



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Access to Information, Privacy and Ethics

EVIDENCE

NUMBER 109

Thursday, March 21, 2024

Chair: Mr. John Brassard



Standing Committee on Access to Information, Privacy and Ethics

Thursday, March 21, 2024

• (1100)

[English]

The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)): I call the meeting to order. Good morning, everyone.

[Translation]

Welcome to meeting number 109 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Wednesday, December 6, 2023, the committee is resuming today its study of the federal government's use of technological tools capable of extracting personal data from mobile devices and computers.

[English]

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

Again, as I always do, I would remind you to be mindful of your earpieces so that they don't cause feedback and damage to our interpreters. The interpreters today, by the way, are on a remote basis. I believe all members were notified by the clerk of that yesterday.

I'd now like to welcome our first witnesses for this first hour. We have Minister Anita Anand, President of the Treasury Board.

Welcome, Minister.

With the minister is Dominic Rochon, deputy minister and chief information officer of Canada, Treasury Board Secretariat.

Minister Anand, I understand that you do have opening remarks and that you will be addressing them to the committee.

You have up to five minutes. Please start.

Hon. Anita Anand (President of the Treasury Board): Thank you very much, Mr. Chair.

Before I begin, I'd like to acknowledge that the lands on which we are standing and gathering constitute unceded territory of the Algonquin Anishinabe peoples.

[Translation]

Thank you for giving me the opportunity to emphasize the government's commitment to ensuring privacy.

[English]

I'm joined today by Dominic Rochon, chief information officer of the Government of Canada.

Let me begin with this. Our government takes the privacy rights of Canadians and federal public servants extremely seriously. It is one of our top priorities.

[Translation]

The government manages personal information holdings through a series of policies and directives that align with the legislation. As President of the Treasury Board, I'm the designated minister responsible for administering the Privacy Act, which sets out the privacy requirements for federal institutions. This legislation also gives individuals the right to access and correct the personal information held by federal institutions.

[English]

The Treasury Board of Canada develops and implements policies, directives and guidance to assist government institutions in meeting their obligations under this act. However, it is important to note that heads of government institutions, or their delegates, are responsible for the proper implementation of the act as well as overseeing TBS's privacy policies within their institutions.

One of these TBS policies is the directive on privacy impact assessment, which sets requirements for institutions to complete privacy impact assessments, or PIAs. A PIA is required when personal information is used for, or intended to be used as part of, a decision-making process that directly affects an individual. The directive requires that institutions undertake a PIA when implementing a new program or activity, and when substantially modifying an existing program or activity and that involves the creation, the collection and the handling of personal information.

Mr. Chair, it is important to note that the responsibility for privacy impact assessments rests with the institution responsible for the program.

• (1105)

[*Translation*]

My department is committed to renewing privacy policies. We'll update the directive on privacy impact assessment. This update includes a commitment to streamline privacy impact assessments and look for ways to improve the directive.

[*English*]

We've undertaken government-wide action, we've consulted with privacy experts on changes to the directive on privacy impact assessment and we are engaging with the Office of the Privacy Commissioner. We intend to publish the updated directive this summer. Heads of government institutions or their delegates are accountable for adhering to those rules that are set out in the Privacy Act and TBS privacy policies.

Institutions will be best placed to provide context regarding the use of digital forensic tools in their respective environments. I am happy to be here alongside Mr. Rochon to discuss how TBS policy can be made more clear, streamlined and easier to follow for those institutions on a day-to-day basis as we continue to respect the Privacy Act and privacy laws that are so important for the protection of personal information.

With that, Mr. Chair, I will close my opening remarks. I'm open to your questions.

Thank you.

The Chair: Thank you, Minister.

We're now going to start our six-minute rounds. For the first round for today, I'm going to Madame Kusie.

Mrs. Kusie, you have six minutes. Go ahead, please.

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Mr. Chair.

Welcome, Minister, to the ethics committee.

This is, of course, our second day together in a row. Yesterday, in the government operations committee, I expressed my disappointment in your handling of the public purse—the \$40-billion deficit and the \$500 million. It was indicated that you would make the commitment to try to find out how the majority of those funds are from lapsed funds and reserves, not new amounts of savings.

Of course, you put out the second edition of the managerial guidelines yesterday, since clearly the managerial guidelines of October were not effective in the six-month period. We didn't even have an opportunity to touch on your role in the oversight of the privacy of information. There was so much to cover yesterday. Frankly, I shudder at the thought of having to take over your role, if necessary, because of the incredible amount of work to do.

Let's talk about PIA compliance today, privacy impacts assessments.

When the news broke about the lack of privacy impact assessment compliance across 13 different federal departments and agencies, you stated that each federal institute—as you did today—is responsible for enforcing the laws and policies. I feel this ignores the

responsibility of the Treasury Board to provide oversight and ensure departments are enforcing these policies.

After more time for reflection, and I was previously making this point, would you not agree that it's a responsibility of the President of the Treasury Board to ensure that federal departments and agencies are protecting the privacy of your primary constituents, the public service?

Hon. Anita Anand: The Privacy Commissioner has received no complaints relating to a violation of the Privacy Act. The Privacy Commissioner has engaged in no investigation and has stated that there was no breach of the law.

The role of the Treasury Board is to promulgate rules and policies relating to the governing of the public service, and those rules need to be enforced by deputy heads. That is what is continuing to happen. We play a coordinating role across government to ensure they have what they need in terms of information relating to government policy.

Mrs. Stephanie Kusie: I believe the term the commissioner used was that it was “an insult” that this sentiment was felt.

Throughout the testimony of the departments accused of not following the Treasury Board privacy policies, we received a number of different responses. Some stated they have the tools and are using them, but are now completing a privacy impact assessment. Others stated they completed a general PIA that covered the tool, rather than specifically analyzing the security concerns of this invasive technology.

Is it concerning to you that 13 departments using the same tool have completely different definitions of what “compliance” means when it comes to following the PIA?

• (1110)

Hon. Anita Anand: To be clear, as the designated minister under the Privacy Act, I'm responsible for the administration of the act. However, the deputy heads are responsible for implementing Treasury Board policies. I am currently updating the directive on the privacy impact assessments.

I will say that programs and activities require a PIA, not the forensic tools themselves. In fact, a majority of those departments are conducting a PIA. We have reached out to them numerous times, as well as to the Privacy Commissioner.

My CIO, Dominic Rochon, can add to this.

Mr. Dominic Rochon (Deputy Minister and Chief Information Officer of Canada, Treasury Board Secretariat): Thank you, Minister.

I will add that with regard to the 13 departments in question here, indeed we followed up with all of them. There was a different set-up with regard to the programs and activities in question. Most of them had PIAs. Then there's the question of whether or not they updated those PIAs at different moments in time when it was apparent they took on new tools. We're getting that info.

I think, out of the 13, three departments.... For example, the CRA had a PIA for their activities for their program and also flagged that they would be using forensic tools, so that was fully compliant. In other instances, there was a decision made that the PIAs did not require an update. There were a couple of departments there—the Competition Bureau and the CRTC, for example. Then, in other cases, departments said that out of an abundance of caution, they were going to update their PIA.

Mrs. Stephanie Kusie: Thank you, Mr. Rochon, for that.

Madam President, you say that you're responsible for the administration of this, but I just don't understand how this doesn't imply that you have complete responsibility and oversight. How can one have responsibility for the administration yet not have the responsibility to ensure that the proper documentation is completed for the protection of Canadians' privacy?

I'll try to get another question in briefly, Mr. Chair. I know my time is coming to an end.

We've heard in this committee that mobile forensic devices, the forensic tools being used by numerous federal departments, are not necessarily spyware but have the same capabilities and are provided by the same suppliers. Do you agree, Minister, that this technology is invasive and violates the privacy of the public servants and the Canadians it is used on?

The Chair: I'm going to need a quick response.

Hon. Anita Anand: There was no violation of the Privacy Act, and the Privacy Commissioner did not launch an investigation or receive any complaints. There was no violation of the Privacy Act.

The Chair: Thank you, Minister.

[*Translation*]

Thank you, Ms. Kusie.

[*English*]

Ms. Khalid, you have six minutes. Go ahead.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you very much, Chair.

Thank you, Minister, for being here today.

Minister, when did you first find out about this issue, and what steps have you taken since to rectify it?

Hon. Anita Anand: The issue relates to the use of PIAs relating to privacy law that departments are undertaking. A PIA is like a checklist: It ensures that the protection of personal information of Canadians continues to occur on a department by department basis.

When I was first sworn in, of course I received numerous briefings relating to my obligations as minister, and I will continue to make sure that Treasury Board policies are understood and distributed across government. It was the end of November when the article was released.

Of course, I was briefed by my team at the time, and I will now ask Mr. Rochon if he could elaborate on the steps we took thereafter.

Mr. Dominic Rochon: Thank you, Minister.

Indeed, December 4 was when the privacy and responsible data team, which is a team within the office of the chief information officer, followed up with all 13 organizations.

We came up with a series of six questions. Obviously, the first question was on whether your institution used the tools or software described in the article. The second question was on which personal information banks were associated with those programs or activities, because a PIA is required on a program or an activity, not an actual tool. Then, what are the legal authorities under which those programs or activities operate? We then asked whether or not the program area consulted their section 10 delegate as to whether or not the Privacy Act was addressed in looking at those tools, and we also asked some questions about the procurement of those tools as well.

• (1115)

Hon. Anita Anand: I will just add that I don't know if it is clear, but there are statutory obligations to undertake investigations, in which case these forensic tools are required, but before they are used in the collection of any personal information, a warrant is required from a judicial standpoint, so there is a very high threshold before these instruments are utilized. It is not taken lightly. Obviously, there are legal parameters that must be respected, including the Privacy Act, the governing legislation, as well as judicial authorization relating to a warrant. The threshold is high.

Ms. Iqra Khalid: Thank you. I really appreciate that.

You spoke about the privacy impact assessments in your opening remarks. Why are privacy impact assessments important, do you think?

Hon. Anita Anand: Institutions are required to undertake a PIA for a program or activity in order to protect the privacy of Canadians. When personal information is being used or is intended to be used as part of a decision-making process, that directly affects the individual. When personal information is intended to be used in modifications to existing programs or activities, privacy impact assessments enable the department and department heads to mitigate privacy risks. That is one of the advantages of the PIA, and I am going to revise the PIA directive. I'll be issuing it this summer, and I will be updating it to ensure that it will be well understood by all departments.

Ms. Iqra Khalid: I appreciate that.

Are departments required to provide PIAs, based on the Privacy Act?

Hon. Anita Anand: They are not. PIAs are not mandatory.

As I said, it's a checklist of items to make sure that Privacy Act considerations, and the protection of individual personal information is paramount. It enables that assessment and risk analysis to occur. Because those investigations are required under statute.... For example, whether it is the CRA to prevent fraud or to investigate fraud, these forensic tools can be useful, but they can't be implemented without legislative and judicial oversight.

Ms. Iqra Khalid: Do you think there should be legislative oversight in the way PIAs are conducted within different departments?

Hon. Anita Anand: I spoke with Minister Virani last night. I know he is examining the Privacy Act as a whole from a Minister of Justice standpoint. We are updating our own directive, which is solely within Treasury Board's authority. That is my realm, so I want to make sure that the checklist of items—the PIAs and the risk analysis that will be done by departments—will occur.

Consultations are ongoing. We need to make sure we do this right. That is a systematic process, and I will come forward this summer with more to say on an updated directive.

Ms. Iqra Khalid: Thank you, Minister

The Chair: Thank you, Ms. Khalid, and thank you, Minister.

[Translation]

Mr. Villemure, you have the floor for six minutes.

Mr. René Villemure (Trois-Rivières, BQ): Thank you, Mr. Chair.

Good morning, Mr. Rochon and Ms. Anand. Thank you for being here this morning. I hope that you can shed light on some of the remaining grey areas.

Ms. Anand, were you surprised to find out, in the article published by Radio-Canada in December, that 13 organizations weren't carrying out privacy impact assessments?

Hon. Anita Anand: As minister, I must ensure compliance with and the enforcement of the Privacy Act and all other legislation. Of course, when I heard the news, I discussed it with my team. I know that my team will take the necessary steps to contact the departments. At first, we didn't know all the facts. However, we now have a methodology that will help us get on track.

• (1120)

Mr. René Villemure: Thank you, Minister.

Mr. Rochon, were you surprised?

Mr. Dominic Rochon: I wasn't in this position at the time. However, I gather that it came as a surprise that not all the requirements were clear to the departments. Departmental programs and activities had to undergo a privacy impact assessment. The measures were in place for this to happen in most departments. However, the current version of the directive on privacy impact assessment gives departments some leeway in deciding whether to update the assessments if these new technological tools are used. This leaves room for interpretation.

That's why the minister explained that the directive would be updated. We'll be introducing components that specifically explain that the use of new technological tools requires updated assessments.

Mr. René Villemure: A department or agency, whose name escapes me, told the committee that its most recent privacy impact assessment dated back to around 2006. That was before the invention of Twitter. This seems negligent to me. We can't turn a blind eye to the fact that a technological revolution—such as the one currently under way—affects privacy.

I agree that there are still some grey areas, which you'll shed light on. In a number of cases, people said that the assessments seemed incidental, so not essential. I know that they aren't mandatory. However, according to Ms. Anand, they're required. If they aren't mandatory, there won't be any compliance.

Mr. Dominic Rochon: A privacy impact analysis is mandatory.

Mr. René Villemure: Yes.

Mr. Dominic Rochon: If you already conducted a privacy impact assessment for your program and you already know that someone will be investigated, whether it's under the Canada Border Services Agency Act or in relation to taxation, for example, I think that it goes without saying that a privacy impact assessment should have been carried out to explain the impact on the information.

If you do this through interviews, if you look at a person's belongings, or if you use a slightly more accurate tool to look for specific information, it doesn't necessarily mean that there will be any additional impact on the...

Mr. René Villemure: Let me give you an example that doesn't come from this period of committee business. Last year, an RCMP official spoke to us about the use of investigative tools. In the past, microphones were placed in lamps. However, a microphone in a lamp and an iPhone in our bed aren't the same thing. The information is more specific, but the potential violation is much more extensive.

Mr. Dominic Rochon: Absolutely. I completely agree with you. That's exactly why I'm saying that an assessment is needed.

Mr. René Villemure: Yes.

Mr. Dominic Rochon: In your example, I would say that the assessment should conclude that an updated privacy impact assessment is needed.

Mr. René Villemure: Ms. Anand, it's required, but not legally required. For the 13 organizations in question, there weren't any consequences. They were updated and informed. However, there weren't any consequences in line with the offence or violation committed.

Hon. Anita Anand: There weren't any, because the Privacy Commissioner didn't find any violation of the act. We'll clarify...

Mr. René Villemure: I just want to get back to my 30 seconds, because it isn't much time.

If the commissioner didn't receive a complaint, he obviously didn't find a violation. You said many times that the commissioner didn't receive any complaints. However, the lack of a complaint is no guarantee of compliance.

• (1125)

Mr. Dominic Rochon: I can try to answer the question.

The Canada Revenue Agency officials said that a privacy impact assessment was carried out. They said that the agency used these tools.

I don't think that the use of these tools will come as a surprise. We aren't surprised. We want to make sure that, when people start using these types of tools, they update their privacy impact assessments. In this case, we followed up. Within a week, we followed up with our questions to find out whether a privacy impact assessment was carried out and whether it was asked...

The Chair: Please wrap up quickly.

Mr. Dominic Rochon: I could provide a bit more information in writing, if you want.

Mr. René Villemure: Thank you, Mr. Rochon.

The Chair: Thank you, Mr. Villemure.

[English]

We'll go to Mr. Green for six minutes. Go ahead, please.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you very much, Mr. Chair.

Welcome to the committee, Ms. Anand. I've certainly had the pleasure of working with you in other committees.

I want to give you the opportunity to summarize, at least for my understanding, a couple of key questions related to the testimony of previous witnesses before the committee. It seems that there are

some significant gaps between what the directives are and the mandate coming from the Treasury Board, and how this is actually being implemented across the various departments and agencies.

I believe you mentioned in your remarks some upcoming changes related to the Treasury Board. As I understand it, you're embarking on modernizing your own department's adherence to PIAs. Is that correct?

Hon. Anita Anand: We are offering, and are continuing to work on, this revised directive on PIAs. We're going to update it. I will be publishing it in the summer.

What we need to clarify is maybe at the heart of your question. We want to specify that if you change your software, for example, you're going to need a PIA going forward. You can't rely on previous PIAs once new software or new tools are being used. Those are the types of clarifications we want to make.

Again, in response to the previous question and this one, it is within the purview of deputy heads to make sure they are enforcing every Treasury Board directive, policy and guideline, not only this one. Deputy heads actually have the ability to suspend, demote and terminate if they find a violation of the law and Treasury Board policy. This will continue to be the case, including with the updated PIA directive.

Mr. Matthew Green: I want to note that this is a directive from the Treasury Board to ministries. Am I correct?

Hon. Anita Anand: That's right.

Mr. Matthew Green: Yet the general culture was that....

I'm going to say that the way I viewed the testimony of many who came before us earlier was that they treated it as almost being optional.

Suffice it to say that you've already delegated the authority to the ministries, but how do you, as the President of the Treasury Board, intend on ensuring that your directives are adhered to across the whole range of departments and agencies?

Hon. Anita Anand: I want to specify that PIAs are not mandatory. They are basically a checklist that deputy heads can go through to make sure that personal information is being protected.

My role relates to the Privacy Act as a whole and being the person responsible for the administration of the Privacy Act. That's going to include issuing policy requirements to which departments must adhere and, as I said—

Mr. Matthew Green: Ms. Anand, respectfully, you're saying that it's not mandatory. Are you just suggesting that they do privacy assessments and that it's not a directive, not within the mandate of departments to do this?

Hon. Anita Anand: Departments have to respect the Privacy Act. That's the role of all of us: Make sure that personal—

Mr. Matthew Green: Are PIAs—

Hon. Anita Anand:—information is protected.

I'll ask—

Mr. Matthew Green: Are PIAs part of the Privacy Act?

Hon. Anita Anand:—Dominic Rochon to—

Mr. Matthew Green: I would prefer that you answer the questions.

Is a PIA not included in the Privacy Act?

Hon. Anita Anand: The PIA is not mandatory. It is part of the directive of the Treasury Board. The Privacy Commissioner provides advice and information to us relating to—

Mr. Matthew Green: When you say “directive”, are you saying it's not mandatory? Help me understand that.

Hon. Anita Anand: Directives are mandatory, but it provides circumstances in which Treasury Board tools should be implemented. Every single item in the directive provides guidance to departments, and then departments can choose to—

• (1130)

Mr. Matthew Green: With two minutes left, I'm going to cut to the chase. I think we've worked together long enough to know that I'll cut right to the chase.

I am watching with interest. It seems that in your reflections, you're going to be modernizing it for the Treasury Board. We heard in testimony from departments that if it were mandatory, there would be clearer guidelines, so let's just cut to the chase. Will you be making privacy impact assessments mandatory on a move-forward basis to ensure that the privacy of not just Canadians but also those who are employed in the federal service is protected, not just by directives but through mandatory privacy impact assessments? Are you going to legislate this and make it part of the—

Hon. Anita Anand: This is not legislation. A PIA directive is through the Treasury Board. It is not legislation—

Mr. Matthew Green: We don't need to use semantics. I just want to—

Hon. Anita Anand: We are in the midst of updating the directive. We are considering a number of avenues.

Regardless, I expect compliance and I will be reviewing the directive to ensure it is strengthened going forward.

Mr. Matthew Green: I just need a straight answer from you, Ms. Anand. Are you going to make it mandatory or not?

Hon. Anita Anand: We're in the process of updating it, and I'd be happy to come back and talk to you once this directive is updated.

Mr. Matthew Green: You're the President of the Treasury Board—

Hon. Anita Anand: Yes, I am.

Mr. Matthew Green:—and you can make that statement right now and say, “Yes, we're committed to going forward so we don't end up back in this mess.”

Hon. Anita Anand: The Privacy Act is also looking at changes right now, so we are coordinating with Minister Virani and the Pri-

vacy Commissioner about how to ensure compliance occurs. Those discussions are ongoing. It is not my style to rush—

Mr. Matthew Green: How are you contemplating—

Hon. Anita Anand:—into making major changes in the directive or suggesting such changes in the law, but we are taking our careful time to make sure that we get this right and, as I said, it's just a few months away from when we will be issuing a revised directive.

Mr. Matthew Green: Okay. I have another two-minute round, and I'm going to pick up on this conversation and ask that you not run the clock out.

The Chair: Thank you, Mr. Green. Thank you, Minister.

That completes our first six-minute round.

We're going to go for five minutes now. We have Mr. Barrett, followed by Mr. Sorbara.

Mr. Barrett, go ahead, please.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): We've heard there are 635 IT middlemen that the Government of Canada does business with. Is that number correct?

Hon. Anita Anand: There are a number of intermediaries. I would—

Mr. Michael Barrett: What is the number?

Hon. Anita Anand: I would very much like clarification of the question, or if my CIO has anything he wants to add...

Mr. Michael Barrett: The question is very straightforward. We've seen—and I am certain you're aware of the issue—companies that are skimming 25% and 30% off multi-million-dollar government contracts. These are two-man operations like GC Strategies, Dalian and Coradix, and the list goes on. We've heard that the number is 635. Is that number correct, for companies like that?

Mr. Dominic Rochon: I can only confirm that PSPC, I think, is the one that came up with this number. That's a specific number, so I can't confirm it for sure.

Mr. Michael Barrett: What's the number you have, sir?

Mr. Dominic Rochon: I don't have a specific number on that, but I do know that the OCG, the Office of the Comptroller General, is doing a horizontal audit, which I think both ministers announced yesterday, to look into the issue, as is PSPC.

Mr. Michael Barrett: Then you don't know, Minister. That's the answer.

Hon. Anita Anand: I announced the horizontal audit yesterday, so I will find out.

Mr. Michael Barrett: Were the three companies identified yesterday as having done fraudulent billing involved in ArriveCAN?

Hon. Anita Anand: Again, that is being run out of PSPC. I do not believe so, but I cannot confirm, and I know I'm under oath here, so I'm sorry that I cannot confirm that.

Mr. Michael Barrett: Do you know the names of the companies?

Hon. Anita Anand: I do not.

Mr. Michael Barrett: How many more companies have been identified for doing fraudulent billing?

Hon. Anita Anand: Again, that is not—

Mr. Michael Barrett: You can just leave your mic. They'll turn it on for you, Minister.

Hon. Anita Anand: That is not information that has come to me as President of the Treasury Board.

Mr. Michael Barrett: You don't know then. Yesterday's announcement said that \$5 million of fraud was just the first wave.

Ms. Iqra Khalid: I have a point of order, Mr. Chair.

The Chair: Go ahead on your point of order, Ms. Khalid.

Ms. Iqra Khalid: I know you've been very judicious in talking about relevance, but I do really question the relevance of this line of questioning here, Mr. Chair.

The Chair: I'm going to allow Mr. Barrett to continue with the floor. I heard what Ms. Kusie had to say, and I'm sure Mr. Barrett will bring it back to where he needs to go.

Mr. Barrett, you have the floor. Go ahead, please.

I did stop the clock.

• (1135)

Mr. Michael Barrett: We heard in yesterday's announcement that the \$5 million of corruption was just the first wave. If it is the first, that implies there's more to come. How many more companies have been identified?

Hon. Anita Anand: I think it's important to note that we are taking this extremely seriously by referring cases to the RCMP whenever fraud is uncovered, and that is exactly what we will continue to do.

I, as Treasury Board president, do not have jurisdiction over the referral of those cases. I introduced the horizontal audit that we will be undertaking, and there will be an update to the manager's guide—

Mr. Michael Barrett: Minister, you said you'd take it seriously.

Hon. Anita Anand: —and the conflict of interest directive.

Of course I did.

Mr. Michael Barrett: However, the Liberal government has failed to take any action until they've been dragged, kicking and screaming, by Conservatives to take action, as has been evident in the ArriveCAN scandal. Why would you—?

Ms. Iqra Khalid: I have a point of order again, Mr. Chair.

The Chair: Go ahead, Ms. Khalid.

Ms. Iqra Khalid: The topic of the day is the federal government's use of technological tools capable of extracting personal data from mobile devices and computers. I don't understand where Mr. Barrett is going. I know you've allowed him some time to get to where he needs to go. I'd like to hurry him along there, Mr. Chair.

The Chair: He still has some time and he has the floor.

I'm going to go back to Mr. Barrett. I stopped your time. You're at two minutes and two seconds.

Mr. Barrett, go ahead.

Mr. Michael Barrett: I can only explain it to you; I can't understand it for you, Ms. Khalid, ma'am.

Ms. Iqra Khalid: I'm sorry. I'm not sure what that means, Mr. Chair.

The Chair: Ms. Khalid, Mr. Barrett has the floor.

Ms. Iqra Khalid: If a member is going to speak to me, then I would like to understand what he's trying to say.

The Chair: Mr. Barrett has the floor. I'm going to allow him to continue, and I hope we're not interrupted.

Go ahead, Mr. Barrett.

Mr. Michael Barrett: Your Liberal government failed to take any action on ArriveCAN until they were dragged, kicking and screaming. We hear time and time again that you take it seriously, but you, Minister, voted against having the Auditor General investigate ArriveCAN. Why?

Hon. Anita Anand: Actually, we do take it very seriously. That's why I made a very extensive announcement yesterday, announcing the horizontal audit across government. I published a new guide—

Mr. Michael Barrett: We heard that in your previous answer, Minister. It's a different question this time.

Hon. Anita Anand: —relating to the professional services—

Mr. Michael Barrett: On November 2, 2022, you voted against the audit. Why?

Hon. Anita Anand: Again, I take the issue extremely seriously, and as soon as—

Mr. Michael Barrett: You don't take it seriously enough to have the Auditor General investigate it.

Hon. Anita Anand: As soon as I read the Auditor General's report—

Mr. Michael Barrett: —that you voted against—

Hon. Anita Anand: —I got to work to make sure that we have—

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I have a point of order, Mr. Chair.

The Chair: Mr. Barrett, I'm just going to ask that you allow the minister time to answer the question, if you don't mind.

Hon. Anita Anand: Thank you, Mr. Chair.

Ms. Pam Damoff: Thank you, Mr. Chair.

The Chair: Ms. Damoff, on your point of order, go ahead.

Ms. Pam Damoff: He was not allowing the minister to speak. If he's going to ask questions, it would be the polite thing to do to let her speak.

I also think it's really rude of a member to call another member dumb in front of everyone. I think the way he spoke to Ms. Khalid earlier was completely uncalled for.

The Chair: I didn't hear that language being used, Ms. Damoff, so—

Ms. Pam Damoff: It was pretty close, Mr. Chair.

The Chair: Well, it wasn't used in the context in which you said it.

Mr. Barrett, you have a minute. Continue, please.

Mr. Michael Barrett: Minister, you've demonstrated your lack of seriousness on the issue by trying to shut down that Auditor General's report. Again, as I said, it is only when you're dragged kicking and screaming that you take action.

Was there a privacy impact assessment done on the \$60-million ArriveCAN app?

Hon. Anita Anand: I want to clarify that I respect the Office of the Auditor General extremely seriously. I have read her report. I take this issue seriously—

Mr. Michael Barrett: It's a yes-or-no question.

Hon. Anita Anand: —and that's why I made the announcement I did yesterday.

Mr. Michael Barrett: Then your defence—and, again, you didn't answer the question—on the question of privacy impact assessments and no wrongdoing by your departments is that there have been no investigations launched.

Ma'am, over a dozen investigations have been launched into your government's \$60-million ArriveCAN scam. What does that tell you? If the absence of an investigation implies innocence, what do you infer from 12 investigations launched in the case of the ArriveCAN scam?

The Chair: Give a very quick answer, please.

Hon. Anita Anand: There was a PIA done on the application called ArriveCAN.

Mr. Michael Barrett: Is there a delay between my...? She seems to be answering my questions out of sequence or missing them.

The Chair: I can't determine that, Mr. Barrett.

Thank you.

Mr. Sorbara, you have five minutes. Go ahead, please.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Mr. Chair.

Welcome, Minister, to this committee.

I want to turn back to the motion at hand with regard to privacy and the privacy risk assessment process. I will try, Mr. Chair, to stay relevant to what the motion speaks to and why the minister is here today. I think that is the job of all members of this committee.

Minister, I have a couple of, hopefully, straightforward questions. I'm sure they will be.

In terms of the privacy impact assessment, why is a privacy impact assessment so important for the employees who are onboarded to the federal government?

● (1140)

Hon. Anita Anand: It all goes back to the Privacy Act and making sure that we're respecting personal information that is collected or intended to be collected in the interest of all public servants. That is the work we need to do across government to protect personal information under the Privacy Act. We work closely with the commissioner's office in making sure that our directives and our tools and guidelines respect the Privacy Act at all times.

I will say again in this case that the Privacy Commissioner did not find any violation of the legislation. There were no complaints lodged and no investigations undertaken. What we can do from a Treasury Board perspective is examine that directive and strengthen it, which is exactly what I'm doing, and I will publish that in the summer.

Mr. Francesco Sorbara: Thank you, Minister.

I believe that on our side, there are three lawyers sitting on this committee, if I'm not mistaken. I think Pam and I are the only ones who are not lawyers.

There's a balance required in terms of the Privacy Act and these privacy impact assessments that are made by the government. Can you speak to that?

Before you answer, Minister, you are prudently undertaking a spending review at the Treasury Board, and I take it that there is no impact from that on how the government views privacy. Could you speak to ongoing successful measures with regard to your spending review?

Hon. Anita Anand: Yes. There's no impact on the compliance with the Privacy Act, which we take very seriously. We are on track to save \$15.8 billion over five years and \$4.8 billion every year thereafter in the spending review. We've done two stages of that spending review now, and in them I've tabled two tranches of results. We will be continuing it, as specified in the fall economic statement.

Mr. Francesco Sorbara: Thank you.

Mr. Chair, I have another minute or two, I think.

The Chair: You have two, Mr. Sorbara.

Mr. Francesco Sorbara: Minister, after hearing what departments have said regarding the use of this software with regard to privacy, do you have any concerns?

Hon. Anita Anand: I think we need to update our directive in order to ensure that departments are clear that when there is new software being used, they need to do a PIA. I want to make sure that all measures are taken, from a Treasury Board perspective, to protect the personal information of public servants.

Dominic, do you want to add anything?

Mr. Dominic Rochon: Thank you, Minister.

What I would say, having heard from all the departments and having reached out to them to understand exactly how they're using these tools, is that nothing has come about that has caused us pause with regard to an impact on privacy. Why is that? It's because they've been following strict guidelines and protocols with regard to the use of these tools.

That said, we want to make it clear that anyone else who wants to delve into the use of these types of tools should automatically think about doing a privacy impact assessment when they bring it into their activities and their programs.

Mr. Francesco Sorbara: To quickly follow up with Mr. Rochon, when there are issues of non-compliance, how are they generally handled?

Mr. Dominic Rochon: On issues of non-compliance, as we did in this case, if there's a question, we would follow up with the department or agency and delve into the matter as to whether or not a PIA was indeed required. If we're in disagreement with the department on the topic, what we can do is ask them to report on it through their annual report.

Of course, with regard to compliance, the Privacy Commissioner can do the same in terms of following up, looking into the matter and launching an investigation.

[*Translation*]

The Chair: Thank you, Mr. Sorbara and Mr. Rochon.

We're now ready for the next round of questions. Mr. Villemure will have the floor for two and a half minutes. Mr. Green will then have the floor for two and a half minutes, followed by Mr. Brock and Mr. Bains for five minutes. We can finish the hour on time.

Mr. Villemure, you have the floor for two and a half minutes.

• (1145)

Mr. René Villemure: Thank you, Mr. Chair.

Ms. Anand, you said earlier that the Treasury Board played an oversight role, but that you deferred to the minister of each organization to implement the measures. I'm sorry to hear that this type of delegating would mean summoning all the ministers. I don't think that anyone wants to do that.

Let me recap. Something happened, but a privacy impact assessment wasn't carried out. The directive was misunderstood, so no complaint was filed with the Privacy Commissioner of Canada. No

complaint meant no investigation, and no investigation meant no consequences.

If Radio-Canada hadn't published an article on this topic, we wouldn't be sitting here at the committee today. This situation worries me. If the Privacy Impact Assessment requirement had been included in the Privacy Act, this whole situation could have been avoided. I have a direct question for you. Will you include the Privacy Impact Assessment in the act? Please don't repeat the answer that we heard earlier.

Hon. Anita Anand: As I said, I spoke with Minister Virani. He's currently looking at the next steps for Bill C-27. At the same time, I'll be issuing an amended version of our directive on privacy impact assessment.

Mr. René Villemure: I understand.

Hon. Anita Anand: We're currently studying and addressing this issue.

Mr. René Villemure: Okay.

You'll be issuing a new directive on privacy impact assessment. Will there be a legislative change? Do you plan to make a legislative change? Are you considering this possibility? Could this happen?

Hon. Anita Anand: This issue doesn't fall within my department's purview. The decision lies not with me, but with Minister Virani. I often speak to him about this issue, as I did this week. I'll tell him about the possibility of including this component in the bill, and the necessary considerations regarding this issue.

Mr. René Villemure: Should we ask Minister Virani to come and explain this to the committee?

Hon. Anita Anand: Mr. Virani is responsible for our position on this bill. He's currently studying the bill. In terms of inviting him here, that's the committee's decision, not mine.

Mr. René Villemure: Thank you, Ms. Anand.

I would like to invite him. We'll do everything to ensure that he comes to speak to us.

The Chair: Thank you, Mr. Villemure.

[*English*]

Mr. Green, you have two and a half minutes.

Go ahead, please.

Mr. Matthew Green: Ms. Anand, your mandate as the President of the Treasury Board is to provide oversight on administrative leadership and regulatory oversight. I'm concerned that you just won't come forward and at least admit there's a huge gap here. That's the purpose of this study. We have 13 departments and countless others, probably 120-plus others, that are unknown in terms of whether or not they're effectively using privacy impact assessments.

I want to know a little bit about your leadership, Ms. Anand. What action did you take upon learning from the media reports that 13 departments and agencies had not completed privacy impact assessments for the use of personal data extraction tools? What did you do?

Hon. Anita Anand: I immediately spoke with my team and was in touch with the department, which is how ministers are briefed, to ensure that we are taking all actions necessary. You have heard that my department then reached out to all of the departments to hear exactly what they were doing. Now, nine out of 13 of those departments have implemented PIAs, and we seek to ensure that compliance with privacy requirements occurs at all times.

Yes, there is a problem, and that's why the directive is being updated.

Mr. Matthew Green: Ms. Anand, rather than reading your statement, what about the other agencies? Have you reached out to them? What have you done? You're the effective management board for the government. You're supposed to be providing oversight. You're supposed to establish policies and common standards for administrative personnel. This is your role. How are you fulfilling it, and what assurances do we have that the other agencies and departments are in compliance?

These are only 13 that got caught. We don't know about the other ones.

Hon. Anita Anand: I am fulfilling my role, and I will assure you that we are in touch with departments regarding their compliance with the Privacy Act and other Treasury Board policies.

• (1150)

Mr. Matthew Green: I'll ask a direct—

Hon. Anita Anand: That's part of why I announced the horizontal audit yesterday.

Mr. Matthew Green: I'll ask a direct question.

Have you, to this date, been in direct contact with all departments and agencies regarding privacy impact assessments, particularly as it relates to the story that broke on the 13 departments? Have you directly reached out to everybody?

Hon. Anita Anand: With our team, through annual reporting, Dominic, could you fulfill that...?

Mr. Dominic Rochon: I will, very quickly, because I'm respectful of your time.

Departments and agencies are responsible for providing personal information banks for all their programs and activities.

Mr. Matthew Green: Respectfully, sir, the question was to the president. The president did not answer it. It was a simple.... Take responsibility as the president.

The Chair: Mr. Green—

Mr. Matthew Green: Did you reach out to everybody, Anita, yes or no? It's that simple. If it's no, then it's no.

The Chair: Okay. Minister, answer quickly.

Hon. Anita Anand: Yes, the department has been in contact. Thank you for the question.

The Chair: Thank you, Mr. Green.

Mr. Matthew Green: It wasn't that hard.

The Chair: Thank you, Mr. Green.

We'll go to Mr. Brock for five minutes. Go ahead, please.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair.

Minister, privacy is extremely important to Canadians and public servants, but so is safeguarding the prudent use of taxpayer funds. Federal spending on outsourcing increased to \$14.6 billion last year, which is 74% higher than when the Liberals, under Justin Trudeau, promised in 2015 to cut back on the use of external consultants.

We now have evidence that ArriveCAN ballooned to at least \$60 million. What you announced yesterday with your colleague, Minister Duclos, in my view, is only the tip of the iceberg, because Minister Duclos confirmed yesterday that the three companies in question that fraudulently billed taxpayers \$5 million had nothing to do with ArriveCAN.

This brings me to the broader question: Of that \$14.6 billion in outsourcing, how many billions of dollars, how many millions of dollars more in fraudulent contracting schemes are out there?

I know you talk about advanced data analytics, and this is how you uncovered the data, but the government always had this data capability. The biggest problem that Canadians have with your government, Minister, is you're very reactive, as opposed to proactive.

One company alone had billed 36 different federal departments, billing for the same hours in a given day. When they submitted their invoices, why was that not detected in 2018 with your advanced data analytics? Why wasn't that caught, Minister?

Hon. Anita Anand: I want to specify that the Treasury Board did not have any involvement with the development of the ArriveCAN app—

Mr. Larry Brock: I'm talking in a broader sense. Why wasn't the government able, with the capabilities of data analytics, to capture this in 2018 when it happened?

Hon. Anita Anand: The app was built on an emergency basis under exceptional circumstances—

Mr. Larry Brock: The Auditor General basically said that the urgency in a pandemic does not mean that you throw the rules out the window. You had an obligation to safeguard taxpayer money, and you abused that. You misused that.

What assurances do Canadians have that we're going to get to the bottom of the millions, if not billions of dollars—

Hon. Anita Anand: Respecting—

Mr. Larry Brock: Let me finish the question. What assurance can you give Canadians that you're going to actually follow up, that you're going to identify these companies and you're going to refer the matter to the RCMP for possible investigation and criminal charges? What can you say about that?

Hon. Anita Anand: I agree with the findings of the Auditor General's report. That is why I published yesterday an update to the manager's guide on professional services.

I've also tabled, through a series of estimates, that we are reducing our reliance on outsourcing, including, in the estimates prior to the holidays, \$350 million in reduced outsourcing contracts and reductions in the recent estimates that I have tabled, to about \$900 million in total.

We are working on continuing to reduce our reliance on outsourcing. That is something I take extremely seriously. That's what I emphasized in my announcement yesterday.

Mr. Larry Brock: Minister, one of your former roles was as Minister of Public Services and Procurement. You held that role from November 20, 2019, to October 26, 2021.

I have before me the mandate letter that Justin Trudeau sent to you. I will read out various passages from it:

...expect us to continue to raise the bar on openness, effectiveness and transparency in government....It also means humility and continuing to acknowledge mistakes when we make them. Canadians do not expect us to be perfect; they expect us to be diligent, honest, open and sincere in our efforts to serve the public interest.

Your leader, Justin Trudeau, has been anything but apologetic. I'm going to give you the opportunity, Minister. It's plainly obvious to Canadians that the \$60 million was wasted on an app that was very ineffective, didn't save one Canadian life and is now subject to numerous RCMP investigations.

Are you prepared to admit your role? During the rollout of 177 different versions of the app, you were the minister. Are you prepared, here and now, to apologize to Canadians for the lack of ministerial oversight, yes or no?

• (1155)

Hon. Anita Anand: I was not the minister. The app was developed at CBSA. I was the minister of procurement. My mandate was vaccines and PPE—

Mr. Larry Brock: You were still part of that, according to the Auditor General.

Hon. Anita Anand: I was not the minister—

Mr. Larry Brock: Are you prepared to apologize to Canadians?

Hon. Anita Anand: I was not the minister—

Mr. Larry Brock: Are you prepared to apologize to Canadians?

An hon. member: I have a point of order, Chair.

The Chair: Thank you, Mr. Brock. That concludes your time. I appreciate that.

Hon. Anita Anand: I was not the minister, so that is incorrect.

The Chair: Thank you, Minister.

Mr. Bains, you have five minutes. Go ahead.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Minister, did you have anything to add at the end there?

Hon. Anita Anand: Yes. Thank you very much.

Yesterday at committee and again today, false allegations were being thrown at a fellow member of Parliament and minister of the Crown. I find that surprising. I think all members of the House of Commons need to deal in facts rather than conjecture and false allegations.

I do take issue with the way in which language is being abused in this committee today and was abused yesterday.

Mr. Parm Bains: Thank you for clarifying, and thank you for joining us today.

I want to go back to the issues of non-compliance that came to light. How are they generally handled? How are these issues handled?

Hon. Anita Anand: Again, the deputy heads of each department—the deputy ministers or the heads of organizations—are responsible for compliance with TBS guidelines, policies and directives. We as the Treasury Board make sure that we are in touch with departments to ensure that compliance.

Dominic, would you like to add anything?

Mr. Dominic Rochon: Thank you, Minister.

As I think I mentioned in one of the earlier answers, if there's an instance of non-compliance found by either the Privacy Commissioner or us, there can be inquiries done, questions asked and requirements for a department or agency to report further on mitigating factors in their annual report to follow up on that. In extreme cases, there can be a revocation of delegated authority, but I'm not aware of ever getting to that point.

Mr. Parm Bains: It's extremely important to have funding for officers of Parliament to do this work and hold government to account to ensure trust in our institutions. The Office of the Auditor General is a prime example. During the first year of the Harper government, the budget for this office was \$78.6 million; during the last year, it was only \$81 million. The current Leader of the Opposition was the minister responsible for safeguarding our democracy. He did not ensure that officers of Parliament were funded adequately.

Can you explain to the committee your thoughts on ensuring adequate funding to these institutions and how that's being taken into consideration now?

Hon. Anita Anand: Sure.

Obviously, in this spending review, what we are not aiming to do is reduce funding to key organizations, especially when that would impact services to Canadians and the protection of Canadians' interests. We take the protection of personal information extremely seriously, and I as minister do as well.

I will say, referring back to my colleague's question, that if he had analyzed my role, he would see that I signed no contract relating to ArriveCAN and he would also see, in the Auditor General's report, that the Auditor General highlighted CBSA, which is an organization within the Department of Public Safety, of which I was not the minister.

Once again, I think it's important to hold government to account, but to speak with truth and professionalism while doing so, rather presenting false allegations and conjecture.

• (1200)

Mr. Parm Bains: Just on the analytics and findings, looking into the issues of non-compliance and having the ability to modernize new tools to get to the root of some of these non-compliance issues, how current are these tools, and when were they brought into government use?

Mr. Dominic Rochon: I'll try to quickly answer that question.

I don't believe that we're in a situation of non-compliance but in a situation of interpretation of the rules, and I think the minister has highlighted that we're going to be updating the directive on privacy impact assessments in order to be more specific, to clarify, and we'll make it better in terms of understanding when a PIA is actually required.

The Chair: Thank you, Mr. Bains and Mr. Rochon.

Minister, I want to thank you for appearing before committee today.

We are going to suspend for a couple of minutes so that we can prepare for the next panel.

The meeting is suspended. Thank you.

• (1200)

(Pause)

• (1205)

The Chair: Welcome back, everyone, for our second hour.

I'd like to welcome now, as an individual, Monsieur Mario Dion, former conflict of interest and ethics commissioner. Welcome back, sir.

Also, from the Office of the Conflict of Interest and Ethics Commissioner, we have Mr. Konrad van Finckenstein, who is the commissioner.

Before we go to opening statements, I have been asked by Monsieur Villemure for a few minutes near the end to discuss something, and I'm going to make sure that we grant that time. Is it regarding the social media study, Monsieur Villemure?

[Translation]

Mr. René Villemure: Yes.

[English]

The Chair: Okay. *Merci.*

Mr. Dion, you can start, please, for five minutes. Go ahead.

Mr. Mario Dion (Former Conflict of Interest and Ethics Commissioner, As an Individual): In fact, Mr. Chair, we will be saving some time because I indicated to the clerk this morning that I did not have any opening remarks.

I will stop right there.

The Chair: You always impress me, Mr. Dion, with your succinctness. I appreciate that, sir.

Mr. Commissioner, do you have anything you would like to add?

Mr. Konrad von Finckenstein (Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Yes. Thank you. I'll be equally succinct.

Thank you for inviting me today. I'll gladly answer your questions regarding any aspect of our work.

[Translation]

You understand that I wasn't in my current position when the "Trudeau II Report" was released, so I can't comment on it.

[English]

I brought with me today Mr. Michael Aquilino at the request of Mr. Dion. He can help him recollect some facts that, after five years, may not necessarily be in the mind of Mario right away.

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

The Chair: Okay. Thank you, Mr. Commissioner.

We are going to start our first six-minute round with Mr. Barrett.

Go ahead, sir.

Mr. Michael Barrett: I'll start by saying this, Commissioner von Finckenstein: Congratulations on your appointment as our commissioner. That's new since the last of many frequent appearances you've made in the time between your taking on the interim role and today.

Mr. Konrad von Finckenstein: Thank you.

Mr. Michael Barrett: Thank you for taking on the role. It's incredibly important. Canadians value the work done to ensure the highest ethical standard is maintained.

I'm going to start with you, Mr. Dion.

Thank you for joining us today, sir.

My question is of course about the "Trudeau II Report".

How many people did you interview, and how many people made submissions to you?

Mr. Mario Dion: At the end of the report, on the last page... Michael is finding it. If I recall correctly, we had 22 people we contacted for documents, and we interviewed seven. That's out of memory.

Mr. Michael Barrett: Of the 22, you interviewed seven. Would those seven have been, then, at the top of your list? Is that how you would characterize it?

Mr. Mario Dion: It's in the public domain, Mr. Chair.

We interviewed former minister Morneau; former minister Wilson-Raybould; Mathieu Bouchard, who was the senior adviser to the PM; Nathalie Drouin, deputy minister of justice; Elder Marques, senior adviser to the PM; and Michael Wernick, who was with you two days ago.

Of the other people with whom we communicated, we were satisfied that the documents they had forwarded were sufficient for us to understand their participation in the subject matter without having to interview them.

• (1210)

Mr. Michael Barrett: Mr. Wernick said that you personally interviewed him. Is that correct?

Mr. Mario Dion: Yes.

Mr. Michael Barrett: Is that true for the other six people?

Mr. Mario Dion: Yes, it is. Throughout my tenure, I was present every time anybody was interviewed. This was Madame Dawson's practice as well. I simply followed the same practice.

Mr. Michael Barrett: How many investigators did you have working on the file?

Mr. Mario Dion: We had one investigator and one lawyer—Michael, who is here today. He played an extended role on this one, because Madame Richard was excluded from the file right on day one. I gave clear instructions that Martine Richard was not to be involved in this investigation. It was Marie-Josée Smith, Michael Aquilino and me, period.

Mr. Michael Barrett: Is Ms. Smith still employed in the office?

Mr. Mario Dion: Yes.

Mr. Michael Barrett: She is.

You've said in interviews following your retirement, sir, that you, in the process, used 49 questions.

Is that the right number? Was it a list of 49 questions?

Mr. Mario Dion: I'm sorry, Mr. Chair. I have no recollection whatsoever. I don't know. I have no idea where this comes from.

Mr. Michael Barrett: Okay. If I recall correctly, it was in a podcast in which you talked about your interview process. Maybe it was The Hill Times.

Mr. Mario Dion: That's not possible, Mr. Chair, because we don't have a standard interview format.

Mr. Michael Barrett: Okay.

Mr. Mario Dion: The way it works is this: Each time we have a witness, Marie-Josée prepares a draft. Michael reviews it and I review it. We follow the script. The commissioner is there to add or emphasize certain things, to ask questions that come up because of earlier answers, and so on and so forth. There is no—

Mr. Michael Barrett: There's no form.

Mr. Mario Dion:—preordained form whatsoever.

Mr. Michael Barrett: There's no form.

In the case of the "Trudeau II Report", were you fully able to discharge your investigatory duties provided for by the act?

Mr. Mario Dion: No.

As I said in the report, Mr. Chairman, we tried to obtain further documents that were covered by the the cabinet confidence convention and we failed in doing so. I thought we had nevertheless enough material to come to a finding. That's why I proceeded, absent the documents that were missing. We still don't know what they contain.

Mr. Michael Barrett: Right, and that finding was that there had been a contravention of the Conflict of Interest Act. It had been broken by—

Mr. Mario Dion: It was a contravention of section 9 of the Conflict of Interest Act, as we refer to it, which was the scope of the investigation. I decided on my own volition, in light of what was in the media and what was being said elsewhere, to launch an investigation on February 8, 2019. The scope was section 9—

Mr. Michael Barrett: Okay.

Mr. Mario Dion:—and I found a contravention of section 9.

Mr. Michael Barrett: Thank you very much, sir.

Commissioner, are you investigating any board members at Sustainable Development Technology Canada?

Mr. Konrad von Finckenstein: Are you talking to me?

Mr. Michael Barrett: Yes, sir.

Mr. Konrad von Finckenstein: I'm sorry. I thought you were still—

Mr. Michael Barrett: I just changed gears.

Mr. Konrad von Finckenstein: Can you repeat your question, please?

Mr. Michael Barrett: With my last minute, I have a couple of quick questions for you.

Are you investigating any board members at Sustainable Development Technology Canada?

Mr. Konrad von Finckenstein: Yes.

Mr. Michael Barrett: How many?

Mr. Konrad von Finckenstein: There are two.

Mr. Michael Barrett: Have you launched any investigations of your own accord, or are there only files that have been referred to you?

Mr. Konrad von Finckenstein: I've only launched investigations at the request of, I think, members of Parliament and maybe the public—I don't know—but I haven't launched any on my own.

Mr. Michael Barrett: Have you interviewed relevant people in those cases at this point?

Mr. Konrad von Finckenstein: Mario explained to you the process, and that's exactly what we're following. We decide who has to be interviewed. We have a set of questions. They are posed by the investigator. I'm there. I'm present. I may ask additional questions for clarification as required.

Mr. Michael Barrett: I have two quick questions in my last 15 seconds.

The Chair: Ask them very quickly.

Mr. Michael Barrett: Have you received access to all the documents you've requested? When can Parliament expect a return on those reports, sir?

Mr. Konrad von Finckenstein: Yes, I have received all the documents I've asked for. We are interviewing a few more witnesses, and then as soon as we can, we will issue a report.

Obviously, I'm fully aware that time is of the essence. These things shouldn't drag out too long, both for the public and for the person being investigated, so we will do it with dispatch.

• (12:15)

Mr. Michael Barrett: Thank you.

The Chair: Thank you, sir.

We'll go to Ms. Damoff for six minutes. Go ahead, please.

Ms. Pam Damoff: Thanks, Chair.

Thanks to our witnesses for being with us here today.

Mr. Dion, thank you for coming to the committee to talk about a report that was done a number of years ago.

I have some questions for you on subsection 49(1) of the act, which talks about suspending your investigation. I'm sure you're familiar with it, but just for those who aren't, it's about when you need to suspend an investigation. It reads, "the Commissioner believes on reasonable grounds that the public office holder or former public office holder has committed an offence under an Act of Parliament". There's more to it, but I'll leave it at that.

When you testified in 2022 about whether or not you would hesitate to turn something over to the RCMP, you responded that, "It is a mandatory provision, so it's not a choice that the commissioner has. The commissioner has an obligation to refer it to the police force that has jurisdiction". You must always be mindful of that in your investigation.

I'm wondering if you could talk a bit about this report and whether you referred it to the RCMP. I guess that's the first question.

Mr. Mario Dion: In any investigation, section 49 is always present in our minds, because facts evolve. These investigations take several months.

In relation to the "Trudeau II Report", Michael Aquilino, who is with me, did a preliminary analysis of whether there were reasonable grounds to believe an offence to another act of Parliament was involved, and came to the conclusion that there wasn't such a situation.

Throughout the investigation, we always had the question present in our minds, because it's an absolute duty to do that. At no point did I feel that I had reasonable grounds to believe that the Prime Minister had committed an offence to any other statute. Therefore, I did not refer the matter to the RCMP.

Ms. Pam Damoff: Thank you very much

I wonder if you could talk a bit—and perhaps we could get our current commissioner to comment on this as well—about the importance of the independence of both the RCMP and the Conflict of Interest and Ethics Commissioner.

Mr. Konrad von Finckenstein: As you can appreciate, what is vested in the commissioner is a lot of discretion to look at the various situations that he faces and to decide how to proceed.

Section 49 is a perfect example of that. The commissioner independently investigates something. If he has reasonable grounds to believe a criminal offence may have been committed, he stops right away and he refers it to the RCMP. He is independent, but so is the RCMP, and obviously criminal things are more important than is conflict of interest, so if there's a criminal matter, it has to be looked at first.

If the RCMP decide that they do not want to investigate or they investigate and conclude, then we continue with the conflict of interest issue, but the two should not interfere with each other. We both have a mandate. We both have to exercise it to the best of our ability, and the statute specifically vests powers for criminal prosecutions in the RCMP and for conflict of interest in us.

Ms. Pam Damoff: Thank you.

Just before I go to Mr. Dion on the same question, I wonder if you could comment on the importance of your office being independent from interference by politicians, as well as in the case of the RCMP.

Mr. Konrad von Finckenstein: The whole system is set up such that we are independent. We are not partisan. We are not influenced by any consideration other than what the mandate is.

In my case, I make sure there are no conflicts of interest, and the RCMP makes sure there are no criminal activities. That decision should be made objectively, on the basis of fact, and without any influence from any connections or partisanship or anything else.

Ms. Pam Damoff: Thank you.

Mr. Dion, could you comment on that?

Mr. Mario Dion: I've said many times during my tenure that it is clear that Parliament intended that the commissioner would be tasked with the mandate, which Konrad just described, in the conflict of interest sphere, and that the commissioner would be a person the government had tried to ensure would have some judgment when appointed.

Throughout the past five years, I have felt completely independent and non-partisan. There has been no attempt whatsoever at any point by anyone to influence in an inappropriate manner with the work of the commissioner, and I'm sure that will continue to be the case in the future, because it's one of the safeguards we have in our democracy, and everybody seems to understand that.

• (1220)

Ms. Pam Damoff: Do you want to comment on the independence of the RCMP as well?

Mr. Mario Dion: Frankly, I don't think I'm qualified to do that, because I have not read the RCMP Act in the last 30 years, so it's hard for me to imagine.

Ms. Pam Damoff: Okay. That's fair.

Thank you both for being here today—all three of you, actually, for being here today.

Chair, I know I have only about 10 seconds left, so I'll give it back to you.

The Chair: Thank you, Ms. Damoff.

[*Translation*]

Mr. Villemure, you have the floor for six minutes.

Mr. René Villemure: Thank you, Mr. Chair.

I want to thank the witnesses for coming.

Mr. Dion, you conducted the investigation in question. I would like to ask you three yes or no questions. My questions concern the information in your report.

Did Mr. Trudeau try to influence Jody Wilson-Raybould?

Mr. Mario Dion: It's obvious. The report finds that Mr. Trudeau, directly or through intermediaries, tried to influence the former minister of justice a number of times.

Mr. René Villemure: Was Mr. Trudeau trying to further SNC-Lavalin's interests?

Mr. Mario Dion: Let's just say that the pressure on the former minister of justice suggested that it would be in the company's best interests. Moreover, SNC-Lavalin's behaviour clearly shows that the company preferred a settlement rather than legal action. I think that the answer to the question is yes.

Mr. René Villemure: In the report's findings, you said that Justin Trudeau used his position of authority to influence Ms. Wilson-Raybould.

Mr. Mario Dion: Yes. Section 9 states that the act is violated when someone uses their position to improperly further another person's interests.

Mr. René Villemure: In your report, you defined the concept of “improper”. You identified, for example, four instances where po-

litical and personal interests seemed to have prevailed over the public interest. Your report was, in a way, a finding of fault.

Mr. Mario Dion: We're talking about a breach or violation of the Conflict of Interest Act.

Mr. René Villemure: This breach directly violates section 9.

We often hear that an investigation must be based on facts. Were the facts at your disposal enough to lead to your findings?

Mr. Mario Dion: I think that we took about 40 pages to provide details of the dates, the people involved, what they did, and so on. In the first 40 pages of the report, you'll find all the facts to support my findings.

Mr. René Villemure: Okay. I read it carefully at the time. I happily read it again recently.

Cabinet confidence has been the subject of much discussion here. However, I would like to pick up on what Commissioner Duheme of the Royal Canadian Mounted Police said in response to one of my questions. I wanted to know whether cabinet confidence was always the same, or whether it varied according to the context. His assistant, Mr. Pincince, responded that, at times, it was less airtight.

In your case, do you think that cabinet confidence is something enforced...

[*English*]

Mr. Matthew Green: The camera is facing the other way.

[*Translation*]

Mr. René Villemure: Okay.

Mr. Mario Dion: I can respond, because I understood the question.

I have some experience with the concept of cabinet confidences. First, we talked about it in law school some time ago when I was a student. Second, I worked at the Privy Council Office where, for a year, I was in charge of the unit that dealt with issues relating to cabinet confidences.

When we tackled the “Trudeau II Report,” we came up against a certain number of witnesses—six or nine—who told us that they would send us all the documents we'd requested, except the ones that had to remain confidential due to the concept of cabinet confidences.

I was a bit surprised, because the Conflict of Interest Act seems to indicate that the Conflict of Interest and Ethics Commissioner should enjoy some confidence when it comes to confidential documents subject to cabinet protection. As I mentioned in the report, I therefore pursued the matter by writing to the Clerk of the Privy Council, Mr. Shugart, to obtain more than what the order allowed Ms. Wilson-Raybould to divulge. However, my request was declined.

At that time, I had to determine whether I had enough information to move forward or not. I considered the possibility of challenging the clerk's decision before the federal court. However, throughout my 43-year career in public service, I was always mindful when it came to the use of public funds. Therefore, I decided that it wasn't worth wasting three years and spending \$2 million to determine whether I would obtain access to those documents or not. As a result, we moved forward without the documents.

• (1225)

Mr. René Villemure: All right.

When the RCMP decided to investigate that same matter, following the publication of your report, were you surprised by the RCMP's conclusions?

Mr. Mario Dion: I wasn't surprised, but it's not based on anything.

Mr. René Villemure: I know that's one impression.

That said, we know that the RCMP didn't obtain access to the documents protected by cabinet confidence either. As a result, they drew a different conclusion than you had, but it's one within the universe of possibilities.

Mr. Mario Dion: It wasn't the same question.

Mr. René Villemure: No, since we're talking about criminals or offences under the code.

Mr. Mario Dion: Correct.

Mr. René Villemure: However, in terms of crime, they saw...

Mr. Mario Dion: Obstruction of justice and contravention of section 9 aren't the same thing.

Mr. René Villemure: No, they aren't.

This week, we heard from Mr. Wernick, who attempted in his appearance to tell the committee nothing. We repeated conversations verbatim, but Mr. Wernick didn't want to admit to them, even though they were his own words. I'm going from memory, but he suggested that Ms. Wilson-Raybould use the legal tools at her disposal. Consequently, I'm forced to read between the lines. When you questioned him, was Mr. Wernick more cooperative? Did he provide you with anything interesting?

Mr. Mario Dion: Yes, Mr. Wernick did answer questions. I know him a little bit, having worked at the Privy Council Office at the same time. His answers were brief, but that's how he is.

Mr. René Villemure: We understood that it's how he is.

Mr. von Finckenstein, Mr. Duheme from the RCMP admitted that he was not familiar with the Conflict of Interest and Ethics Commissioner's mandate. What's your opinion?

Mr. Konrad von Finckenstein: Pardon me?

Mr. René Villemure: The RCMP Commissioner admitted to not really understanding your mandate or not knowing where it started and ended. Perhaps he needs some training.

Mr. Konrad von Finckenstein: As my predecessor just mentioned, the mandate is clear. The question that remains is to determine whether the documents are required. In this case, we're talking about confidential documents from Privy Council.

Mr. René Villemure: In addition to his report, Commissioner Duheme made a general comment about not really understanding your overall role. I think that it's in your interest to clear that up with him. Obviously, it's not the same role, but I think that he would benefit from understanding your role in that regard. I was surprised to hear that.

The Chair: Thank you, Mr. Villemure. I gave you a little more time, due to the interruption.

[English]

Mr. Green, the camera is facing directly at you. You have six minutes. Go ahead.

Mr. Matthew Green: I do appreciate that. I'm dealing with some technical difficulties on my end with Adobe with those licences, but that's another story.

For me, at the crux of this, and one of the things that I've been really stuck on, is the convention of cabinet confidence and the issue of the position of the government—particularly this government, I would say—that by being both the client and the solicitor, they have basically that client-solicitor privilege, and then that broader stroke of cabinet confidence as a convention.

I'm wondering about each panel member's thoughts on the effectiveness of that, and whether or not, for issues that require greater scrutiny or third party non-partisan oversight, having access through their offices to key documents and information would help provide a better check and balance to the PMO or the Privy Council.

Mr. Konrad von Finckenstein: The act is quite clear: We have access to those documents if we require them and we need them. Obviously, if there's a refusal in each case to give some or part of the documents, we look at whether they are essential to the investigations or not. If they are, we will push it to the outer limits. We can always go to the Federal Court if we think it's so germane and so central to an issue. Most of the time you work this out. You understand there's some reluctance. You make sure you get the documents that you need in order to reach your decision: Was there a breach of conflict of interest or not?

That in the past has always been worked out. I'm pretty sure it will be in the future. That being said, the law is quite clear. If we need access to those documents, we can get it.

Mario, did you want to add something?

• (1230)

Mr. Mario Dion: I will just add that this is precisely what I did. I did assess with the documents and the refusal to provide further documents whether I had enough to proceed, and I concluded that I did.

There were several instances during my five years when Michael and other lawyers who worked at the office were able to gain access to cabinet confidences in a very practical and formal way. This was actually the first time that we were opposed with a written note that said we will not gain access to additional documents.

The problem with cabinet confidences is that you don't know what you don't have. You have no idea of what you're not seeing. However, I determined I had enough to do section 9, so I proceeded.

Mr. Matthew Green: I think for me, in listening to the testimony of the RCMP, and when I hear things like investigations cannot proceed based on the information that is available....

I'll start with Mr. von Finckenstein.

Do you believe that the RCMP, particularly in relation to criminal matters, should have access to cabinet confidence documents in order to adequately provide oversight?

Mr. Konrad von Finckenstein: I think you should put that question to the RCMP rather than me.

Mr. Matthew Green: Okay. If you don't want to answer, I'll go on to my next question.

Mr. Konrad von Finckenstein: Obviously, nobody should be able to hide criminal acts, and the investigators should have access to all the facts necessary to determine whether a crime has been committed.

Mr. Matthew Green: Thank you.

Stories were posted this morning about additional information related to the Prime Minister's trip to Jamaica. In particular, I note the way in which the information is coming out in trickles, dribs and drabs. First there's a bit of denial, and then there's a bit of deflection, and then there's a dig-in, and then we find that there's more and more information.

In light of the various Trudeau reports and in light of some of these discrepancies, do you believe that amendments to the Conflict of Interest Act should provide, particularly to the office-holders and to the Prime Minister...?

What do you suggest we do to tighten that up so that the perception of a conflict and the real conflict are dealt with in a way and a seriousness that helps to restore public confidence and trust?

Mr. Konrad von Finckenstein: You used the word "perception" right now, and I think it's very important to do that. Unfortunately, the act deals with conflict of interest. There is no "apparent" conflict of interest provision. There isn't that code for the members of Parliament or the House of Commons, as you know. That's a question you could put—that it is not only a real conflict, but a perception or an apparent conflict of interest.

Here is another one, since you're talking about the Jamaica trip. Should there be a ceiling on gifts? Right now there's a complete exception for gifts from a friend. You could say that's fine, but if a gift is too large, it may create the wrong perception. Maybe we should have a monetary limit on it.

Mr. Matthew Green: I deeply appreciate that, because I know that there was a past commentary that wealthy people should be able to give wealthy gifts. I think to the average person watching, the average person struggling in this economy, extravagant gifts in the tens of thousands of dollars, \$80,000-plus, in these luxury settings.... It goes back to my earlier points about sponsored travel and other things. In a time of conspiracy theories and distrust in govern-

ment, there needs to be that cap, so I'm glad to hear that reflected in testimony today.

Thank you.

The Chair: Thank you, Mr. Green.

That concludes our first round of questioning. We have five-minute rounds followed by rounds of two and a half minutes and two and a half minutes. I will remind the committee that I want to leave some time because Mr. Villemure wants to bring an issue in front of the committee that should not take too much time.

Mr. Brock, go ahead for five minutes.

Mr. Larry Brock: Thank you, Mr. Chair.

Thank you to the witnesses for their attendance today on this important study.

I'm going to read to you a portion of a mandate letter that Justin Trudeau supplied to one of his ministers, Minister Anand. He talked about raising "the bar on openness, effectiveness and transparency in government."

It also means humility and continuing to acknowledge mistakes when we make them. Canadians do not expect us to be perfect; they expect us to be diligent, honest, open and sincere in our efforts to serve the public interest.

However, on February 7, 2019, The Globe and Mail cites unnamed sources and reports that Justin Trudeau and his aides attempted to pressure Jody Wilson-Raybould while she was Attorney General to intervene in the prosecution of SNC and that exasperation and her lack of co-operation was one reason for shuffling her out of the justice portfolio.

Justin Trudeau, when pressed by reporters at some event in Canada, looked Canadians right in the eye and said that the Globe story was "false". He lied to Canadians.

He ultimately received your report, Mr. Dion. He said that while he disagrees with some of the findings, he accepts the report and takes responsibility for the mistakes that he made, whatever that means. He didn't elaborate.

We all know your conclusions. Your conclusions were well founded. Your conclusions were based on all the evidence that you received. You took it upon yourself, Mr. Dion, to identify all the relevant witnesses and the evidence that you hoped for to be able to discharge your responsibility. Is that correct?

• (1235)

Mr. Mario Dion: Yes.

Mr. Larry Brock: I've totalled 14 individuals that you ultimately either interviewed or received by way of affidavit or some other written documentation.

I contrast that to the RCMP. I can't express how profoundly disappointed I am, as a member of Parliament and as a former officer of the court, a former Crown attorney, in the slipshod way that they conducted this investigation. They only interviewed Jody Wilson-Raybould, twice; Jessica Prince, her chief of staff; Nathalie Drouin, the deputy attorney general; and nobody else. When I asked the commissioner not too long ago why he didn't actually seek out some information from the Prime Minister himself, the person of interest, he said that didn't think they had sufficient grounds to do that. That really disturbs me, sir.

I'm not going to be asking you about RCMP decisions, but what I am going to ask you about is this: When you interviewed Justin Trudeau, was he forthright with you? Did you get the impression that he was giving you all the information you requested? Was he holding anything back?

Mr. Mario Dion: I recall the interview vividly. It was long, over two hours. The Prime Minister was accompanied by a few lawyers. He did respond to every question we asked. There was no feeling of resistance or trying to indirectly avoid questions. He did provide answers to every question that we had.

Mr. Larry Brock: Your standard for referral to the police, I believe you said, is on reasonable grounds. Is that a reasonable grounds test?

Mr. Aquilino, is it the same reasonable grounds test that law enforcement uses in terms of laying a charge?

Mr. Michael Aquilino (Legal Counsel, Office of the Conflict of Interest and Ethics Commissioner): I believe so, yes.

Mr. Larry Brock: Again, Michael and Mr. Dion, we all know that there are two elements to any criminal offence: the *actus reus* and *mens rea*. The *actus reus* is the act of the pressure exerted either by Justin Trudeau himself or by his aides. The *mens rea* requires a specific intent.

I want to circle back to your report, Mr. Dion. I'm going to read paragraph 284. It's very brief:

Here, in contrast, the evidence abundantly shows that Mr. Trudeau knowingly sought to influence Ms. Wilson-Raybould both directly and through the actions of his agents.

"Knowingly" is the operative term I look for as a former Crown attorney.

I'd like to know your opinion and perhaps Mr. Aquilino's. In terms of the reasonable grounds test, did that not give you the ability to make that referral, based on that finding?

Mr. Mario Dion: I think that those are legal issues. Criminality aside, in the Conflict of Interest Act, "knowingly" in the context does not necessarily mean "knowingly" for *mens rea* purposes under the Criminal Code, but that's a legal issue.

Mr. Larry Brock: I disagree, respectfully. I think "knowingly" means the same thing. It's an intentional act to do something knowingly, as opposed to innocently or accidentally. "Knowingly" is purposeful—

The Chair: I'm sorry, Mr. Brock. You're going to have another opportunity to ask questions, if you like.

Mr. Larry Brock: Thank you.

The Chair: Mr. Housefather, go ahead, please.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you very much, Mr. Chair.

Gentlemen, thank you for being here today.

Mr. Dion, I have a question for you. It's a little bit of an esoteric one.

Section 9 of the act reads:

No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person—

That's clear.

—so as to further the public office holder's private interests—

That's clear. That makes all kinds of sense.

—or those of the public office holder's relatives or friends—

That also makes lots of sense, but then it goes on to add:

—or to improperly further another person's private interests.

That lumps the other person into something that would directly benefit the public office holder or his or her family or friends in the same breath. Do you believe the wording should be equivalent in this case?

I'll come to it from the perspective that a public office holder is frequently, as you know, seeking to push government to deliver funding or grants to companies in their riding. They're not doing it for themselves; they're doing it for the benefit of their constituents or their community. How is that equivalent?

In this case we're talking about Mr. Trudeau and SNC-Lavalin. Nobody is alleging Trudeau has any private interest in SNC-Lavalin or that he's benefiting personally or financially from anything that goes to SNC-Lavalin. How are these concepts intertwined? Would it be better if there were some language that related to one's own personal benefit and another clause that dealt with improper dealings related to a third party?

I don't know if you understand the question, but it's been on my mind for a bit.

● (1240)

Mr. Mario Dion: I do understand the question. I've never actually asked myself the question, so I therefore cannot offer an improvised answer.

Section 9 was the subject of parliamentary debate. It was part of the Accountability Act. I assume the drafters of the act knew what they were doing.

My role was to implement section 9 as it exists. I'm sorry that I don't have a view at this point, because I've never thought about it.

Mr. Anthony Housefather: Okay. I understand.

Can we get—

Mr. Konrad von Finckenstein: Maybe I can help you.

Mr. Anthony Housefather: Of course, Mr. von Finckenstein. Please go ahead.

Mr. Konrad von Finckenstein: You are overlooking the word “improperly”.

The section deals, first of all, with using influence to further somebody's private interests or the private interests of their friends, etc., and then, when you're talking about unrelated third parties, it is “improperly” furthering them.

Obviously, part of your job is to further the interests of your constituents, etc., but to do it properly and not improperly. That's the distinction in the act.

Mr. Mario Dion: There are reports from the office going back several years that deal with that. It's only when you go outside of accepted avenues that it becomes improper.

Mr. Anthony Housefather: I understand.

I've read the “Trudeau II Report”. In it you gave a detailed analysis of how you arrived at the idea that it was improper in terms of crossing the Shawcross doctrine. I do understand that.

However, even though it's improper, one of them relates to your own personal interests and your own benefit and the other relates to the benefit to a third party. I just thought it might be—

Mr. Mario Dion: I'll add, Mr. Chair, that in the document we do indicate that the Prime Minister or one of his assistants, Monsieur Bouchard, mentioned that there would be an election one day and that it's important to win an election, and this matter could have an impact on Mr. Trudeau's electability in Papineau.

That was mentioned by the witness, so maybe there was also some interest on the part of the Prime Minister.

Mr. Anthony Housefather: I'm reading your report and I understand.

I'm trying to get to another question.

In terms of the entire interaction here, was it because Ms. Wilson-Raybould was in this capacity of Attorney General that you looked at it differently from the way you would have if it had been a different minister—if she had been acting in her capacity as Minister of Justice, for example? Was it because of the very different rules related to the Attorney General?

Mr. Mario Dion: Yes. The central issue of the Shawcross doctrine, of course, was related to her role as Attorney General. It played a very important role.

Mr. Anthony Housefather: If the same interactions had happened... We don't know if anybody in the Prime Minister's Office at that time understood the Shawcross doctrine and if they really understood that there should be a difference in the way they treated the Attorney General versus another cabinet minister. If this had been, for example, the Minister of Health and it had been a decision related to health care, would you have treated it in the same way? Would there have been that impropriety?

Mr. Mario Dion: Again, it's hypothetical. I don't know if there is any doctrine that exists in the sphere of health. I frankly don't have any idea.

I would like to add that Ms. Wilson-Raybould, on several occasions, tried to explain the very specific nature of her role as Attorney General to those who were trying to influence her. They had an

opportunity to reflect on that. That's one of the first things you learn in criminal law—the independence of the prosecution. I know that when I was at the Department of Justice, this was sacred.

She tried to explain that, but maybe they didn't understand.

• (1245)

Mr. Anthony Housefather: Am I out of time?

The Chair: Yes, you are. Thank you.

Mr. Anthony Housefather: Okay, thank you.

The Chair: Thank you, Mr. Dion.

[*Translation*]

Mr. Villemure for two and a half minutes.

Mr. René Villemure: Mr. Dion and Mr. Finckenstein, I'm going to ask you the same question. Remember I only have two and a half minutes.

Based on your experience as a result of your mandate, during which you had to consider cases involving cabinet confidences, do you believe that there should be more clarification on the circumstances in which access to documents could be obtained? Should there be a special procedure, in a similar investigation involving a minister or the prime minister, that would allow you to investigate fully? When there is more light by which to see, sometimes a different conclusion can be drawn. Indeed, your comments in this regard were quite accurate.

After listening to the previous witnesses, I get the impression that that they considered the presence of cabinet confidences to be problematic. I feel, on the contrary, that it's a good thing. Should any changes be made here?

Mr. Mario Dion: I don't think that's necessary. It's possible to manage each situation under the current legal framework. Recourse to the federal court of appeal or the federal court is always an option.

Mr. René Villemure: All right.

Mr. Mario Dion: So it's sufficient to respond to emerging needs. This was the first time such a collision has occurred since the Office of the Conflict of Interest and Ethics Commissioner was created 18 years ago.

Mr. René Villemure: So, it wasn't worth wasting three years and spending \$2 million.

Mr. Mario Dion: Exactly.

Mr. René Villemure: All right.

Mr. von Finckenstein, I'd ask you the same question.

Mr. Konrad von Finckenstein: I agree with my predecessor. This problem was not raised in the past, and I believe that it can be resolved. We always have the possibility of going to court, but we're not talking here about crimes, we're talking about conflicts of interest. There are many means by which to resolve them, and we shall.

Mr. René Villemure: Excellent. Thank you very much.

Mr. Dion, you wrote the “Trudeau I Report”, the “Trudeau II Report” and the “Trudeau III Report”—

Mr. Mario Dion: Actually, Ms. Dawson wrote the “Trudeau I Report”.

Mr. René Villemure: That's true, you're correct. In your case, you wrote the second and third reports.

At that time, as an outsider, I saw a habit or, at the very least, somewhat of a cavalier attitude towards ethics. I don't want to presume an outcome, but what is your opinion? You had to examine this kind of situation a few times.

Mr. Mario Dion: I think that I spoke about this at my last appearance when I was still commissioner. I hoped that some members of the government would take the issue more seriously. Some take it very seriously, but others take it a little less seriously.

Mr. René Villemure: Yes.

Mr. Mario Dion: That was my conclusion last year. Things may have changed for the better since then, but I don't know. Perhaps Mr. von Finckenstein—

Mr. René Villemure: That's true. I'm reminded by your answer. I'd asked you whether some government members were more flip-pant when it comes to ethics, and you replied that this was the case. So you're sticking to that answer. Thank you very much.

The Chair: Thank you.

[*English*]

Mr. Green, you have two and a half minutes. Go ahead.

Mr. Matthew Green: Thank you very much.

I have a question for Mr. Dion.

It's our committee's prerogative to try to provide recommendations, hopefully, and get something out of these studies. In retrospect, what lessons might have been learned from your involvement in the SNC-Lavalin affair.

Mr. Mario Dion: Not many. We had the tools, and I was able to launch an investigation very quickly after the allegations emerged.

There's not much that needs to be changed, nothing I can think of at this point in time that relates to the conduct of the investigation. I think it works well the way it is now. There's a margin of manoeuvre that the commissioner needs, and the commissioner has the margin of manoeuvre. I would leave it at that for the time being.

Mr. Matthew Green: If the same situation were to occur again, notwithstanding the fact that the cabinet confidence issues were still present, are there no different approaches you would take to try to get more information?

Mr. Mario Dion: When the people are interviewed—that's how we refer to them, as interviews—they are under oath. They are placed under oath. There is a stenographer present. There is a transcript. It's a pretty solemn event. People take it seriously and answer the questions. We use the transcripts extensively in preparing the reports. There are enough formalities.

I think my successor has enough powers to do the work, in my opinion. He may differ; I don't know.

• (1250)

Mr. Matthew Green: If there's enough, that's great. If we were to look at improving the standard, going back to the notion of cabi-

net confidence, is there anything we could contemplate as a committee that might trigger an automatic disclosure for certain levels, or are you simply saying, here in your testimony today, that everything's fine, there's nothing to see here, and should this happen again, we can expect the same kind of outcomes?

Mr. Mario Dion: One thing I haven't said is that it would be hard to create such a list, because there are a myriad of possible scenarios. It's always dangerous to try to put in an exhaustive list of situations. That's why I think we need the flexible approach.

In terms of what I did with Mr. Shugart, my approach was that I tried to impose some pressure, if you wish, on getting more documents. I did not know until I received the reply what the reply would be—Michael can attest to that—because I didn't know what was in those documents that I didn't get to see. The answer was no. We accepted the answer. It's hard to imagine that a statute could change that.

The Chair: Thank you, Mr. Dion.

Mr. Matthew Green: Thank you so much.

Thank you for the extra time, Mr. Chair.

The Chair: No worries, Mr. Green.

We'll now go four minutes and four minutes. I had already predetermined this in advance of Mr. Green speaking.

We'll have Mr. Kurek and then Mr. Bains for four minutes each.

[*Translation*]

We're going to give Mr. Villemure some time at the end of the meeting.

[*English*]

Go ahead, Mr. Kurek. You have four minutes.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thanks very much.

I appreciate the testimony here today.

Mr. Aquilino, Mr. Brock asked a question about the Prime Minister having “knowingly” influenced former justice minister and Attorney General Jody Wilson-Raybould. Regarding that term of “knowingly”, it's my understanding that in civil and criminal law, it's a fairly low threshold, but it is interpreted the same.

I'd like your interpretation, if I could, Mr. Aquilino, of that threshold, and whether or not that threshold was in fact met, and your interpretation of the events that took place related to that question around his having “knowingly” influenced her.

Mr. Michael Aquilino: When you apply the facts of what transpired here to the wording of the offence in subsection 139(2), you have to apply the “knowingly” standard to the act of obstructing, perverting or defeating the course of justice. Case law says that it takes more than a mere moral lapse or a lapse of ethical judgment. It takes an additional step—a corrupt intent, a criminal intent. This is where we have difficulty in establishing that intent.

Mr. Damien Kurek: When it comes to establishment of that intent, I was not elected at the time; I followed the breaking story in The Globe and Mail on what transpired and the damning testimony that Jody Wilson-Raybould brought forward at committee. It was extraordinary to watch. I was very troubled at the time by how narrow the constraints were on the evidence that could be obtained by the office of the Ethics Commissioner but also, in light of that, by the justice committee and presumably the impacts that had in relation to the RCMP being able to get to the bottom of exactly what you've referred to, about knowing what that intent was.

Could having more evidence and understanding what the bigger context is...? Certainly, you don't know what you don't know, but if there was more information available, could that have influenced and led to you, the RCMP and others coming to a different conclusion?

Mr. Mario Dion: It's purely speculative, so it's impossible to answer your question. Of course it could. Maybe it couldn't. I don't know.

Mr. Damien Kurek: So it could have. I think that's the question. Why were the constraints so tight? Certainly that's an outstanding question that remains, and it's an incredible disappointment that there was not a willingness for the government to be more transparent. It leads one to ask what there is to hide.

I want to ask another question. Yesterday the Liberals tabled an amendment to the Canada Elections Act. In that, on page 2, there was a very interesting change to the election date. As the public, I'm sure, is very aware, MPs qualify for a pension after six years of service. The election was planned to be held on October 20, 2025. That would have been one day short for MPs elected in 2019 to qualify for their pension.

While Conservatives are calling for an election immediately, I'm just wondering, with regard to that delay on page 2 of this amendment, if it would be a conflict of interest for MPs to vote on something that would be the difference between either qualifying or not qualifying for their pension.

• (1255)

The Chair: Give a very quick response on that, please.

Mr. Konrad von Finckenstein: You as MPs have the power to make the rules for yourselves, including on your code of conduct and when elections are held and so on—

The Chair: Thank you.

Mr. Konrad von Finckenstein: That's not a conflict of interest. It's something you are charged with doing. One expects you'll do it in the public interest, not in your personal interest, but that's—

The Chair: Thank you.

Mr. Damien Kurek: Could there be a perceived conflict in that?

The Chair: That's enough time.

No, Mr. Kurek. I'm sorry. I'm over time. I think the commissioner answered the question.

Go ahead, Mr. Bains, for four minutes.

Oh, I had Mr. Bains.

Ms. Khalid, go ahead, please, for four minutes.

Ms. Iqra Khalid: Thank you, Chair.

To clarify, I know my colleague asked this question about nefariousness and conspiracy theories—going down that rabbit hole—but October 20, 2025, is the day of Diwali, which many hundreds of thousands of Hindu Canadians celebrate, so I think it's good for us to be—

I'm sorry, Mr. Brock. Are you interrupting my time here?

Mr. Larry Brock: I'm talking to myself.

Ms. Iqra Khalid: Oh, okay. I'm glad you are.

Thank you so much. I wanted to clarify that and put that on the record.

Mr. Aquilino, can we talk about sanctions?

What kinds of sanctions do you feel would be fair, equitable and enforceable? Do you think the current sanctions are enough, as they stand right now?

Mr. Konrad von Finckenstein: I will point out that Mr. Aquilino is here in order to help Mr. Dion recall the facts regarding the “Trudeau II Report”. He is not here as a witness to speak.

Ms. Iqra Khalid: Perhaps Mr. Dion can, then.

Mr. Mario Dion: I've expressed the view in the past that maybe the issue of penalties should be looked at. There is an absence of direct penalties in relation to the act that should be looked at.

In terms of the credibility of the system, it would help if there was a possible sanction recommended by the commissioner but imposed potentially by the House or another upper authority. That's been my view throughout.

I don't know what my successor thinks of that, but that is my view.

Ms. Iqra Khalid: Thank you.

Mr. von Finckenstein, are you considering reviewing those sanctions at all?

Mr. Konrad von Finckenstein: I have been in the job now for literally one month. Obviously, there's a temporary period of seven months. It's a bit early. Clearly, when the chairman congratulated me on my appointment and asked if I had any views about improvements to the act, I wrote to him saying that, yes, undoubtedly there will be some. I will express them at that point in time.

Right now, as you know, the main penalty for breaching the act is that you basically certify that your reputation is not what you were holding it up to be and that you do not understand your job and acted in conflict. That's a pretty bad penalty for an elected official.

Ms. Iqra Khalid: Thank you.

Mr. Konrad von Finckenstein: Should it be supplemented along the lines of what Mario suggested? It's something I would like to study in a bit more detail before making any statement.

Ms. Iqra Khalid: Thank you.

I have one more question for you.

I know that members opposite have been directing you and making demands and saying that you haven't done your job effectively on this specific case and many others.

Can you talk to us about the importance of independence in the work you do and the work the RCMP does? Just as you wouldn't be directed by political officials, would you then go and direct the RCMP as to how they conduct their investigations?

Mr. Konrad von Finckenstein: I'm sorry. As you know, I am not a public servant. I report to the Speaker of the House, and that's to insulate me from political interference.

The act is quite clear. Decisions are to be made on their merits are made public. They're made public immediately. For instance, the same day that the "Trudeau II Report" came out, it was also published. There was no opportunity to hide anything. The whole scheme is to be as public, open and fair as possible.

Can it be improved? Sure, everything can be improved, but there's no glaring omission or fault right now that I'm aware of.

As for the RCMP, you should ask them, not me, whether they feel they need more independence or not.

• (1300)

The Chair: Thank you, Commissioner.

Thank you, Ms. Khalid.

Certainly we appreciate the independence of the office as it reports to Parliament.

Commissioner, I want to thank you on behalf of the committee for being here today. Again, I congratulate you on your appointment. As the committee chair, I have the utmost confidence in your ability to do your job independently and effectively. I look forward to continuing to work with you.

Mr. Dion, again, thank you for your service to our nation. Your retirement... You seem to come back every once in a while at the request of the committee. I appreciate your taking the time to do that when you could be someplace else. Thank you, Mr. Dion.

Mr. Aquilino, thank you for your time today.

[*Translation*]

I'm now going to give Mr. Villemure the floor about a question he wishes to put to the committee.

Mr. Villemure, I remind you that, since our report is being done in camera, you may not speak to its contents. You have the floor.

Mr. René Villemure: We've concluded our study on social media and our report is being drafted. However, as with many things, sometimes, the context changes. Last week, we learned that the Department of Industry had launched a national security review of TikTok. When the people from TikTok appeared before us, perhaps they knew or didn't know, we don't know; however, one thing is certain: the picture that was painted was far from anything like a national security review. Indeed, TikTok was recently described as digital fentanyl or a technological weapon in the 21st century. We're hearing all sorts of things.

The fact that a Canadian minister has called for a national security review leads me to question the validity of our report. It's possible, therefore, to add a warning to our report, or cancel it altogether. I'm putting the question to the group here, because I believe that, if we don't take clear steps in this regard, our report will be a joke.

The Chair: Thank you, Mr. Villemure.

[*English*]

I'll warn the committee now that we don't have much time to deal with this today, based on the services that are available to us.

I will say that I am in agreement with Mr. Villemure that we put the report on the shelf for now, pending the results of the national security review. If we need to reopen the report at that time, we can do that and have witnesses reappear if need be, because there may be things that we might add to the report.

My concern, frankly, is that we're going to make recommendations that are contrary to what the national security review provides for. With the results of the national security review, it's going to look foolish on our part to make these recommendations if they are, in fact, contradictory to what the national security review proposes. I don't think there's any harm in holding on to dealing with this report until such time as this review comes forward.

The other thing I would say is that there was no indication at all during the time of our study that this national security review was going on until it was made public last week.

Go ahead, Ms. Khalid.

Ms. Iqra Khalid: Mr. Chair, do we know what the timeline looks like for the NSIRA to come back?

The Chair: No, but I am going to take it upon myself on behalf of the committee to find out.

Ms. Iqra Khalid: Can we then table this question as to whether we're going to be shelving this report until we figure out what the timelines look like? To me, it makes more sense if we are able to bring in TikTok maybe one more time and bring in whatever relevant witnesses to address these concerns and include that information in the report, rather than shelving it for an indefinite period of time.

The Chair: I will tell you my plan for the committee, just so that the committee knows.

When we come back from the two-week constituency period, we were going to start the report—I think it's the second day of the report—in camera. I can schedule committee business at that time to provide an update to the committee, and then we can carry on with this discussion later, if that's okay with the committee, until I find out information about the timelines of the national security review.

Would that be acceptable to the committee?

• (1305)

[*Translation*]

Mr. René Villemure: I find that acceptable.

[*English*]

The Chair: Does that cover what you're asking for?

Are we all okay with that?

Mr. Barrett, are you good? Okay.

Ms. Iqra Khalid: Good.

The Chair: Mr. Green, is that good? Okay.

Thank you.

Thank you, Mr. Villemure.

That concludes today's meeting.

I hope you have an effective couple of weeks in your constituencies. I look forward to seeing everybody when we come back.

Again, our condolences go to the Mulroney family as they head into a difficult period on Saturday in Montreal with the celebration of the former prime minister's life.

Thank you.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the Copyright Act. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the Copyright Act.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <https://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la Loi sur le droit d'auteur. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre des communes.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante :
<https://www.noscommunes.ca>