't give up there.

I'd like to go back to the article of April 12. Look at the wording. For those of you who are former journalists on the other side, look at the wording: "according to a source familiar with the legislation". The words "according to a source" is pointing you right there, is telling you right there.... Look at some of the wording, that the bill "will exclude", and "Sources say the Liberal cabinet", from the CBC on April 13. It is very clear.

I'll even quote my friend Andrew Scheer, from Regina—Qu'Appelle, a beautiful part of the country, I'm sure. He said, "I hope the House agrees to send this to the procedure and House affairs committee so that the committee can look into what happened, perhaps determine who did it,"—that is what we hoped to do, but we seem to be hitting a wall—"perhaps determine what systems could be put in place to avoid this type of thing [from happening] in the future, and if the culprit is found, bring that detail back to the House for the House to decide what to do with it further."

Right now we have really nothing, but we want to get there. We want to take those steps to get to the next phase, but we can't do that if we don't know who had access to the bill, and if the bill gives us somewhere to go, this list gives us somewhere to go, somewhere to start, that, to me, says this is the next step. Yet some are saying that we've had one witness and that that's good enough.

No, that's not good enough. I'll even quote Speaker Lamoureux from 1971, who said, "Privilege is that which sets hon. members apart from other citizens giving them rights which the public do not possess...". That means they get the first view of the bill, which goes back to the very clear wording of the article here, that "according to a source familiar with the legislation...".

Again, how do we get there? On the question of privilege versus contempt, the parliamentary law clerk has noted that a breach of privilege refers directly to the breach of a specific right, power or immunity claimed by the House or its members as necessary to fulfill their parliamentary functions. In contrast, contempt of Parliament refers to an offence against the authority or dignity of the House that impedes the work of the House or its members.

Mr. Chan, sir, it's right here, in a quote from 1971.

What we are looking at is very clear. To say that one witness is good enough.... We talked about a number of other things. We talked about the source of the leak. Okay, again, let's find out. Saying, let's draw the line, is unacceptable, because somebody clearly is the source of this leak. Will we find that person? Maybe, who knows? We can't do it without proceeding with this investigation.

The Speaker has referred it to us, and then it just seems as if it is going to disappear and fly off the radar and that it's no big deal. Well, it is a big deal. For sure, it's a big deal. Then you say, "Well, I don't know if this is true. I don't know", but how does someone get that much detail? How does a reporter get this much detail as to what is or isn't in the bill? You just don't make that much up. If you work for the *The Beaverton* or *The Onion*, I guess you could, but this is *The Globe and Mail*. You just don't make it up, and you don't write with this kind of language if you're just looking up in the sky and hoping the words fall to you. It doesn't work that way.

As a reporter, I think back, where did I get my sources? Well, you talk to the rank and file. You talk to people in the communications department, sometimes politicians—but for the most part rarely, if ever, which is why the communications staff at the PMO are on this list. As Mr. Richards said, if the other side would like us to call the Prime Minister, we're more than happy to do that.

How much time do I have, Chair?

• (1300)

The Chair: None.

Mr. Jamie Schmale: None? Okay.

The Chair: Thank you. We'll have to continue—

Mr. Jamie Schmale: I'd like to continue.

The Chair: —this discussion another time. I'm sure everyone will get a chance to continue it.

The meeting is adjourned.

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