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• (1100)

[*Translation*]

The Chair (Mr. John Williamson (New Brunswick South-west, CPC)): I call this meeting to order.

Good morning, everyone. Welcome to meeting number 145 of the House of Commons Standing Committee on Public Accounts.

[*English*]

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely by using the Zoom application.

Before we begin, I'd like to ask all in-person participants to read the guidelines written on the updated cards on the table with respect to the sound system. These measures are in place to help prevent audio and feedback incidents and to help protect the health and safety of all participants, including and especially our interpreters.

I'll remind all those appearing in person and online that for the safety of our interpreters, it is very important that your microphones be muted when you're not speaking.

[*Translation*]

Thank you for your co-operation.

[*English*]

I remind you that all comments should be addressed through the chair.

[*Translation*]

Pursuant to Standing Order 108(3)(g), the committee is resuming consideration of Report 6 of the Auditor General of Canada, entitled "Sustainable Development Technology Canada", from 2024 reports 5 to 7.

[*English*]

Before I introduce our witnesses, I understand Mr. Erskine-Smith would like the floor for just a few minutes.

It's over to you.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks, John.

As you will recall, at our last meeting things got quite heated between me and my Conservative colleague from South Shore—St. Margarets. I'll be brief, but I would like to speak to that.

I want to say that a former Conservative leader, in his last speech in the House as leader, raised concerns about performance politics fuelling polarization and about too many politicians chasing algorithms, clicks and "likes" towards diversion and division. I want to be clear: There's no place in the House or committee for personal and unwarranted attacks on a member's integrity, their work ethic or ability to exercise independence, which I would know, as I've exercised on countless occasions since I was elected in 2015. One shouldn't chase "likes" if it means embracing character assassination. It's toxic and unparliamentary, and it's going to push good people out of politics. We should call that behaviour out.

At the same time, I could and should have used parliamentary language in calling out that behaviour, because instead of contributing to a solution, I missed the mark. I retract those comments. We should all act how we want this place to be.

Thanks.

The Chair: Thank you, Mr. Erskine-Smith. I do appreciate those comments.

I'll now turn to our witnesses.

From the Office of the Conflict of Interest and Ethics Commissioner, we have Mr. Konrad von Finckenstein, commissioner.

It's good to see you again, sir.

Also, we have Michael Aquilino, their legal counsel.

Mr. von Finckenstein, you'll be given five minutes for opening remarks. The floor is yours.

Mr. Konrad von Finckenstein (Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you.

Does the microphone work? I was told to do a test so that the interpreters can understand me. I gather that it works.

[*Translation*]

Thank you for inviting me to appear before you today. With me is Michael Aquilino, legal counsel at the office.

The subject of today's meeting is the Auditor General's Report 6, entitled "Sustainable Development Technology Canada". It is about a performance audit conducted under the Auditor General Act.

• (1105)

[English]

We administer the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. The commissioner's office helps members in the public office—

The Chair: Mr. von Finckenstein, just one second. Some members are having some trouble with the interpretation.

Ms. Yip, can you hear me?

Ms. Jean Yip: Yes.

[Translation]

The Chair: Is it working?

[English]

Ms. Jean Yip: Okay. I can hear now. Thanks.

The Chair: Mr. von Finckenstein, you have the floor. You're welcome to back up and start over.

Mr. Konrad von Finckenstein: On a previous occasion, you gave me an extra-long microphone so that this doesn't happen. Maybe we can dig out that extra-long microphone.

The Chair: The floor is yours, sir.

Mr. Konrad von Finckenstein: We administer the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. The commissioner's office helps members and public office holders—i.e., people appointed to their positions by the Governor in Council—to prevent and manage conflicts of interest. On occasion, when necessary, we also investigate.

[Translation]

Michael Barrett, Member of Parliament for Leeds—Grenville—Thousand Islands and Rideau Lakes, asked me to investigate two members of SDTC's board of directors. One was Annette Verschuren, former chairperson of SDTC. The other was Guy Ouimet, a former director of SDTC. The SDTC board had 15 members. Of those, Ms. Verschuren and Mr. Ouimet were among seven directors who were appointed by the Governor in Council.

[English]

As order in council appointments, they were subject to the act as public office holders. Unlike reporting public office holders, this category of people subject to the act do not have to give the commissioner's office any personal and financial information on appointment, nor do they have to make any declarations. We do not assign advisers to them, but we are available should they have problems and want to contact us.

The other eight members of the board were appointed by SDTC's member council, so they were not covered by this act.

[Translation]

I reported on the Verschuren and Ouimet investigations in July 2024.

I found that Ms. Verschuren failed to comply with the act's provisions on decision-making and recusal. Those lapses were based on a misunderstanding of the difference between abstaining and recusing, and on incorrect legal advice.

[English]

It was clear there was an information gap about recusals. The office has therefore since addressed this gap by issuing an information notice, which can be found on our website.

In short, recusal is more than staying silent during a discussion or refraining from voting. Public office holders must leave the room, virtually or physically, so that their mere presence cannot influence other parties.

[Translation]

Unlike the Auditor General, the Commissioner's office does not look at any conduct other than conflicts of interest. In the case of SDTC, our scope is limited to the rules of the Conflict of Interest Act insofar as they apply to individuals appointed to their position by the Governor in Council.

• (1110)

[English]

I therefore have absolutely no comment to make on the alleged conflict of interest of individuals not appointed by the Governor in Council or on any other issues of alleged malfeasance mentioned by the Auditor General. That's not part of my remit.

I'm happy to answer your questions.

The Chair: Thank you very much.

We'll open things up with Mr. Cooper.

Mr. Cooper, you have the floor for six minutes, please.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you very much, Mr. Chair, and thank you to the witnesses.

Mr. von Finckenstein, the report in which you found Ms. Verschuren guilty of breaking the law by violating the Conflict of Interest Act merely scratches the surface of corruption and conflict in the green slush fund. The Auditor General identified 186 conflicts of interest involving board members, involving 330 million taxpayer dollars.

When you appeared at the industry committee last month, you were asked by Mr. Perkins if you were going to initiate investigations into these many other conflicts of interest. You indicated that you had not. You further said, as a rationale, "When they are no longer in office, what good does it serve to expose them?"

You just said, in concluding your remarks, that this is not part of your mandate, so why are you not taking steps to look into these other 186 conflicts of interest, which did involve, potentially, board members who were appointed by way of order in council?

Mr. Konrad von Finckenstein: First of all, none of the order in council appointees are there any longer, but were in place at the time I made my final report. Second, as you know, my remit is basically conflict of interest. All I can do is expose it. I cannot penalize people. I cannot ask for repayment of funds or anything like that.

The allegations in the Auditor General's report are indeed shocking and very numerous, but they really do not concern what I am charged with, which is to expose conflicts of interest.

Mr. Michael Cooper: Mr. von Finckenstein, I appreciate that, and you are right that your mandate is to expose conflicts of interest.

When you were pressed by Mr. Perkins at the industry committee, you said that just because someone was a former board member or a former order in council appointee doesn't preclude you from initiating an investigation. Is that correct?

Mr. Konrad von Finckenstein: That's correct.

Mr. Michael Cooper: While it is true that these are now former board members, when you talk about "exposing", I would submit that it's all the more reason why it would be appropriate for you to make queries about these 186 conflicts of interest, which you just said were shocking, that were revealed in Auditor General's report.

To that end, what about accountability? What about transparency? What about shining a light on wrongdoing on the part of former board members? Again, it's \$330 million in taxpayer dollars.

Mr. Konrad von Finckenstein: I think the Auditor General has done exactly what you're asking for. She has exposed the workings. She has exposed conflicts. She has exposed where they were self-serving or log-rolling, etc. It is quite a damning report.

However, if I now exercise my discretion, which it is, to launch an investigation against one of these people, for instance—

Mr. Michael Cooper: Yes. Well, sir—

Mr. Konrad von Finckenstein: —what could I do? I would—

Mr. Michael Cooper: Sir, I'll ask you this. Have you contacted the Auditor General to inquire into the particulars of the 186 conflicts of interest involving the former green slush fund board members identified in her report?

Mr. Konrad von Finckenstein: Look, the Auditor General has a job. With what she does, she has access to all sorts of confidential information, which she guards, but then on that basis, she makes her report—

Mr. Michael Cooper: Sure. Again, my time is limited.

I'm asking you if you've made any inquiries of the Auditor General to better understand the particulars of those conflicts, because they're not in any way.... They're discussed in the Auditor General's report in broad terms, but not every conflict of interest is equal. Some may be more egregious than others.

Where there was impropriety, it seems to me that there would be an expectation that there would be accountability, including calling out those who violated the Conflict of Interest Act, potentially blatantly. This is because there were 90 instances identified in the report of board members not recusing themselves, notwithstanding potentially having interests in companies into which money was funnelled.

Again, have you contacted the Auditor General?

• (1115)

Mr. Konrad von Finckenstein: If you were a member of SDTC, your reputation by now would be damaged. You were clearly part

of this whole organization and the behaviour that was exposed by the Auditor General. My report—

Mr. Michael Cooper: With respect, the answer is no, you have not contacted the Auditor General. Is that correct?

Mr. Konrad von Finckenstein: If you let me finish one sentence, I'll gladly answer, but I cannot answer you if you keep interrupting me.

You asked me, and I'm pointing out that the damage was done through the Auditor General.

Now, you want to have an answer specifically on what we contacted the Auditor General about. My colleague Michael will answer you.

Mr. Michael Aquilino (Legal Counsel, Office of the Conflict of Interest and Ethics Commissioner): The simple answer is no, we don't communicate with other agents of Parliament to discuss operational matters.

Mr. Michael Cooper: Let me just say, with the greatest of respect, Mr. von Finckenstein—I have respect for you and the office that you hold—that I find it surprising and disappointing that you would simply say, "It's not within my purview. I have no interest in looking at this further to identify or get to the bottom of any of these further additional 186 conflicts of interest involving \$330 million of taxpayer money."

It seems to me that 186 conflicts of interest involving that amount of money should have the full attention of the Conflict of Interest and Ethics Commissioner.

The Chair: Thank you, Mr. Cooper.

Mr. von Finckenstein, if you have a response to that, I'll certainly allow it.

Mr. Konrad von Finckenstein: A conflict of interest doesn't necessarily mean a conflict of interest under the act, first of all. You would have to go through each one of those to see.

Second, as I pointed out, it's my discretion to launch an investigation or not. I launch one if I think it will have an effect and is needed. In this case, I'm of the view that the Auditor General has made a very lengthy report and exposed all sorts of malfeasance by the corporation and its operations. I think my making an investigation of any of the board members would merely substantiate what the Auditor General has already said. I don't think it is worth my time or the use of public money.

The fact is that all I can do is expose. I cannot penalize. I cannot recoup.

The Chair: Thank you, Mr. von Finckenstein.

Next is Ms. Bradford for six minutes, please.

Ms. Valerie Bradford (Kitchener South—Hespeler, Lib.): Thank you, Mr. Chair.

Thank you to both witnesses for appearing today.

Just for the benefit of people who may be watching from home, I want to reiterate, Mr. von Finckenstein, that you've already appeared before both this committee and INDU on this subject within the last two months, so you're quite familiar with this process and the topic.

The Chair: I believe Mr. von Finckenstein was here on Arrive-CAN previously. This is his first time here on this one.

Ms. Valerie Bradford: Right—

The Chair: He has been here, but—

Ms. Valerie Bradford: —but it did devolve into this topic as well.

The Chair: Yes. Okay.

Anyway, I did stop the clock. The floor is yours. I just wanted to be clear on that.

Ms. Valerie Bradford: Right. That's not why he was called—you're correct—but it did devolve into that.

Since your last appearance at this committee, we've heard from two members of the new SDTC board, Ms. Morgan and Ms. Doyle. Both have stated that they met with you as part of their appointment process.

Can you confirm that you met with the three new members of the board responsible for the transition of SDTC into the NRC?

Mr. Konrad von Finckenstein: Are you talking about the members of the new board—Marta Morgan, Paul Boothe and Cassie Doyle?

Ms. Valerie Bradford: Yes.

Mr. Konrad von Finckenstein: I had one conversation with Mr. Boothe. I have not talked to the other two. However, they asked for a presentation from my office on the Conflict of Interest Act, how it works and how it applies to them, and we gave them that presentation.

Ms. Valerie Bradford: Then you didn't meet with either Ms. Morgan or Ms. Doyle.

Mr. Konrad von Finckenstein: No.

Ms. Valerie Bradford: Okay.

Could you expand on the conversation you had with the third member, then?

Mr. Konrad von Finckenstein: That was prior to appointment. He basically asked me what the act involved and what the obligations would be. It was very short and cursory, because I didn't know whether or not he was going to be appointed or whether he wanted to be. In effect, like any responsible person before taking a new job, he wanted to know what was involved and what it was.

I pointed out to him that the biggest issue he would probably be facing was whether he had any assets that would prevent him from taking the job or whether any previous activity on his part could be considered a conflict, etc. He obviously had to make the decision.

He seemed to be not at all worried, if I can say it that way, about anything I said. He was a retired public servant and he didn't think he had any assets or activities that involved the SDTC.

It was his decision to make. All I could do was outline it to him: If you accept this job, this is the kind of regime you will be under.

• (1120)

Ms. Valerie Bradford: Just to confirm, then, you haven't met with any of the three of them after their appointment to the board.

Mr. Konrad von Finckenstein: No, I have not.

Ms. Valerie Bradford: Okay.

The members we've had before committee, Ms. Morgan and Ms. Doyle, stated that they are not conflicted and that they have no conflicts with any company or organization within the clean-tech sector. Can you speak to this?

Mr. Konrad von Finckenstein: It is up to them to decide.

As I mentioned in my opening remarks, they are subject to the act, but because they are only public officers and not reporting public officers, it is up to them to inquire or to familiarize themselves with the act and to act in accordance with it. If you're a reporting public officer or a member of Parliament like you, then, as you know, you have to make a declaration and annually update it. There's a person designated to look after you. You can talk to them at any time.

That doesn't apply to public office holders. If you're a public office holder, basically you're subject to the act. We write them a letter: Here is the act. You are now appointed. You are subject to the act. This is a copy of the act. If you have any problem, contact us. It's up to them to decide whether or not they have a conflict and whether or not they want to consult us.

Ms. Valerie Bradford: Okay.

We've learned that SDTC has already implemented 11 of the Auditor General's 12 recommendations. They're in the process of implementing the final one, which is to review the projects from an eligibility and conflict of interest standpoint. SDTC has sought advice from multiple third party firms as part of this process. They've been clear that any wrongdoing or fraud on the part of a company would lead to the recouping of funds.

I'm wondering if you have any comments or thoughts on this process.

Mr. Konrad von Finckenstein: I think indeed there should be a recoupment of funds if fraud or a breach of the act has been involved, but that's not my remit. That falls really under the Public Sector Integrity Commissioner. My sole duty is to make sure that people do not get into conflict—or, if they have a conflict, that they manage it in such a way that they are in compliance with the act—and obviously to investigate if there should be alleged breaches.

Ms. Valerie Bradford: During your last appearance before this committee, one of my colleagues filled you in on a letter from the RCMP commissioner to the House clerk about the Conservative House motion adopted on June 10, 2024. With this letter, the RCMP commissioner sounded the alarm, saying that this House order is interfering in operational and police independence. The Auditor General has also come out saying that this motion would compromise her independence, and she has refused to abide by it.

You previously stated just how vital independence is to the functioning of offices such as yours and that of the AG, and that your roles and continued credibility are functions of this independence.

Do you have any further comments to make on this?

Mr. Konrad von Finckenstein: As I said before in another committee, we have two different principles here, which are very difficult to reconcile.

One of them is the principle of independence, confidentiality, etc.

The other one is this: When you do a prosecution, bring people before court and try to convict them, you have to show that the evidence you obtained is from a clean source of evidence, that it is evidence that is credible and was obtained legitimately. Now, in this case, when documents were forced to be disclosed to the RCMP... They didn't have a warrant to use. Undoubtedly, in a prosecution, there will be some objections raised. Somebody will say, "No, there was a violation of the Charter of Rights, because these documents weren't obtained through a warrant."

The court will then have to decide how you reconcile these two principles—the principle of Parliament being supreme and able to order whatever it wants and the principle of a Charter of Rights that protects citizens against unlawful conduct by authorities.

• (1125)

The Chair: Thank you.

That is the time, I'm afraid, Ms. Bradford.

[*Translation*]

Ms. Sinclair-Desgagné, you now have the floor for six minutes.

Ms. Nathalie Sinclair-Desgagné (Terrebonne, BQ): Commissioner, thank you for being here. I would also like to thank Mr. Aquilino.

Can you tell us briefly how your process works? For example, how do you decide who to investigate?

In the case of Sustainable Development Technology Canada, you prepared reports on Ms. Verschuren and Mr. Ouimet. What about the other board members? How does the office of the Commissioner select individuals? Does it do so only at the request of members of Parliament, or can it decide on its own?

Mr. Konrad von Finckenstein: There are two possibilities. First, a member of Parliament can ask me to look into something. In that case, I conduct an investigation if I think there are grounds to do so.

Second, I have the power to initiate an investigation on my own, for example after hearing or seeing things in the media or if someone has given me information.

Mr. Aquilino, what are the relevant sections of the Conflict of Interest Act?

Mr. Michael Aquilino: Sections 44 and 45.

Mr. Konrad von Finckenstein: Subsection 45(1) states: "If the Commissioner has reason to believe that a public office holder or former public office holder has contravened this Act, the Commissioner may examine the matter on his or her own initiative".

In other words, I have to decide whether there are grounds to believe that an individual has contravened the act.

Ms. Nathalie Sinclair-Desgagné: Thank you.

Mr. Konrad von Finckenstein: That's the test I have to apply every time, before starting an investigation.

Ms. Nathalie Sinclair-Desgagné: Are you investigating other board members who were involved in the Sustainable Development Technology Canada affair?

Mr. Konrad von Finckenstein: As I said to your colleague, I only have the authority to identify conflicts of interest, which the Auditor General has already done through her report. I did a special examination of Ms. Verschuren and Mr. Ouimet. The other members are quite involved in various conflicts of interest, but the Auditor General has already laid that out in a report. I don't see what an investigation by my office could add to the Auditor General's report.

Ms. Nathalie Sinclair-Desgagné: It's just for the simple reason that you look specifically at conflicts of interest.

The Auditor General, on the other hand, looks at how funds are managed and whether the way funds are managed corresponds to the original contribution clauses. It's a totally different mandate from yours. It would be relevant, and even important, I think, that you look specifically at conflicts of interest and also investigate other board members, because, in this case, I believe many of them have potential conflicts of interest.

Can you only investigate individuals appointed by the Governor in Council, or can you also investigate public servants?

Mr. Konrad von Finckenstein: I have no authority over members of the public service.

In the case of SDTC, I can only investigate board members who are appointed by the Governor in Council. Eight of those members were not appointed by the Governor in Council, so I can't touch their cases. I investigated two of the other seven directors, and I made my report.

• (1130)

Ms. Nathalie Sinclair-Desgagné: So you don't intend to report on the other members.

Mr. Konrad von Finckenstein: As I mentioned before, I don't see what else we could add to the information that already exists. We know there were conflicts of interest. That was demonstrated by the Auditor General. The consequences of those conflicts of interest do not fall under my mandate, that is to say whether someone got rich, whether there was fraud, or any other matter of that kind.

Ms. Nathalie Sinclair-Desgagné: The Auditor General didn't go that far. She cited some cases of conflict of interest. She mentioned that there were cases of apparent conflict of interest.

However, an investigation would be relevant. Again, in good faith, I think other members of the board in a conflict of interest have been identified. It would therefore be relevant to know whether they personally received public funds through their businesses. I think that's one of your key functions.

Your investigations of the two individuals have been very helpful. We are using them in committee. Others could also be useful to us, particularly if they concern some of the other board members. We have the list of 90 cases of conflict of interest.

Some names, like Andrée-Lise Méthot, come up very often on this list. In her case, given the allegations we're hearing, would it not be relevant and, above all, necessary that the Conflict of Interest and Ethics Commissioner be able to tell us what really happened, based on what former board members are reporting, of course, but in a more detailed manner?

It's not the Auditor General's role to further investigate conflicts of interest. She cited some of them, but then the Conflict of Interest and Ethics Commissioner can really dig in and shed light on these issues.

Mr. Konrad von Finckenstein: First, Andrée-Lise Méthot was not appointed by the Governor in Council.

Ms. Nathalie Sinclair-Desgagné: Okay.

Mr. Konrad von Finckenstein: So I can't—

Ms. Nathalie Sinclair-Desgagné: So you can't do that.

The Chair: Ms. Sinclair-Desgagné, I'm going to let the commissioner finish his answer, because your speaking time is up.

Ms. Nathalie Sinclair-Desgagné: Okay.

The Chair: Mr. von Finckenstein, you have the floor.

Mr. Konrad von Finckenstein: As I said, the Auditor General identified the cases of conflict of interest. She's already outlined those cases, which is all I could have done. That's why, in my opinion, I don't think it's worth the trouble to conduct another investigation. Obviously, I know my opinion differs from yours.

The Chair: Thank you both very much.

[English]

Up next is Mr. Cannings.

It's good to see you again. You have the floor for six minutes.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you.

I think one of the main tasks of this committee and others when we are presented with what is clearly an incredibly dramatic case of

conflict of interest on multiple fronts, as the Auditor General found it, is to stop this from happening again.

I was a bit surprised when you mentioned that there are seven members, I think, who are appointed by the Governor in Council and who are subject to the Conflict of Interest Act, but you don't get information from those people when they're appointed. They're not required to report, as MPs and others are required to do. Is there even any form of orientation?

I used to be on a couple of administrative tribunals. When I took those positions, I was given training on what conflict of interest is, how you test for it and when you should recuse yourself. Is there any orientation at all for those board members?

Mr. Konrad von Finckenstein: Normally it would be the corporate counsel who would do that. If you were appointed to a board, that person would give you a briefing.

In this case, it's a government body and the members are public officers, so if they ask for a briefing, we would give them one in which we would explain it to them. That is what they have done. On the new board, the three members have asked for a briefing, and we have given that.

They were appointed as public office holders. It was the government's choice to make them either public office holders or reporting public office holders. If they decided that this organization was very important and dealt with a lot of money and had a lot of discretion and they wanted to put the highest form of discipline on them, they could designate them as reporting public office holders. In that case, as with you as an MP, they would have to have a disclosure, they would have a special counsellor, we would monitor them each year, and they would have had to report.

The downside to that is, of course, that you want to have people who know something about sustainable development technology who have other interests and not.... Therefore, I assume.... I have no idea why the government chose to do that. Right now we have a different board, but they originally chose to have a board that was half nominated by the government and half by this council, but even for those who are nominated by the government, like Madam Verschuren, it's up to them to make sure they abstain. They don't have to be as closely monitored as reporting public office holders.

• (1135)

Mr. Richard Cannings: Okay.

As we all know, SDTC is now only temporarily at NRC and will eventually become, at least according to plans, part of the Canada Innovation Corporation. The act creating that corporation has passed, but it isn't in force. In that act, it says, "The guidelines respecting conflicts of interest must be consistent with sections 116 and 117 of the Financial Administration Act."

Can you explain what those sections are? Will they have any bearing on how we can prevent this from happening in the future?

Mr. Konrad von Finckenstein: If they are part of the Canada Innovation Corporation, the same rules would apply as applied here. They are public office holders; they are not reporting public office holders.

Mr. Richard Cannings: This would just repeat the situation we're dealing with right now, wouldn't it?

Mr. Konrad von Finckenstein: There's nothing preventing the government from making them reporting public office holders. They have the authority.

Michael, can you explain it to him, please?

Mr. Michael Aquilino: Often the decision on whether to make an individual a reporting public office holder or a simple public office holder is based on their role. Oftentimes, public office holders would be part-time appointees, but there is a provision in the act, which is what the commissioner was trying to allude to, whereby the Governor in Council can designate certain public office holders or even certain non-public office holders to get them into the ambit of the act.

The Governor in Council does have that power to designate certain officials and change their reporting status.

Mr. Richard Cannings: How much time do I have?

The Chair: You have 45 seconds.

Mr. Richard Cannings: I just want to be clear that this doesn't change anything about what SDTC would be in the future. It would be in the same position in terms of its board members.

Mr. Michael Aquilino: If they operate on a part-time basis, they'll most likely remain public office holders unless they are designated otherwise.

The Chair: Thank you very much.

I'm going to begin the second round now. It is my intention to get through it fully, since this is an important witness we have here today.

We will begin with Mr. Nater.

You have the floor for five minutes, please.

Mr. John Nater (Perth—Wellington, CPC): Thank you, Mr. Chair, and through you, thank you to our witnesses for joining us here this morning.

Commissioner, I want to begin with the "Verschuren Report", which you obviously undertook and in which you provided a thorough analysis of some of the challenges that were discovered with Ms. Verschuren and her work at SDTC.

I wanted to highlight a few sentences that were found at paragraph 151 of your report. You wrote:

In reality, the entire approval process for Seed funding was flawed. The evidence shows that decisions regarding Seed funding had essentially already been made at earlier stages and the Board's final approval was automatic since decisions were made by consensus and Seed funding, in any event, was included in the consent agenda. Thus, an abstention, especially a partial one in respect of particular projects contained within a single agenda item, had no impact on the outcome for those projects.

Effectively, to paraphrase, these decisions were already made by the time Ms. Verschuren recused herself or abstained, and that simple act at the end actually didn't do anything to negate the conflict of interest, because in the entire process leading up to that, she would have been conflicted.

Am I correct in that interpretation?

• (1140)

Mr. Konrad von Finckenstein: Yes. Proper corporate behaviour would have been to take it out of the consent agenda. If a member comes forth and says that they have a conflict with company X, then you take company X out of the consent agenda and deal with the consent agenda minus company X. Then deal with company X, and she has to recuse herself and leave the room. That would have been the proper way.

Here, they follow this rather strange procedure in which she says she has a conflict. It's noted. On consent agenda item one, is everybody agreed? Everyone says yes, including her, and it's done.

This doesn't make sense. If you abstain, which you can't—the act has no provision for it.... Anyway, obviously if you indicate your conflict, then you shouldn't be involved. You should actually leave the room. That wasn't followed. That's what this sentence that you cite is trying to drive at.

Mr. John Nater: That effectively would apply to all board members and not just Ms. Verschuren. Anyone who would have had a conflict would have been in that same boat when it's simply being agreed to. There are all these things, and they're conflicted, but here they are.

Is it effectively the case that any of the board members who had a conflict would have been in that same spot? Were they effectively just giving a wink and a nod, and things were being approved?

Mr. Konrad von Finckenstein: I don't know about a wink and a nod, but effectively, yes, it applied not only to Ms. Verschuren but to anybody who was in that same position.

Mr. John Nater: I want to back up from this specific issue in terms of your investigation and how you came to some of these outcomes.

Were you provided with copies of minutes and discussions that led up to some of these final decisions? Were you provided with all the information so that you could make these analyses leading up to these final decisions?

Mr. Konrad von Finckenstein: Under the act, we have the power to ask for any kind of document, which we do. It's like a subpoena, if you're a lawyer. It means it's a subpoena to bring the relevant documents. Then you come personally with counsel. You're put under oath, you testify under oath as to what's happened, and you can have reference to the documents.

Mr. John Nater: One thing our committee has done is that we've passed a motion requesting certain documents. One of the motions was the minutes of all meetings of the selection committee that considered the appointment of the chair of the board—the same chair, obviously, that you found in a conflict of interest.

Interestingly, the PCO came back and told us that no such records exist since they were considered transitory in nature and were disposed of once the appointment had been made. Disposed of, obviously, means they disappeared in some way, whether they were deleted or were just never filed formally.

Would you have had access to any of those appointment considerations when Ms. Verschuren was initially appointed?

Mr. Konrad von Finckenstein: When there is a question of documents that are held by Privy Council and we ask for them, in some instances Privy Council will say there's a prerogative here, and as their prerogative, they do not have to disclose.

This always becomes a sensitive issue. We've never had to take it to court. We've always managed to resolve these issues of conflict.

They, of course, feel very strongly about some documents and want to preserve their confidentiality. We, obviously, want to go to the bottom of the situation, so sometimes there are tense discussions, but they have always been resolved.

The Chair: Thank you very much.

Next up is Ms. Yip for five minutes, please.

You have the floor.

Ms. Jean Yip: Thank you to both of you for coming this morning.

You mentioned in your opening statement that when it is necessary, the Ethics Commissioner's office will investigate.

What is the tipping point of when you would start an investigation?

Mr. Konrad von Finckenstein: There are two reasons.

Number one is when I'm asked to investigate something by a member of the House of Commons. I have no choice; I have to do that.

I look at it, but I actually do what we call an exam. We look at the situation and ask if there is enough. Is this just an allegation, a rumour or something, or is there something substantive enough to have reason to believe that there has been a breach of the act? If so, then we start an investigation. If we don't have reason to believe that there has been a breach, then we don't investigate.

If it's on my own initiative, the same test applies. If somebody writes to me or if I see something in the paper or on the news, etc., and it looks like this is suspicious, then we may take a preliminary look at it and see if there is enough. We'll ask for some documents from the relevant person. On that basis, we make the decision of yes, this warrants a deeper investigation, or no, there's really nothing here and this is a bit of vapour produced by the media.

• (1145)

Ms. Jean Yip: You don't always need a request from members. It can be anyone.

Mr. Konrad von Finckenstein: Yes. It's not a request. If somebody writes me from the public, I don't have to act at all on it, but basically, of course, I will look at it. As I say, there has to be reason

to believe that there has been a contravention of the act. If there isn't, then we don't go any further.

Ms. Jean Yip: What are the dangers of an incredible Office of the Auditor General or Office of the Ethics Commissioner?

Mr. Konrad von Finckenstein: What are the dangers of an incredible office? Well, I mean, the whole system is based on integrity of government. The Auditor General's job is the same as mine and the same as that of the of Public Sector Integrity Commissioner; it's to ensure that the government works with integrity, that the rules are respected and that there's no self-serving, etc.

If we don't do that, if people can't believe in what we say or if our reports are not based on fact or something, then the whole exercise is for the birds and basically just increases the lack of faith that some people have in the government.

When we do things, we are very careful that everything is substantive. We want to demonstrate it. We have no interest in the outcome. I am personally indifferent to it; it's a job I have to do. I have to find out whether there has been a violation and, if so, expose it. At the same time, I want to be very careful that I don't hurt somebody's reputation by relying on facts that can't be proved or on things that are said or issued with ulterior motives but that really do not have a bearing on the issue in question.

Ms. Jean Yip: I appreciate your clear statements and your opening remarks.

What are the dangers of a tainted police force in this country, given the legislative branch's incursion into its independent processes?

Mr. Konrad von Finckenstein: You're now alluding to what you had before. The problem is the documents that you have asked for and sent to the RCMP. If they use them or something like that, to what extent will that interfere with subsequent prosecutions of a person, and to what extent are those documents obtained in violation of the Charter of Rights? That's an issue for which nobody knows the answer.

Undoubtedly, the issue will come before the courts at some point in time, and they'll have to decide in a Solomonic way how to reconcile these two principles: the principle of, perhaps, the supremacy of Parliament and the principles set out in the Charter of Rights.

Ms. Jean Yip: Okay.

The Chair: Be very brief if you have a question, and if you don't have a question, you'll keep us on time.

Ms. Jean Yip: I'll just keep us on time.

Thank you.

The Chair: That's perfect. Your side will have another opportunity, of course.

[Translation]

Ms. Sinclair-Desgagné, you now have the floor. You have only two and a half minutes.

Ms. Nathalie Sinclair-Desgagné: Commissioner, in the Verschuren report you prepared, you mentioned that there had indeed been a breach in the conflict of interest policy in the case of NRStor, Ms. Verschuren's company.

The Auditor General identified more than a dozen cases of conflict of interest where policies were not followed. What about those other companies? Have you looked at all of them?

Mr. Konrad von Finckenstein: I'm going to ask Mr. Aquilino to answer that question.

Mr. Michael Aquilino: We did look at every single decision that Ms. Verschuren made and every single one of her votes when she was at SDTC. We didn't name the companies, but we reported on every decision she made.

Ms. Nathalie Sinclair-Desgagné: I know this question has already been asked, but since the Auditor General has compiled the list and provided it to the committee, I'd like to know if you've seen the list. If you looked at all the transcripts, you did pretty much the same thing as the Auditor General. Did you compare your results with the Auditor General's?

• (1150)

Mr. Michael Aquilino: No, we didn't compare them to determine if our numbers matched up. Based on the primary resources we obtained through our investigation, we ourselves counted every vote she had cast, as well as the results. She would sometimes declare a conflict of interest and abstain rather than recuse herself. In some cases, despite a statement, she still voted. We did the count ourselves.

Ms. Nathalie Sinclair-Desgagné: In the other cases, was there nothing as egregious as NRStor?

Mr. Michael Aquilino: We observed that there were systemic issues. That's what the commissioner found in his report. For example, in the COVID emergency funding votes, all of the board members basically followed the same legal advice, which was wrong.

As the commissioner mentioned, in our opinion, conducting subsequent investigations would take us no further in exposing these systemic issues, because these problems existed for each member.

Ms. Nathalie Sinclair-Desgagné: If it were properly determined that a member of the board of directors had, at the very least, lacked judgment and had potentially become wealthier, it would be good to have a study showing that. However, we know that the RCMP has begun its investigation.

That's it for me.

The Chair: Thank you very much.

[*English*]

Up next is Mr. Cannings again.

You have the floor for two and a half minutes, please.

Mr. Richard Cannings: I'd like to continue with this theme of how we stop this from happening in the future. I'm imagining that these directors knew what a conflict of interest is. If not, I think there should be some sort of mandatory orientation to instruct them on what it is and some rules around when they have to recuse themselves in different scenarios.

Mr. Konrad von Finckenstein: The SDTC has a very elaborate code of conduct by itself, which made reference to the Conflict of Interest Act. There was absolutely nothing wrong with it. The code was well set out and clear.

I'll ask Michael to see if we have any evidence on whether they had training on it or not. However, clearly it was given to them when they were appointed. Also, as with everybody who's appointed, we write to them, saying that you are now subject to the act, and we include a copy of the act.

Michael, do we have any evidence that there was any training inside SDTC?

Mr. Michael Aquilino: It wasn't set out in the report, and I would assume there was not. However, the interesting thing that is set out in the report is that their own policy set out the correct standard, the standard to recuse in such instances, and they didn't follow it.

Mr. Konrad von Finckenstein: You see, the problem here was that they really got very bad legal advice, and they followed the legal advice rather than looking at the code, which said quite correctly what they had to do.

Mr. Richard Cannings: As MPs we're reporting officers or whatever, so we have to report annually. Also, the first day that we come in for orientation here, we are sat down and the legal people go over with us various things about conflict of interest and what will put us in jail. It's very much emphasized.

I'm wondering if that was not done here, or what...? You say their policies were good as written, but they either ignored them or weren't aware.

Mr. Konrad von Finckenstein: Mr. Cannings, we didn't examine the internal educational policy of SDTC, so I cannot speak to it. I can only assume, as is the case with any other corporate body when there are new directors, that the corporate counsel sits down with them and tells them what their obligations are and gets them to sign a piece of paper saying that they have read the code and will abide by it.

The Chair: Thank you.

Mr. Konrad von Finckenstein: As I said, I'm surmising. I don't know—

The Chair: Thank you. That is the time.

Going back to Mr. Cooper, you have the floor for five minutes.

Mr. Michael Cooper: Thank you very much, Mr. Chair.

I want to probe your findings in the "Ouimet Report".

You undertook an investigation into green slush fund board member Guy Ouimet. You looked more specifically into allegations of conflict of interest when Mr. Ouimet voted along with the rest of the board to approve \$38.5 million in taxpayer dollars in so-called COVID relief payments, \$38.5 million that the Auditor General determined went improperly out the door. At issue with Mr. Ouimet is that he had a 1% interest in a company called Lithion, a company that received nearly \$400,000 from the COVID relief payments that Mr. Ouimet improperly voted to approve. You found that Mr. Ouimet had a financial interest when he voted to approve this funding. Is that correct?

• (1155)

Mr. Konrad von Finckenstein: Yes.

Mr. Michael Cooper: You found that when Mr. Ouimet participated in voting to approve the so-called COVID relief payments, he knew that Lithion, a company that he had an interest in, would benefit. Is that correct?

Mr. Konrad von Finckenstein: Yes, yes, yes....

Mr. Michael Cooper: Therefore, he had a private interest in those decisions.

Mr. Konrad von Finckenstein: That is correct.

Mr. Michael Cooper: As a result, it was your conclusion that Mr. Ouimet's conduct fell short of the Conflict of Interest Act, and more specifically sections 6 and 21, which, taken together, require a public office holder such as Mr. Ouimet to recuse themselves on matters in which they have a conflict of interest.

Is that a fair conclusion?

Mr. Konrad von Finckenstein: Yes.

Mr. Michael Cooper: Okay. Thank you for that.

Nonetheless, you dismissed the allegations against Mr. Ouimet on the basis of the principle of de minimis, in that his 1% interest in Lithion was “of a trivial nature”. That's at paragraph 144 of your report.

Did you ask Mr. Ouimet the dollar value of his 1% interest in Lithion?

Mr. Konrad von Finckenstein: Michael, can you answer?

Mr. Michael Aquilino: Yes. It was a \$1,200 interest.

Mr. Michael Cooper: That's correct. It was \$1,200 at the time, but in the three short years after Mr. Ouimet voted to funnel nearly \$400,000 from the green slush fund into Lithion, his 1% interest in Lithion increased by nearly 900%. It went from \$1,250 to \$11,000.

That's quite a return, wouldn't you say?

Mr. Konrad von Finckenstein: Well, let's start at the beginning.

Mr. Ouimet, like everybody else, voted on the COVID payments. Two quotes were taken, and at the time there was absolutely no reference to conflict of interest at all, because the advice from the corporate counsel who was at SDTC.... It was not “corporate counsel”; what was he called?

It was “reporting counsel”. The reporting counsel said there was—

Mr. Michael Cooper: Sir, I don't want to interrupt you, but bad legal advice doesn't excuse one from following the Conflict of Interest Act.

Mr. Konrad von Finckenstein: Did I say it did?

Mr. Michael Cooper: Well, you were alluding to bad legal advice.

Mr. Konrad von Finckenstein: I'm trying to give an answer.

Everybody who voted on that, if they had a conflict, was in conflict. Mr. Ouimet's conflict of interest was in this tiny little sliver of a company. I don't know—

Mr. Michael Cooper: I find it interesting that you looked at \$1,250, but you didn't look at the fact that it increased by 900% in value after he voted to funnel \$400,000 to a company that he had an interest in. He knew he had an interest in it at the time, and all of a sudden, his so-called trivial 1% interest increases nearly 900%.

How is that a conflict of interest is too small to matter? It is a fact that Mr. Ouimet, with the greatest of respect, profited handsomely in part because of his conflict of interest at the green slush fund.

Mr. Konrad von Finckenstein: He had a 1% interest. He could have lost that 1% interest.

The vote was not on his 1% interest; the vote was on a number of companies, all the companies that SDTC until that point had supported, and whether they needed emergency funding before COVID. He, like all the others, voted. As I've said in my report, it was totally wrong to—

Mr. Michael Cooper: He voted to funnel \$400,000 into a—

Mr. Konrad von Finckenstein: No. He voted for his 1%.

Mr. Michael Cooper: He profited handsomely from that, and I would submit that this isn't a trivial matter.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): I have a point of order, Mr. Chair.

Mr. Konrad von Finckenstein: I—

The Chair: Just one second, Mr. von Finckenstein. I have a point of order from Mr. Drouin.

Mr. Francis Drouin: Yes. I'm having a hard time listening to who's up. I know it's the member's time and I respect that, but obviously we need to hear from the witnesses as well.

• (1200)

The Chair: Very good, and yes, members should avoid speaking over themselves.

What I'm going to do, before returning to Mr. von Finckenstein, is ask Mr. Cooper.

You have about 15 seconds left. Do do you have a further follow-up?

All right. Mr. von Finckenstein, the floor is yours. That will lead us into our next member.

You have the floor, please.

Mr. Konrad von Finckenstein: At best, you can say that he voted to save the \$1,200 that he had invested. That was at stake at the time he made his vote, and I found that it was so trivial that it didn't.... The principle of *de minimis non curat praetor* applied.

That was at issue for him at the time he took the vote. Subsequent events, as you point out, turned out to be positive. That could have been negative, etc. I have no idea. That was not the issue. The issue was what was at stake for him at the point in time when he took the vote, and that was \$1,200.

The Chair: Thank you very much.

[*Translation*]

Mr. Drouin, you have the floor for five minutes.

[*English*]

Mr. Francis Drouin: Mr. Chair, we've changed our minds since then, so Mr. Erskine-Smith will be going ahead.

The Chair: Mr. Erskine-Smith, you have the floor for five minutes, please.

Mr. Nathaniel Erskine-Smith: Thanks, John.

The last back-and-forth was instructive, because you have the Conflict of Interest Commissioner saying that this is *de minimis*. It was a \$1,200 stake, a 1% stake in a company that was one of 63 companies that were being funded in a bundled package in the midst of COVID. As well, we have a Conservative member saying, "How dare you find this to be *de minimis*, this green slush fund?"

I want to pick up from that, because when I hear that language of "green slush fund", it sounds like bribery or embezzlement. It sounds like fraud. It sounds like there is something criminal there.

There were 90 conflicts of interest identified by the Auditor General in which processes were not followed. In 96 cases, they were followed. In 90 cases, they weren't followed. That's damning on its own, as you've said; in almost half of the cases, the policies were not appropriately followed, and 63 of those cases were those two COVID votes.

You've done a proper report with respect to Ms. Verschuren. You found two ethics violations. You did a proper report for Mr. Ouimet. You found that there was an ethics violation that was so *de minimis* that it was not of sufficient concern.

For the Canadian public who have followed these proceedings in passing and have heard language like criminal accusations and about "green slush fund", you've looked at this in detail. You have the expertise. Is there any reason to think that there was criminal conduct here?

Mr. Konrad von Finckenstein: No. If there had been any reason for me to believe that there was criminal conduct, I would have immediately stopped my investigation and referred the matter to the RCMP. I am obliged to do that by the act.

Mr. Nathaniel Erskine-Smith: In all of your review of documents, your interviewing of witnesses, the Auditor General doing the work and then your pursuing this further, not a single piece of evidence, not a single bit of testimony has caused you to pause and say, "Maybe I should refer this matter to the RCMP".

Mr. Konrad von Finckenstein: No, there was nothing.

I listened to the examination of both Ms. Verschuren and Mr. Ouimet in entirety, which I always do in order to get a feeling or an assessment of the veracity of what they're doing, the credibility of what they are saying. It was clear to me that this was a fund that was—let's be kind—sloppily organized and operated, but there was nothing illegal from the evidence that I was presented with such that I would have said, "Hey, I should stop right now and refer it to the RCMP."

Mr. Nathaniel Erskine-Smith: Let's look at the jurisdiction for which you're responsible, conflicts of interest.

The Auditor General identifies those 90 cases. I want to go into the details a little bit here, because you have 63 cases that have to do with two votes around bundled COVID payments.

It's relatively straightforward what happened here. You've articulated this, and just so I have this clear, a lawyer at Osler who was reporting counsel gave advice to the board to say that they had already declared these conflicts or they'd managed these conflicts, so they didn't have to redeclare them and they could vote as a bundled payment without further declaring conflicts on this matter.

That was bad advice, obviously. You've said it was incorrect legal advice. You are right and the Auditor General is right, but that's what happened. It was bad legal advice that they were following.

Mr. Konrad von Finckenstein: Yes. These votes came up. Nobody talked about conflict of interest. We examined both Ms. Verschuren and the legal counsel, and they said that it hadn't come up. I asked why wasn't it raised, etc., and the legal counsel said that on the basis of their general knowledge of corporate law, they didn't think it was necessary.

Mr. Nathaniel Erskine-Smith: I want to get to the 25 cases. We have 63 cases of those 90 that were the bundled COVID payments. Two cases in which the individual should not have been involved relate to an external expert reviewer.

With respect to the board, you have 25 additional cases in which directors participated in discussions and voted to approve funding, according to the Auditor General, despite having previously declared a conflict. Half of those directors, according to the Auditor General, said that there was no further conflict or that they did in fact recuse themselves.

With respect to those 25 cases, should Canadians have any concern? You obviously found two ethics violations with Ms. Verschuren. Should Canadians have concern in those 25 cases that anything warrants further investigation?

• (1205)

Mr. Konrad von Finckenstein: If these 25 allegations of conflict of interest resulted in enrichment, in fraud or something like this, it obviously should be investigated and should be dealt with. Unfortunately, it's not my mandate. I have no powers to do that.

The Public Sector Integrity Commissioner and the RCMP are both looking at this. Unfortunately, Parliament has seen fit to have different sectors. I am conflict of interest.

Mr. Nathaniel Erskine-Smith: I understand—

Mr. Konrad von Finckenstein: The commissioner is in public sector integrity, i.e., misuse of money and fraud. The RCMP is to deal with criminal violations. We don't overlap, and we respect each other's jurisdiction. We have to. If I see something that belongs there, I will notify them and stop my investigation.

The Chair: Thank you.

That is the time, I'm afraid.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: I want to thank you for your testimony today, gentlemen, and participating in relation to “Report 6: Sustainable Development Technology Canada”.

I'll now suspend for a few minutes while we switch panels and welcome our next witness.

• (1205)

(Pause)

• (1210)

The Chair: I'll now bring the meeting back to order.

Welcome back.

[*Translation*]

We are still discussing 2024 Report 6, entitled “Sustainable Development Technology Canada”.

[*English*]

I'd now like to welcome our witness. From the House of Commons, we have Michel Bédard, Law Clerk and Parliamentary Counsel.

Monsieur Bédard, it's good to see you again. Thank you for coming in today.

You'll be given time for an opening statement. The floor is yours for five minutes, please.

[*Translation*]

Mr. Michel Bédard (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chair and esteemed members of the committee.

Thank you for the invitation to appear before you today.

As the chair indicated, my name is Michel Bédard, Law Clerk and Parliamentary Counsel at the House of Commons.

I understand that, as part of its study on the Auditor General's Report on Sustainable Development Technology Canada, the committee has some questions in relation to the order for the production of documents adopted by the House on June 10, 2024.

[*English*]

As members know, the order requires that the government, SDTC and the Auditor General deposit documents regarding SDTC with me, as Law Clerk and Parliamentary Counsel. I am then to notify the Speaker as to whether the documents were provided as ordered. The Speaker must, in turn, inform the House accordingly.

To date, I have provided the Speaker with four reports. I provided them on July 17, August 21 and September 16, and I provided the fourth report just this morning. These reports were all tabled in the House of Commons and are publicly available as sessional papers.

[*Translation*]

I note that some government institutions informed me that they still have documents to submit. The Auditor General also indicated that she may have more documents to provide later.

As stated in my reports to the Speaker, some documents I received were redacted while others were withheld. The order of June 10 also requires that the documents I receive be provided to the RCMP. On that, my office provided documents to the RCMP on August 16, 2024.

My role under the order is limited to receiving the documents, notifying the Speaker and providing the documents to the RCMP. The order does not contemplate any assessment or analysis of the documents.

[*English*]

As members are aware, a question of privilege was raised in the House of Commons on September 16 regarding compliance with the order. On September 26, the Speaker ruled that the matter constituted a prima facie case of privilege. The House leader of the official opposition, Mr. Scheer, then moved that the matter be referred to the Standing Committee on Procedure and House Affairs. This motion is still being debated in the House of Commons.

This concludes my remarks.

I will be pleased to answer your questions to the extent I can under the order of June 10 and taking into consideration that the House is still currently debating this matter as a question of privilege on whether the Standing Committee on Procedure and House Affairs should be seized by the matter.

Thank you.

[*Translation*]

The Chair: Thank you very much, Mr. Bédard.

[English]

We'll now begin questions. I'd like to get through two full rounds, so I'll notify members that we'll be here a few minutes late, but not much beyond that. This should take about 50 minutes.

Mr. Nater, you have the floor for six minutes, please.

Mr. John Nater: Thank you, Mr. Chair.

Through you, thank you to our parliamentary law clerk for joining us today. I appreciate your advice and guidance on these important matters when it comes to the privileges of Parliament.

Before I get into my line of questions, I want to step back a little and begin by noting that what I'm about to ask has no bearing on our ability to request documents. However, to put some people's minds at ease, could you indicate to the committee what steps you have taken in your office to respond to concerns about security clearances for you and anyone else in your office with regard to documents that are being provided to you?

• (1215)

Mr. Michel Bédard: Excuse me; there was some noise, so I could not completely understand the question.

Mr. John Nater: Basically, what steps have you taken in your office to protect the documents that may be provided to you, including security clearances for you or members of your team?

Mr. Michel Bédard: First of all, the documents were produced and deposited with me under the authority of a production order that was adopted by the House, which constitutes the exercise of a parliamentary privilege to compel the production of documents. It is a parliamentary privilege, which, like all the other privileges, is constitutional in nature, and that has been recognized as such by the courts.

Our role under the order was limited to receiving the documents and providing them to the RCMP. We made sure that we limited the circulation of documents, so only two persons in my office with top secret clearance, I and another counsel, had access to documents.

That said, as they were obtained through a production order, the top clearance requirement was not a requirement per se, but we nonetheless took that step.

Mr. John Nater: I appreciate that, and I appreciate the clarity, too, that it isn't relevant, but it is nonetheless an extra step that you have taken in your office.

I want to begin now with this morning's tabling of the recent update.

Included in that report this morning was the comment that redactions were made pursuant to the Access to Information Act. Could you confirm with this committee that those redactions made pursuant to the ATIP are not permitted under the House order, that the House order supersedes and goes beyond any type of restrictions that an ATIP law may put into place?

Mr. Michel Bédard: As you summarized well, the power of the House to compel the production of documents is a constitutional power that is a parliamentary privilege. It supersedes ordinary law, so it will prevail over the Access to Information Act, the Privacy Act and, for example, solicitor-client privilege.

Mr. John Nater: I don't want to put you in a position of going beyond the focus of this meeting, but it is clear that the Speaker of the House of Commons has found a prima facie question of privilege on this matter because of the failure to produce certain unredacted documents. To see an excuse being used that is clearly not relevant to the documents in the House order is quite concerning from the standpoint of this committee and from the standpoint of Parliament as a whole.

There's a phrase that's often used that Parliament is the "grand inquest of the nation". Part of that is that we are able to compel the production of documents and require witnesses to appear before this House. From a constitutional standpoint, from the standpoint of the grand inquest of the nation, can you explain to this committee why it's important that those privileges, those important rights of Parliament, be maintained for us to fulfill our duties as parliamentarians?

Mr. Michel Bédard: It goes to the very raison d'être or reason for parliamentary privilege that the House of Commons, or Parliament in general, has the autonomy it requires to perform its functions to hold the government accountable, to legislate and to deliberate. That's the root of all parliamentary privilege. As part of its function to investigate and hold the government accountable, if a committee or the House requires documents, it can order the production of these documents.

Mr. John Nater: Can you confirm whether a committee has the same power as the House of Commons itself to compel the production of documents?

Mr. Michel Bédard: The privilege belongs to the House of Commons. It's delegated through the Standing Orders to committees. If there is a breach of this privilege, committees cannot themselves impose sanctions. They have to report the matter to the House.

• (1220)

Mr. John Nater: The power is still there for committees to do that, but we would have to go through the House to impose sanctions.

Going down that route, what sanctions are available to committees to recommend to the House as a whole to hold accountable those who may not be complying with production orders?

Mr. Michel Bédard: There are various sanctions available. For example, one sanction we saw recently was when a witness at the bar of the House was admonished by the Speaker. In 2011 another sanction was that the House of Commons removed its confidence in the government because they had not provided all of the documents.

Those are two examples of sanctions that are at each extreme of the spectrum.

The Chair: Thank you very much.

Mr. Erskine-Smith, you have the floor for six minutes, please.

Mr. Nathaniel Erskine-Smith: Thanks very much.

I am entirely supportive of the idea that Parliament reigns supreme in demanding documents. I sat on a committee that worked alongside the Parliament in the U.K. to pursue a Canadian company, AIQ, which was a smaller player in the scandal around Cambridge Analytica. As the U.K. was dealing with that fallout, we were dealing with a smaller amount of that fallout. We worked hand in hand to make sure that documents were properly disclosed and witnesses were compelled to testify. We were able to work collaboratively as parliamentary committees pursuing parliamentary investigations.

At the same time, with such significant power, in this particular case I'm at a bit of a loss. One has to use that power responsibly. This is where I would welcome your thoughts. We have a situation of a former law clerk, Rob Walsh, calling this an "abuse" of the House's powers. He says it's an abuse because the purpose of the House's powers is to enable the House to carry on its proceedings.

How do you respond to that? What do you make of that?

Mr. Michel Bédard: As I indicated in an answer to a previous question, the root of parliamentary privilege and the reason for it is to allow Parliament—the House of Commons and its committees—to perform their functions of deliberating, investigating and legislating without any interference from outside, be it the executive or the judiciary.

The order of June 10 has two components. First, there is the component that documents be provided to me as law clerk. The second component is that they be made available to the RCMP. It doesn't go further than that. If you look at the order, you'll see that this is the only thing that is in the order.

What the RCMP could do with the documents potentially could—

Mr. Nathaniel Erskine-Smith: Let's pause that. I want to get to that, but I actually want to deal with the powers of the House.

A law clerk, Rob Walsh, is saying that it's an "abuse", he says, because the purpose of the House's powers is to enable the House to carry on its own proceedings. He's saying that the active intent to request documents for the sole purpose of turning those documents over to a third party is inconsistent with the power of the House, because the power of the House is to enable the House to carry on its own proceedings, not to simply pass that work on to a third party.

What do you make of that?

Mr. Michel Bédard: As I indicated in my remarks at the beginning of my testimony, I need to be mindful that there is a question of privilege right now before the House of Commons that has been debated for two weeks and that the matter could be referred to the Standing Committee on Procedure and House Affairs as a question of privilege. In the assessment of the question of privilege, if the matter is ever referred to the committee, it could look at the fact that the order is indeed unprecedented and unusual.

Now, if you look at the order—many things have been said about this order, but one needs to look at the text of the order and the paragraphs of the order—you see that it does not require the RCMP to do anything with the documents. It's—

• (1225)

Mr. Nathaniel Erskine-Smith: It doesn't need to, but I want to get to what the RCMP could do or should do. How could these documents be used in any investigation?

We have the RCMP commissioner saying:

...the RCMP's ability to receive and use information obtained through this production order and under the compulsory powers afforded by the Auditor General Act in the course of a criminal investigation could give rise to concerns under the Canadian Charter of Rights and Freedoms. It is therefore highly unlikely that any information obtained by the RCMP under the motion where privacy interests exist could be used to support a criminal prosecution or further a criminal investigation.

If I'm defence counsel and there's been no search warrant approved on reasonable grounds, will my client's charter rights have been circumvented?

Mr. Michel Bédard: Even before getting to protections under charter rights, one needs to look at the issue as a question of parliamentary law and whether these documents would be admissible in a court of law as documents obtained under the authority of a House order and are directly and closely connected to parliamentary proceedings.

Also, the House and its committees need to consider the potential impact of such an order. Witnesses come to committees and testify. They're told they have immunity while testifying. It will destroy the root of the privilege itself if testimony or documents were, as a matter of principle, referred to the RCMP once the evidence has been given—

Mr. Nathaniel Erskine-Smith: I understand that, but let's deal with the charter question as well.

You're a lawyer. In what world could this evidence be admissible, given that it was not subject to a search warrant on reasonable grounds?

My former colleagues at the Canadian Civil Liberties Association are going to point and laugh at this. In what world could this ever be used? It's a clear violation of one's charter rights.

Mr. Michel Bédard: As I indicated at the beginning, my role under the order was not to proceed to an analysis or evaluation of the documents. I had to receive the documents and make them available to the RCMP. I also had to report to the House on whether or not the order had been complied with. I did not read the documents. I just had to look and make sure I could inform the Speaker about whether or not redactions had been made.

In conducting this role, I was able to see that some documents would have been publicly available. Other documents, in my opinion, would not necessarily raise charter issues.

That said, there are indeed concerns, as I think the RCMP, the Auditor General and other lawyers have expressed. I concur with their concerns that there might potentially be charter issues, because there might be an expectation of privacy for certain documents obtained without any search warrant or production order. Before we get to charter rights, Parliament needs to look at this order and its rights under parliamentary law for obtaining documents.

[Translation]

The Chair: Thank you.

[English]

That is the time.

[Translation]

Ms. Sinclair-Desgagné, you have the floor for six minutes.

Ms. Nathalie Sinclair-Desgagné: Good afternoon, Mr. Bédard. It's nice to see you before the committee again.

You said that you reported to the Speaker of the House of Commons this morning about Sustainable Development Technology Canada, or SDTC. Could you give us a quick update on the documents we have received, the ones we are yet to receive, and also on the ones that were redacted by certain departments or were missing pages?

Mr. Michel Bédard: To date, I have made four reports to the Speaker and they have all been tabled as sessional papers. As you know, my first report, the one in July, was more substantial because it was the first one. After that, the reports were basically updates.

To summarize, so far, eight government entities have produced unredacted documents, and 22 government entities have produced redacted documents. With respect to SDTC, some documents were withheld, while others were redacted.

Ms. Nathalie Sinclair-Desgagné: What reasons did SDTC and the government entities give for the redactions?

• (1230)

Mr. Michel Bédard: Essentially, the redactions were done under the Access to Information Act, because they treated it like an access to information request.

Ms. Nathalie Sinclair-Desgagné: Is it just the names and phone numbers and addresses, or were other things redacted? For example, were any full pages or full sections of contracts or emails redacted? Can you tell us a little more about that, please?

Mr. Michel Bédard: Pursuant to the order of the House, I receive the documents, and then I inform the Speaker. I don't have the mandate to look in detail at the nature of the redactions and report them to the Standing Committee on Public Accounts.

If the matter is recognized as a breach of privilege by the House of Commons and referred to the Standing Committee on Procedure and House Affairs, the situation will be different, and the committee will be able to legitimately consider the matter.

That said, if you look at the letters I've received from government entities, which are all appended to my report to the Speaker, they talk about documents, sometimes hundreds of pages that have been withheld, redactions that relate not only to personal information but also to information protected by solicitor-client privilege or other provisions of the Access to Information Act.

Ms. Nathalie Sinclair-Desgagné: Okay. Great.

In this context, can you also tell us about the entities that responded, that sent documents, but they were heavily redacted? I think you cited some examples of that in your report this morning to the Speaker. Can you give them to us here at the committee, please? What are those departments, other than SDTC, that you mentioned earlier?

Mr. Michel Bédard: I hesitate to give you a list of government entities that have redacted more, or less, of their documents. My role under the House order was to inform the Speaker so that he could tell the House whether any redactions had been made. When we received documents from an entity, our first step would be to check whether or not there were redactions. So we looked at all the documents to make sure there were no redactions. As soon as we found any, we classified the document as redacted.

I couldn't really give you a list of the entities that are the most delinquent in redactions or the entities that have complied the least with the House order. Otherwise, I think we would be touching on the substance of the order and the question of privilege currently being debated in the House and which could eventually be referred to the Standing Committee on Procedure and House Affairs.

Ms. Nathalie Sinclair-Desgagné: When it comes to questions of privilege, I think it's important to remember that this is a constitutional issue, as you said at the outset. Once again, it's always a bit ironic when it's the Bloc Québécois members who remind us of the Constitution, but this is about the primacy of Parliament, the right of Parliament to request documents, which are sent to you first.

Based on the arguments we're hearing, the government is saying that these documents must be provided to the RCMP, whereas all these documents must be provided, first and foremost, to you, the law clerk of the House of Commons, so that we can then proceed to the various other steps, whether we agree or not. The House therefore has the right to request these documents. I think it's important to remember that, from a legal perspective, under the Parliament of Canada Act, Parliament has the right to request that documents be sent to the law clerk of the House. Is that correct?

Mr. Michel Bédard: Under the parliamentary privileges set out in section 18 of the Constitution Act, 1867, and section 4 of the Parliament of Canada Act, the House of Commons has the power to order the production of documents. We've had cases in the past where documents were given to the law clerk and parliamentary counsel first and then to the House.

Ms. Nathalie Sinclair-Desgagné: Thank you.

The Chair: Thank you very much.

[English]

Up next is Mr. Cannings. You have the floor for six minutes, please.

Mr. Richard Cannings: Thank you.

Thank you, Mr. Bédard, for being here with us today.

I'm going to go back to some of the lines of questioning that Mr. Erskine-Smith was following. I'm new to this committee and trying to grasp the bounds of these powers.

In your letter, you said the power to send for documents is "absolute and unfettered." In my experience at the House of Commons, when a committee asks for documents, they often come redacted. Sometimes I think we call for you or other law clerks to come and explain why they're redacted.

When it's "unfettered", does that mean we could ask for all the documents from cabinet, for instance? What about state secrets? It seems very broad.

What are the bounds? If there are no bounds, what are the procedures in place to deal with these documents when they're deposited with the House to make sure that sensitive information is treated properly?

• (1235)

Mr. Michel Bédard: As with other parliamentary privileges that belong to the House and Parliament, the House of Commons has the exclusive authority in the exercise of these privileges, so it's up to Parliament to decide whether or not to exercise its privilege in any given case.

You referred to the fact that you've seen documents in the past provided to other committees that were redacted. It is not unusual for committees to either contemplate or authorize redactions when they order the production of documents. Also, even when there's no such mention in the production order, we will see witnesses or third parties participating in committee proceedings providing documents with redactions.

Once the committee receives documents with redactions, it's for the committee to decide whether or not it wants to pursue the matter further. Sometimes the redactions could, on their face, be minimal. One could tell that only the phone number was taken away or redacted. However, if there are important portions that are redacted or if, for any other reason, the committee wants to insist on the production of documents totally unredacted, it can insist on that in its order. That's oftentimes when we at the Office of the Law Clerk and Parliamentary Counsel can assist committees and explain to witnesses that the power of committees to send for records and papers is absolute and unfettered.

If, after insistence, the documents are still produced with redactions, it's up to the committee to decide whether or not it wants to leave the matter as it is or report it to the House. If it reports the matter to the House, the matter could still be raised as a question of privilege.

In the past, there have been instances when very sensitive documents were the subject of production orders. There are two cases I could refer to. One is the case of the Winnipeg lab documents; in that case, the government was claiming that certain documents were protected under national security. It was the same thing for the second case, the Afghan papers documents, a decade or so ago. In those specific circumstances, Parliament, in a position of working with government, found a compromise so that some members could have access to the documents without compromising the security and sensitive nature of the documents.

Mr. Richard Cannings: How much time do I have?

The Chair: You have about 90 seconds.

Mr. Richard Cannings: I'm going to go now to this issue of documents being sent on to the RCMP. Mr. Erskine-Smith and our witness, the Ethics Commissioner, mentioned this earlier this morning.

If the House of Commons has asked for these documents for this purpose, is it the case that whether it would be a mistake to send them on to the RCMP is of no consequence to you or to others? In legal terms, that's what you've been ordered to do, so you do that. You don't take into account what that might do to subsequent legal actions.

I ask because we've heard from various people who seem to know their stuff that this might not be the best course of action, yet this is what the House has asked for. Is there any legal reason to say that we shouldn't do this, or do you just say that this is what you've been told to do?

• (1240)

Mr. Michel Bédard: In terms of the instruction in the order, it was very clear and unambiguous that I was to receive the documents and make them available to the RCMP. I did comply with the order, and after I provided the first batch of documents to the RCMP, they have been also made aware that there are other documents that are available for them if they want to pick them up.

Now, the power of the House to order the production of documents is one thing; the RCMP or any other outside body using parliamentary proceedings for their own purpose is another. I echo the concern that has been expressed in relation to the charter and I also raise the fact that as a matter of parliamentary law, these documents were produced under a production order. They are closely connected to parliamentary proceedings, and these proceedings are not admitted as evidence in a court of law.

There's also the possibility that it could eventually discourage witnesses and other parties if they're asked to produce documents by committees or the House and are concerned that these documents could be referred later on to the RCMP.

The Chair: Thank you. That is the time.

Beginning our second round is Mr. Cooper. You have the floor for five minutes, please.

Mr. Michael Cooper: Thank you very much, Mr. Chair. Thank you, Mr. Bédard, for confirming that SDTC continues to withhold documents and that they have been submitting documents that they have redacted. Therefore, SDTC continues not to be in compliance with the order of the House.

There are other government entities that have not followed the order of the House, including the justice department. As of the summer, 11,517 pages of documents concerning SDTC have been withheld by the Department of Justice. Is that the case today?

Mr. Michel Bédard: I have received further documents from the justice department that they hadn't provided earlier because they had been redacted or withheld.

Mr. Michael Cooper: Thank you for that. That's a lot of documents that have been withheld by the Department of Justice.

What about ISED? Are there documents that are outstanding from ISED or the Department of Industry?

Mr. Michel Bédard: Yes, indeed, I still have to receive documents from ISED.

Mr. Michael Cooper: Do you have any idea of how many documents you're awaiting from the Department of Industry?

Mr. Michel Bédard: Excuse me. I misheard. Can you repeat the question?

Mr. Michael Cooper: Approximately how many documents are missing?

Mr. Michel Bédard: Until I receive the documents, I have no idea.

Mr. Michael Cooper: That's fair enough.

Now, some of those documents that the Department of Industry has submitted have been redacted. Is that correct?

Mr. Michel Bédard: That's correct.

Mr. Michael Cooper: Have others been withheld?

Mr. Michel Bédard: There have been government entities that have provided documents with redactions or that they had withheld, yes.

Mr. Michael Cooper: Does that include the Department of Industry, on the point of withholding documents?

Mr. Michel Bédard: In relation to each department, I would rather prefer...

Mr. Michael Cooper: Okay. Is the Department of Industry withholding or, rather, redacting documents on the basis of the Privacy Act?

Mr. Michel Bédard: I will have to check for a specific case. It's all in my reports.

The grounds for redactions or for having withheld documents is always either the Access to Information Act or the Privacy Act or solicitor-client privilege.

Mr. Michael Cooper: You have confirmed that the House order supersedes all of those bases. Is that correct?

Mr. Michel Bédard: That's correct. The House order, contrary to some orders in the past, does not contemplate any redactions to be made to the documents.

Mr. Michael Cooper: What about cabinet confidence? Has that been asserted at any point?

Mr. Michel Bédard: Yes, that has been asserted, and that's also a ground in the Access to Information Act. When I refer to the Access to Information Act, that also included cabinet confidences.

Mr. Michael Cooper: Would it be accurate to say that the Department of Industry has asserted it on the basis of the cabinet confidence that the minister has?

Mr. Michel Bédard: Again, I'm reluctant to comment on any specific department in particular, but generally, yes.

Mr. Michael Cooper: Okay, I understand. Thank you for that.

Would it be fair to say that ministers of the Crown are ultimately accountable to Parliament with regard to compliance by their department with respect to any order of the House?

• (1245)

Mr. Michel Bédard: Yes.

Mr. Michael Cooper: Thank you for that, Mr. Bédard, because what we have is a Minister of Industry who claims that he is interested in getting to the bottom of corruption at SDTC, yet contrary to what Minister Champagne has asserted and what you have confirmed, Mr. Bédard, he has invoked cabinet confidence to protect himself from issues of corruption at SDTC and is running interference, blocking the production of documents and obstructing a parliamentary order that is specifically designed to get to the bottom of corruption at SDTC.

The minister is doing exactly the opposite of what he asserted. It begs the question: What is he hiding?

Thank you, Mr. Chair.

The Chair: Thank you very much.

Up next is Ms. Khalid. You have the floor for five minutes, please.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you very much, Chair, and thank you, Mr. Bédard, for being here today.

I really appreciated the soliloquy by my colleague there, though none of it is true, but I do have some quotes from people that I want to run by you.

Former senior parliamentary counsel for the House of Commons Steven Chaplin stated that the June 10 order was “both 'completely unprecedented' and a likely abuse of Parliament's powers”, that “the House of Commons is simply acting as a 'mailbox' for the police force, which is not one of its duties”, and that “It is not a parliamentary or constitutional function of Parliament to help the police.”

In the same vein, former RCMP deputy commissioner Pierre-Yves Bourduas also commented that we all know that “the rule of law is predicated upon a separation between what [Parliament is] doing and what law enforcement agencies are doing, in this case, the RCMP.”

Would you agree with those statements?

Mr. Michel Bédard: Under the.... I mentioned parliamentary privilege earlier, and the reason for parliamentary privilege is to allow the House and its committees to—

Ms. Iqra Khalid: Let me rephrase that a little bit: Do you share the same sentiments that are being conveyed by these two very senior people within our institutions?

Mr. Michel Bédard: I will answer the question the best I can.

You referred to documents that express opinions. I can offer my opinions to the committee, if it's the will of the member, respecting the issues you have raised.

Ms. Iqra Khalid: Please go ahead.

Mr. Michel Bédard: The parliamentary privilege, whether it is to send for records and papers, to compel the production of documents or to send for witnesses, exists to support the function of the House as the grand inquest of the nation and the investigative power function of the House of Commons and its committees.

Other parliamentary privilege exists to protect the House and its members from outside interference. Parliamentary privilege does not exist so that the House can assist outside powers like the judiciary or police forces to conduct their functions. As I stated, as a matter of parliamentary law, when witnesses testify before committees or when submissions or documents are produced, there is immunity protecting the witnesses, and these proceedings are not admissible before a court of law.

Traditionally, there is always a separation between various powers in Canada. I think this very committee set the gold standard about 20 years ago when, during the sponsorship scandal, there was one witness who was called upon to testify before the committee while there was also a police investigation into that person. The committee, so as to not interfere with the police investigation, decided to hold the meeting in camera for the very reason that they did not want to interfere with the police investigation, and it kept those proceedings in camera for a number of years so as not to interfere with the investigation.

Ms. Iqra Khalid: Thank you for that.

I believe it was Mr. Chaplin who also said, “I think that the House has really overstepped here, and it raises a number of constitutional issues.” I know that you spoke about this a little bit earlier, but I would like you to talk more about the constitutional implications of this unprecedented move by the opposition in Parliament?

● (1250)

Mr. Michel Bédard: Without suggesting that I agree with the comment or the blog that you have just referred to, I alluded earlier to certain issues that have been raised.

There have been charter issues raised by the RCMP as well as the Auditor General. I earlier, during this testimony, raised that as a matter of parliamentary law, it's doubtful that these documents could be used as evidence before courts of law.

Ms. Iqra Khalid: We've seen a lot of influence from misinformation and disinformation and their impact on our democratic institutions. How do you think this kind of a political move impacts our core democratic institutions and their separation, and the rule of law, in how we conduct ourselves and maintain a free and fair democracy here in Canada?

Mr. Michel Bédard: I won't answer the general question, because it invites.... House officers are impartial, non-partisan, non-political.

I mentioned earlier that parliamentary privileges are for members. They belong to the House committees and all members. It's for the members to assess how they want to exercise those privileges.

There's currently a question of privilege being debated before the House of Commons. The motion is to refer the matter to the Stand-

ing Committee on Procedure and House Affairs, and that will provide the appropriate forum to discuss those issues.

The Chair: Thank you very much.

Ms. Iqra Khalid: Thank you very much.

[*Translation*]

The Chair: Ms. Sinclair-Desgagné, you have the floor for two and a half minutes.

Ms. Nathalie Sinclair-Desgagné: Thank you, Mr. Chair.

Mr. Bédard, regarding what we were discussing earlier, you had started to talk a bit about the Parliament of Canada Act, which requires the government to provide the documents to the House.

What are the various possible scenarios when you receive documents ordered to be produced by the House of Commons, as is the case here? What can be done with these documents?

Mr. Michel Bédard: With respect to the order itself, there is no precedent for the House directly ordering the production of documents to be turned over to law enforcement.

In terms of possible scenarios, there are several. I know there's been ongoing debate in the House and in the public domain, which is entirely legitimate. However, if we rely solely on the wording of the current order, nothing prevents another order from being made concerning these documents or an appearance by the Commissioner of the RCMP before this committee to share his assessment of the substance of the documents, to the extent that the RCMP has agreed to review them. This is all within a parliamentary context.

Now, as I was saying, if these documents are expected to be used by the RCMP in an investigation and as evidence in front of—

Ms. Nathalie Sinclair-Desgagné: No, I'm not talking about the RCMP. Rather, I want to know how they could be used in Parliament, particularly in committees.

Mr. Michel Bédard: If we limit ourselves to Parliament, the documents currently exist only in my office and are accessible to only a few people. Since they haven't been tabled in the House, neither the Official Languages Act nor the Standing Orders of the House of Commons apply. These documents exist in only one language, which is entirely consistent with the legislation, and the versions that I provided to the RCMP are only in one language. If the documents were to be referred to any committee or used for any other purpose, they would have to be translated, because most committees have adopted routine motions in that regard.

Furthermore, since I received the documents pursuant to a House order, my hands are tied, and I can only distribute them or do something else with them if I receive a direct order from the House. If the committee asked me to show them the documents, I would unfortunately have to refuse, because I received them under an order of the House and, if I may say so, the committee is a creature of the House and reports to the House.

The situation would be different if the question of privilege were referred to the Committee on Procedure and House Affairs. In my opinion, if the committee were to study the question of privilege concerning compliance with the order of the House, it would mean that it would also have an idea of certain excerpts of documents so that it could conduct its own examination.

• (1255)

Ms. Nathalie Sinclair-Desgagné: Okay. Thank you.

The Chair: Thank you very much.

[*English*]

Up next is Mr. Cannings.

You have the floor for two and a half minutes.

Mr. Richard Cannings: Thank you.

Again, I'd like to try to figure out what the bounds to these powers are.

You said in your letter that when we ask for production of documents, that is a privilege that's unfettered and unbounded. In a sense, the House of Commons is above the laws that it creates for the rest of the country.

I'm wondering if there are laws that do bind those privileges. Are there any laws? If you can answer that, I'll finish on a different tack.

Mr. Michel Bédard: In terms of laws that will limit the privilege of the House to send for records and papers, there's no explicit law that diminishes or limits this power.

As the privilege is constitutional in nature, the parliamentary privilege is not amended or modified by implication or indirectly. There needs to be an explicit provision in the law that will override the privilege.

There are some privileges—the privilege of freedom of speech, for example—that create some limitations, but those limitations are very explicit. There are none in relation to this power.

We know of some circumstances in which the law of parliamentary privilege does not apply. For example, the House cannot compel the production of Senate documents and the Senate cannot compel the production of House documents, but these are exceptions that arise from the law of parliamentary privilege and not from any acts of Parliament.

Mr. Richard Cannings: You're saying that there are restrictions within Parliament, but not between Parliament and the rest of the world.

Mr. Michel Bédard: Also, in terms of restrictions, within Parliament there are always the restrictions that the House or committees will impose on themselves.

As indicated, and you referred to examples earlier, there are documents provided with redaction. It's up to each committee, on a case-by-case basis, to decide whether they want to accept the redactions that have been made and whether to insist on some and not on others and, if they're still dissatisfied, to report to the House.

The Chair: Thank you.

Do you have a brief question?

Mr. Richard Cannings: No, it wasn't a brief question.

The Chair: I appreciate your candour.

We'll turn now to Mr. Stewart. You have the floor for five minutes, sir.

Mr. Jake Stewart (Miramichi—Grand Lake, CPC): Thank you, Mr. Chair.

Thank you, Mr. Bédard, for being here today.

Finance, the Department of Industry and BDC are all sending in redacted documents. These are key departments up for public discussion here with certain hearings and many motions. These are departments that are present at our standing committees on a very regular basis.

Are they complying with the House order when they redact?

Mr. Michel Bédard: The June 10 order did not contemplate any redactions. Had the House wished for any redaction, it would have been stated explicitly. I think that was the substance of the Speaker's ruling that the matter constitutes a *prima facie* case of privilege.

The answer is no, there was no compliance.

Mr. Jake Stewart: What about cabinet confidences? At times, they're being redacted as well. How do you feel about that? Are there any rules being broken there? Can you explain that process?

Mr. Michel Bédard: Do you mean in terms of...?

Mr. Jake Stewart: You can speak in generalities.

Mr. Michel Bédard: In terms of the power to order the production of documents, as I indicated, this power is absolute.

When a document is ordered, there might be a legitimate privacy concern or other legitimate concerns not to provide the document in full. If there are redactions, it's really for the House or committees to decide whether or not they accept the reason that was put forward not to see the information. If the House or committees are still unhappy with the reason put forward, they can take further measures. It could be from ordering a representative to appear at the bar of the House or, as we saw in 2011, withdrawing the confidence in government.

• (1300)

Mr. Jake Stewart: Thank you for that.

As you know, "Parliament is not bound by the Privacy Act, and has a right to have any documents laid before it which it believes are necessary." This power "is said to be absolute." This is how the Liberal chair of this very committee ruled in 2009.

On the ArriveCAN investigation, as an example, in an email discussing an OGGO motion, the CBSA talks about redacting and withholding, based upon the spirit of the ATIP Act.

Could you explain if that is allowed? Can you explain that process and how they would be allowed to redact and withhold documents based on the spirit of the ATIP Act?

Mr. Michel Bédard: Generally, the power to send for records is unfettered. If the committee requests unredacted documents, it is entitled to unredacted documents. The Access to Information Act, the Privacy Act or any other act will not apply, nor will the spirit of the act. If redactions are proposed, it's up to each committee to decide whether or not it will accept the redactions.

Mr. Jake Stewart: Is Parliament not supreme when ordering documents, or is CBSA allowed to deny the will of the committee?

Mr. Michel Bédard: The power for Parliament to send for records and paper is absolute.

Yes, if the House or one of its committees is ordering the production of documents, it is entitled to them.

Mr. Jake Stewart: I appreciate that. I have no further questions.

The Chair: Very good. Are there any other questions? It doesn't sound like it.

I will then turn it back to Mr. Erskine-Smith.

You have the last five minutes, please. The floor is yours.

Mr. Nathaniel Erskine-Smith: Thanks very much.

I wouldn't mind, given that we're at the end of this, recapping a little bit.

You've called this an "unprecedented and unusual" order today. Is that right?

Mr. Michel Bédard: That's correct. That's how the speaker, in his ruling, qualified the order.

Mr. Nathaniel Erskine-Smith: Now the Auditor General has said there's nothing criminal here to warrant referring the matter to the RCMP. Earlier today, before your testimony, the Ethics Commissioner said exactly the same thing.

The Auditor General has expressed concerns with the order. The RCMP has expressed concerns with the order as well. Are you aware of those concerns?

Mr. Michel Bédard: Yes.

Mr. Nathaniel Erskine-Smith: Now we have the former law clerk, Rob Walsh, as well as a former senior parliamentary counsel, Steve Chaplin, calling the order an abuse or a likely abuse of the House's powers.

You have said here—I just want to be clear—in response to Ms. Khalid's questions, that Parliament's function, the function for which its powers exist, is not to serve a third party's investigation.

Is that right?

Mr. Michel Bédard: That's correct.

Mr. Nathaniel Erskine-Smith: You've also said that the gold standard with respect to our separation of powers as a country was when this committee went in camera to avoid interfering with an RCMP investigation.

Is that right?

Mr. Michel Bédard: I'm sorry; could you repeat the question?

Mr. Nathaniel Erskine-Smith: You have said the gold standard—you used the language of "gold standard"—to respect the

separation of powers was when this committee went in camera 20 years ago to avoid interfering with a police investigation.

Is that correct?

Mr. Michel Bédard: That's correct.

Mr. Nathaniel Erskine-Smith: Here we are doing the exact opposite of that gold standard and—wait for it—after all of that, the RCMP is unlikely to even be able to use the underlying information because, absent a search warrant issued on reasonable grounds, the use of that information would obviously violate an accused's charter rights.

What precedent are we setting here? Where does this end?

Mr. Michel Bédard: In terms of the order and in answer to Ms. Sinclair-Desgagné's question, there might still be a use related to parliamentary proceedings with the documents that were produced, but that will require a subsequent order from the House.

If the intent is to have the documents used as part of an investigation of the RCMP or as evidence before a court of law, it's at odds with parliamentary law.

Mr. Nathaniel Erskine-Smith: Let's imagine other scenarios.

Once upon a time, a Harper government was going after environmental charities. Let's say that a majority-led Conservative Parliament is so angry about that issue and so vindictive that they decide they're going to order the disclosure of every single document and email from an environmental charity. Parliament reigns supreme, right?

• (1305)

Mr. Michel Bédard: The parliamentary privilege to order the production of documents is an exercise of privilege. It is absolute and unfettered.

Once that has been exercised, the use of proceedings is, by parliamentary law, subject to restrictions and limitations.

Mr. Nathaniel Erskine-Smith: That's understood—absolute and unfettered.

However, with "absolute and unfettered", we ourselves should possibly subject ourselves to some reasonable framework that we should operate under, because you could imagine a request for documents in any number of instances. You could imagine a number of unreasonable requests, including this one, in which documentary disclosure is being demanded in the face of the Auditor General's concerns, the RCMP's concerns and lawyers' concerns that this is improper. In the face of former parliamentary counsel saying that this is an abuse of power, we still have that power. If we're willing to use it in this case, when are we not willing to use it?

Thanks very much.

The Chair: Thank you very much.

Do I have Monsieur Drouin?

Mr. Francis Drouin: No, no.

The Chair: I wasn't sure. All right. I just wanted to be sure. I [English]
didn't want to leave any time on the table.

Monsieur Bédard, I want to thank you very much for your testimony and participation in relation to the study of Report 6.

[Translation]

There's no information to submit. So thank you again.

Members, we'll see all of you on Wednesday.

With that, have a good day. I adjourn the meeting.

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