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COMMITTEE EVIDENCE

**Tuesday, February 19, 2002**

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## Standing Committee on Procedure and House Affairs

Tuesday, February 19, 2002

• (1935)

[English]

**The Chair (Mr. Peter Adams (Peterborough, Lib.)):** Colleagues, we'll now begin. This is meeting 45. It's our second meeting on the following order of the day: pursuant to the order of reference from the House of Thursday, February 7, 2002, consideration of the question of privilege raised on January 31, 2002, by the member for Portage—Lisgar concerning the charge against the Minister of National Defence of making misleading statements in the House.

Our witnesses today, who I will welcome formally in a moment, are William Corbett, Clerk of the House, and Rob Walsh, Law Clerk and Parliamentary Counsel.

Before we begin, I have some points to make. The first one is a technical point. It has been suggested to me—and I'm already not doing it—that because this goes out directly on television, it's much better if members speak directly into the microphones. I've been asked to say that, so I've said it.

Secondly, I would remind you that we still have on the table Jay Hill's motion of this morning, and I would urge all members to study it. We will be returning to it at a future meeting.

Next, this morning various requests were made by the committee for information contained in Brian Pallister's presentation, and we will be following up on each of those.

Lastly, colleagues—and this has nothing to do with the order of the day—I received a report from the Sub-Committee on Private Members' Business. It indicates that they have not selected any items at this time. I'm going to circulate this report, and I assume we will return to it at a future date. I don't think it's appropriate to deal with it now, but I thought I should indicate that I've received that report.

There is one more thing. I believe each member has a copy of the paper by Terry Moore and James Robertson, who is sitting beside me, entitled *An Introduction to Parliamentary Privilege*.

I'd like to welcome the Clerk of the House. It is indeed a privilege, Mr. Clerk, to have you with us. It's very kind of you to come this evening. Rob Walsh, it's nice to have you appear before our committee once again.

Given your high status in the House of Commons, I don't have to remind you to address your remarks to the chair, do I?

Do you all have that?

**Mr. William Corbett (Clerk of the House of Commons):** No, Mr. Chairman.

**The Chair:** Mr. Corbett, we're in your hands. I understand you have a statement to begin with.

**Mr. William Corbett:** I do indeed. Thank you very much, Mr. Chairman.

[Translation]

I would like to thank the committee for inviting me to appear this evening. I have a short presentation that I would like to make to the committee and then I would be prepared to answer questions.

[English]

I shall first briefly define the privileges of the House and its members, and then I will address what constitutes a contempt of the House. Finally, I would also like to say a few words about the procedural aspects of the issue before the committee and the various approaches the committee may wish to take based on past occurrences.

As noted in the chapter on privilege in the *House of Commons Procedure and Practice*, the classic definition of parliamentary privilege found in Erskine May is as follows:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively...and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

[Translation]

These peculiar rights can be divided into two categories: those extended to members individually, and those extended to the House collectively. Each grouping can be broken down into specific categories. For example, the rights and immunities accorded to members individually are generally categorized under the following headings: freedom of speech; freedom from arrest in civil actions; exemption from jury duty; and exemption from attendance as a witness.

[English]

The rights and powers of the House collectively may be categorized as follows: the power to discipline, that is, the right to punish persons guilty of breaches of privilege or contempts, and the power to expel members guilty of disgraceful conduct; the regulation of its own internal affairs; the authority to maintain the attendance and service of its members; the right to institute inquiries and to call witnesses and demand papers; the right to administer oaths to witnesses; and the right to publish papers containing defamatory material.

These two groupings represent all of the privileges extended to members of Parliament and the House of Commons.

• (1940)

[Translation]

Any disregard or attack on the rights, powers and immunities of the House and its members, either by an outside person or body, or by a member of the House is referred to as a breach of privilege and is punishable by the House.

[English]

There are, however, other affronts against the dignity and authority of Parliament that may not fall within one of the specifically defined privileges.

The House also enjoys wide latitude in maintaining its authority and dignity through the exercise of its power to investigate and discipline in instances of contempt. The House, in the same manner as the courts, claims the right to punish as a contempt any action that, though not a breach of a specific privilege, tends to obstruct or impede the House in the performance of its functions, obstructs or impedes any member or officer of the House in the discharge of their duties, or is an offence against the authority or dignity of the House, such as disobedience of its legitimate commands or libels upon itself, its members, or its officers.

Throughout the Commonwealth, most procedural authorities hold that contempts, as opposed to privileges, cannot be enumerated or categorized, nor is it possible to categorize the severity of contempt. Contempts may vary greatly in their gravity. Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

[Translation]

In *Odgers' Australian Senate Practice*, the authors explain that the rationale of the power to punish contempts, whether contempt of court or contempt of the Houses, is that the courts and the two Houses should be able to protect themselves from acts that directly or indirectly impede them in the performance of their functions. In that sense, all breaches of privilege are contempts of the House, but not all contempts are necessarily breaches of privilege.

[English]

In Canada, we have never tried to produce a list of types of contempts. However, in its report to both Houses of the British Parliament in 1999, the Joint Committee on Parliamentary Privilege provided a list of some types of contempt. Included in the list were the following: interrupting or disturbing the proceedings of, or engaging in other misconduct in the presence of, the House or a committee; assaulting, threatening, obstructing, or intimidating a member or officer of the House in the discharge of their duties; deliberately attempting to mislead the House or a committee by way of a statement, evidence, or petition; deliberately publishing a false or misleading report of the proceedings of the House or a committee; without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee; divulging or publishing the content of any report or evidence of a select committee before it has been reported to the House; or acting in breach of any order of the House.

[Translation]

The Order of Reference to this Committee adopted by the House on February 7, 2002 reads:

That the charge against the Minister of National Defence of making misleading statements in the House be referred to the Standing Committee on Procedure and House Affairs.

This is what the committee is here to consider.

[English]

There has never been a case in the Canadian House of Commons of a member being found in contempt of the House for deliberately misleading the House. In his ruling on the matter before you, Speaker Milliken quoted Erskine May about the consequences of deliberately misleading the House. That passage referred to the Profumo scandal in the United Kingdom in 1963. John Profumo, a minister of the crown, actually made a statement to the House about his involvement in the scandal and then later admitted in the House that he had misled the House with that statement. He later resigned his ministerial portfolio and his seat.

It was felt that this affront to the House could not be allowed to pass without a formal censure, and the British House eventually debated and adopted a motion finding Mr. Profumo guilty of a grave contempt of the House.

• (1945)

[Translation]

Joseph Maingot in the *Parliamentary Privilege in Canada*, in the second edition at page 240, notes that a member who admits to deliberately misleading the House would probably forthwith be the subject of a motion of contempt. This passage is also based on the Profumo case.

[English]

In his ruling, Speaker Milliken stated he was prepared to accept the minister's assertion that he had no intention to mislead the House. He did not find that the issue, as presented, constituted a prima facie breach of privilege. However, he went on to conclude that the situation left the House with two versions of events, which merited further consideration by the appropriate committee, if only to clear the air. He therefore allowed the motion to be brought forward.

It must be remembered that the Speaker, in his ruling, did not decide on the merits of the case, but decided simply to give the matter priority of consideration. The House then decided to refer the matter to committee for further study.

In such instances, it has been the practice of the House to refer the matter to committee for investigation to determine if a contempt has been committed and therefore not to prejudice the findings of the committee.

[Translation]

How then is the committee to proceed? It may be helpful to consider what the text, *Parliamentary Practice in New Zealand*, written by the clerk of the New Zealand House of Representatives, has to say in this regard. It states at page 491 that there are two ingredients to be established when it is alleged that a member is in contempt for deliberately misleading the House.

[English]

The statement must in fact have been misleading, and it must be established that the member making the statement knew at the time the statement was made that it was incorrect, and that in making it the member intended to mislead the House.

I would humbly suggest to members of the committee, through you, Mr. Chairman, that they must first examine the facts of the current case to determine whether the House has been obstructed or interfered with in any way or whether its authority or dignity has been offended. Once given those facts, the committee must then decide if a contempt has occurred. What further steps may be taken will depend upon what conclusion the committee reaches with respect to those two issues and how the House receives the report of the committee.

Thank you, Mr. Chairman. I'd be happy to take questions from members.

**The Chair:** Thank you, Mr. Corbett. That's a very carefully considered statement. Mr. Walsh doesn't have anything to add at this time.

Colleagues, I would remind you that the agreement is that on the first round we'll proceed with the ten-minute question and answer process, alternating as usual between the parties. I would urge you, if you don't need ten minutes, to feel free not to use the ten minutes.

I'll go to Garry Breitkreuz. I understand the Liberals are going to split their ten minutes, so we'll have Geoff Regan and Paul Macklin, and then Pierre Brien.

Garry Breitkreuz.

**Mr. Garry Breitkreuz (Yorkton—Melville, Canadian Alliance):** Thank you, Mr. Chair.

Thank you, Mr. Corbett, for the excellent presentation. You've done such a good job of introducing the topic that I have very few questions left.

**The Chair:** Thank you, Garry. Next.

**Some hon. members:** Oh, oh!

**Mr. Garry Breitkreuz:** Anyway, I appreciate it very much. You are definitely an expert and that was clearly indicated.

The Speaker ruled on February 1, 2002, that this was a *prima facie* case of privilege with regard to the issue raised by the member for Portage—Lisgar. Could you explain to us what the term “*prima facie*” is, and what it means for the Speaker to have made such a ruling? I think we could use a bit of an explanation there. I know you touched on it in your introductory remarks, but what clearly is the meaning of that, and why did the Speaker use that term in his ruling?

• (1950)

**Mr. William Corbett:** Thank you, Mr. Chairman.

I actually stated that the Speaker did not actually state that he had found a *prima facie* question of privilege. My exact words were:

He did not find that the issue as presented constituted a *prima facie* breach of privilege.

But he did feel that the matter was sufficiently important that it warranted clarification by a committee study. The Speaker's role ought to be explained, and it is that the issue put before the Speaker is not a finding of fact, it is simply whether on first impression the issue that is before the House warrants having priority consideration over all other matters, all other orders of the day that are before the House. In essence, when the Speaker is asked through the process of the presentation of a question of privilege to the House to make a ruling, the Speaker is only ruling that at first glance, on first impression, which is the terminology that's actually used to explain this in the chapter on privilege of Marleau and Montpetit, there is sufficient concern there that the matter ought to be given priority consideration over other orders of the day that are before the House at any given moment. And that, in essence, is what the Speaker is asked to rule on when questions of privilege are put before him.

**The Chair:** I'm interrupting you. I won't use your time.

So *prima facie* means “at first glance”. That was the question.

**Mr. William Corbett:** At first glance. That's the terminology that is used, Mr. Chairman, in Marleau and Montpetit.

**The Chair:** Thank you.

**Mr. Garry Breitkreuz:** Thank you very much for clarifying that.

One of the reasons this whole meeting of the committee over these number of days is so important is that we need to protect democracy in this country. It's absolutely essential that in our debates, and as we discuss matters and then reach decisions, we have accurate information. Without that free flow of accurate information, we, as parliamentarians, cannot really make proper decisions. I think that's fundamental to the entire discussion here.

In relation to privilege, could you explain to us why that is important? How does it work?

**Mr. William Corbett:** I think the point I was trying to make in my presentation to you was that an attempt to mislead the House deliberately, if anything, would fall into the realm of a contempt of the House and not a contravention of the specifically enumerated privileges of the House. So, in essence, what this committee will have to decide in the circumstances, and when you are in full possession of the facts of the matter, is do you think what happened constituted a contempt of the House?

There are very few cases in the procedural authorities of the Commonwealth where such determinations have been made. I have to tell you that. There are virtually none in Canadian experience. The only one that is cited in Erskine May is the Profumo case. There are some others in other Commonwealth houses—Australia, New Zealand—but they're very rare.

**Mr. Garry Breitkreuz:** I appreciate that.

The outline of the role of the committee in this process has been well explained, and maybe it can be elaborated on, but what tools do we have in exercising this role, the mandate we've been given at the committee? Can you maybe explain some of the tools available to us in fulfilling this role?

●(1955)

**Mr. William Corbett:** All I can tell you is that the committee has the normal tools that are available to a parliamentary committee under our Standing Orders: the power to send for persons, papers, and records. In essence, those are the same powers that any other standing committee would have. How the committee chooses to exercise those powers is not for me to second guess or advise. In essence, it is for the committee to determine.

**Mr. Garry Breitkreuz:** I see.

**The Chair:** The committee is master of its own affairs. We can use our own ingenuity. We can be inventive. I think this is the sort of thing Garry is interested in, rather than the specific point you made.

**Mr. William Corbett:** There is, once again, very little in any of the procedural authorities on these sorts of circumstances, or the kind of case that is put before the committee. There is some writing in the manual of procedure and practice of New Zealand. It gives some advice to committees on the kind of attitude and posture they ought to take when examining something of this delicacy. I would be happy to furnish to the committee the appropriate paragraphs from both the Australian and New Zealand manuals of parliamentary procedure.

**The Chair:** We'd be glad to receive them.

Garry, you have three and a half minutes left, so please carry on.

**Mr. Garry Breitkreuz:** Is there a difference when a minister breaches privilege, as opposed to a regular member?

**Mr. William Corbett:** That's a difficult one to answer. In essence, you could take the position that there is a difference, although in most of the matters concerning contempt and privilege in the House, we don't make a difference among members and the treatment of members.

On misleading the House, in the New Zealand manual there's a quote I'll give you:

The misleading of the House must not be concerned with a matter of such little or no consequence that it is too trivial to warrant the House dealing with it.

But it should be concerned with matters of a serious nature. The standard of proof that a committee ought to hold themselves to would be a standard of proof on the balance of probabilities. But if the allegations are so serious, the requirement of proof should be of a very high order. In other words, it is a serious allegation that a minister has misled the House; therefore, the committee looking into this matter should hold itself to a very high standard of proof in dealing with this question.

**The Chair:** Garry.

**Mr. Garry Breitkreuz:** Finally, you mentioned there are very few precedents of a member or a minister intentionally misleading the House. You mentioned one example in England. Are you aware of any case of a defence minister misleading the House during a time of war, and if so, do you know what the outcome was?

**Mr. William Corbett:** Without doing further research, from the research I have done and that has been done on my behalf, the answer to that would be no.

**Mr. Garry Breitkreuz:** If I can have half a minute—

●(2000)

**The Chair:** Okay.

**Mr. Garry Breitkreuz:** —is it essential to prove or demonstrate motive in order to find contempt?

**Mr. William Corbett:** If we're getting into the realm of motive, I'm not sure, but I think you have to prove the act was deliberate and there was an intent to mislead. The authorities are quite clear on that.

**The Chair:** Next we have Geoff Regan, Paul Macklin, Pierre Brien, John Harvard, Marlene Catterall, and Yvon Godin.

Geoff.

**Mr. Geoff Regan (Halifax West, Lib.):** Thank you, Mr. Chairman, and thank you, Mr. Corbett, for coming before us this evening and edifying us, with your background on parliamentary procedure.

Obviously, one of the challenges we face is determining the parameters of our inquiry in this investigation, as you put it. So some of these questions on whether it's important that there's a distinction between whether it's a minister as opposed to just a member of Parliament are of interest to us.

In that regard, I want to refer you to Mr. Maingot's book on parliamentary privilege. On page 224, he says the following, and I'd like to know if you feel this is an accurate representation of the situation:

Privilege concerns a Member as Member, not as Minister, Party Leader, Whip, or Parliamentary Secretary

... Therefore, allegations of misjudgment, or mismanagement, or misadministration on the part of a minister in the performance of his ministerial duties do not come within the purview of parliamentary privilege.

**Mr. William Corbett:** I would have to agree with that. But, as I said before, Mr. Regan, the matter of misleading the House, or deliberately misleading the House, is a matter that is possibly a contempt but not a breach of the privileges of the House per se.

**Mr. Geoff Regan:** Mr. Corbett, through you, Mr. Chairman, have you reviewed any cases in our House of ministers inadvertently providing misinformation to the House?

**Mr. William Corbett:** I have to be very careful here, Mr. Chairman, but it's a not infrequent occurrence that ministers, by mistake, by inadvertence, possibly mislead the House. It's my experience as a witness in the chamber during question period every day that ministers will come before the House and simply clarify a statement and say, "I may have inadvertently misled the House, Mr. Speaker; it is my intention to correct the record".

So, yes, it does happen, and all the procedural authorities recognize that in the cut and thrust of debate it is possible for all sides to mislead the House inadvertently.

**Mr. Geoff Regan:** I take it then that you wouldn't disagree with me if I said this was common and happened frequently.

**Mr. William Corbett:** It happens quite often, but I would say on all sides of the House.

**Mr. Geoff Regan:** Through you, Mr. Chairman, Mr. Corbett, clearly you've said there's never been a case in the Canadian House of Commons of a member being found in contempt of the House for deliberately misleading the House, and so there's no point in my asking you whether there's ever been a case of a member being found in contempt for inadvertently misleading the House.

**Mr. William Corbett:** There was one case back some years ago where there was a case put to the Speaker as a prima facie case of a minister of the crown having made a misleading statement to the House. The Speaker granted the prima facie case. A motion was put to the House. The motion was debated for two days, put to a vote, and defeated. So the case went no further; there was no investigation. That's the only case we can find in our records.

**Mr. Geoff Regan:** In this case the Speaker, of course, did not find a prima facie case.

**Mr. William Corbett:** The Speaker stated simply that the issue is of such a serious nature it should go to committee for investigation. Those were the Speaker's words.

• (2005)

**The Chair:** Mr. Paul Macklin.

**Mr. Paul Harold Macklin (Northumberland, Lib.):** Thank you, Mr. Chair.

With respect to contempt and the breach of privilege, I would like to go back to the notes you presented this evening. Does one have to demonstrate in order to find a contempt that there has been an obstruction or an impeding within the House that affects that member's privilege?

**Mr. William Corbett:** To Mr. Macklin, through you, Mr. Chairman, I think the thread here is that over the years, misleading the House has been taken to be an obstruction; it's been understood as to have obstructed or to have impeded the House in its function.

So, yes, if you're looking for the thread, that is what you as a committee would have to be able to make a judgment on.

**Mr. Paul Harold Macklin:** Would you have any examples of this in the past that might give us some guidance in that regard?

**The Chair:** Through the chair.

**Mr. Paul Harold Macklin:** Through the chair. Thank you very much.

**Mr. William Corbett:** None that my research has turned up at this point, Mr. Macklin—through you, Mr. Chairman, to Mr. Macklin.

**Mr. Paul Harold Macklin:** Thank you.

Another area I'd like to pursue is, with respect to exculpatory statements by the party, what weight has been given, or is there a way of expressing that weight in terms of outcome in these—

**The Chair:** Would you explain “exculpatory” to me, please?

**Mr. Paul Harold Macklin:** In other words, if I make a statement to the House acknowledging that I was in error.

**The Chair:** Thank you. Okay. I understand you.

Mr. Corbett.

**Mr. William Corbett:** I have found nothing in the writing on this I could possibly share with you at this point. I can certainly try to

find something in other Commonwealth authorities. There's nothing in our procedural manual.

**Mr. Paul Harold Macklin:** Earlier you mentioned that it is a high standard of proof. Can you relate this to any of our existing standards, on a balance of probabilities, or beyond reasonable doubt, in terms of what judgment we should exercise in this regard?

**Mr. William Corbett:** The only place this is mentioned in the Commonwealth procedural authorities is in the parliamentary practice in New Zealand. I can read for you the paragraph, and I'll certainly be prepared to get it translated and share it with the committee after the meeting.

I quoted the two original tests in the latter part of my exposé to the committee at first, that there are two ingredients to be established when it is alleged that a member is in contempt of the House on the grounds that the member misled the House. The statement must in fact have been misleading, and it must be established that the member making the statement knew at the time the statement was made that it was incorrect and that in making it the member intended to mislead the House.

The paragraph goes on to state:

The standard of proof demanded is the civil standard of proof on a balance of probabilities but, given the serious nature of the allegations, requiring proof of a very high order.

That's what the only procedural authorities we've been able to find in the Commonwealth have to say about this.

**Mr. Paul Harold Macklin:** So if one alleged that one was accused in terms of the statements one had made in the House, is it fair to suggest it wouldn't meet this test?

**Mr. William Corbett:** What weight is to be given to evidence before the committee is really a judgment the committee itself will have to make.

**The Chair:** Pierre Brien.

[Translation]

**Mr. Pierre Brien (Témiscamingue, BQ):** You alluded to your past experience to explain that on several occasions you had witnessed situations where facts had been incorrectly stated in the House, and you said that it was not an infrequent occurrence. If a member or a minister had made incorrect statements on the same topic, over a long period and on several occasions, would he be in the same category as the one you described?

• (2010)

**Mr. William Corbett:** Mr. Brien, it is difficult to answer that question—

**Mr. Pierre Brien:** That is why I am asking it.

**Mr. William Corbett:** ...without ending up in a situation... As an officer of the House, I came this evening to outline the procedural parameters. Being asked to comment on the behaviour of members or ministers puts me in an awkward position.

**Mr. Pierre Brien:** I will reformulate my question. For you, is there a difference between a minister or a member who makes a statement as part of a debate and who, subsequently, corrects himself by saying that the facts were not entirely accurate, and a minister or a member who, on several occasions, omits to state the truth as part of a debate on the same topic? Is that type of situation in the same category, in your opinion? Is one less frequent than the other?

[English]

**The Chair:** Mr. Corbett, I know you know, but if you do feel uncomfortable in replying you need simply say so.

[Translation]

**Mr. William Corbett:** Thank you, Mr. Chairman. I think that in a case like that, I must go by the Speaker's decision. The Speaker felt the situation was serious enough to refer the matter to this committee.

**Mr. Pierre Brien:** In your conclusion, you seem to be suggesting how we should proceed. You say that you would humbly suggest to members of the committee that they must first examine the facts.

So if I understand the procedure correctly, you are saying that we should establish the facts first of all and determine whether the House has been obstructed in any way. Then you add the criteria: either the authority or the dignity of the House has been offended. So if I understand correctly, once we establish the facts and determine that the House has been obstructed, that can be enough to determine that there has been contempt.

**Mr. William Corbett:** Yes, that is true, Mr. Chairman and Mr. Brien, but it depends on the facts.

**Mr. Pierre Brien:** Okay, so that is the way you suggest we proceed given the other references you have. Is that correct?

**Mr. William Corbett:** Yes.

**Mr. Pierre Brien:** Okay.

I'm going to give the rest of my time to Mr. Guimond.

**The Chair:** Very well. Mr. Guimond, you have the floor.

**Mr. Michel Guimond (Beauport—Montmorency—Côte-de-Beaupré, Île-d'Orléans, BQ):** Thank you, Mr. Chairman.

Mr. Corbett, you provided us with the paragraph preceding the one that my colleague Mr. Brien just mentioned for information purposes only. It deals with two ingredients established by parliamentary practice in New Zealand. Is that the only example you found that was codified?

**Mr. William Corbett:** Yes, Mr. Chairman and Mr. Guimond. That is the only procedural authority that we have found to date in the Commonwealth where it is codified like that.

**Mr. Michel Guimond:** Okay, at any rate, you provided an excellent response in your last paragraph to Mr. Brien's question on how we should proceed.

I just want to correct an answer that you provided previously. When a minister makes a statement and subsequently says that the statement he made in Question Period or in his speech the day before was inaccurate... So we are to understand that the minister, when he made his statement, was not personally aware of the fact that his statement was incorrect.

Here's my question: If we can prove that a member knew, when he made a statement, that it was inaccurate, that case could lead to contempt. Am I reading the situation accurately? It is a matter of determining if the member, when he made his statement, knew that it was incorrect. If he did, he cannot say it was a mistake in his defence and say that it was a statement he made inadvertently. So if we can show that he knew that the statement was incorrect when he made it, that constitutes contempt. Is that correct?

• (2015)

**Mr. William Corbett:** The two items that I quoted from the New Zealand procedural guide deal with two things: did the member know that the statement was incorrect and did he intend to mislead the House? It is a double test according to the people in New Zealand.

**Mr. Michel Guimond:** So if I understand your answer correctly, a member may know that he is lying or that he is making an incorrect statement, that it was incorrect, but not intend to mislead the House. Allow me to express my doubt. He knew that it was inaccurate. All he would have had to do is say that he had lied, but that he did not intend to lie. I'm having trouble following you on that, Mr. Clerk.

**Mr. William Corbett:** Mr. Chairman, trying to defend something based on parliamentary procedure in New Zealand puts me in a difficult situation.

**Mr. Michel Guimond:** So that is why you are suggesting another avenue.

**Mr. William Corbett:** I quoted that as the only example where such a case is codified and to show what tests are applied in New Zealand.

**Mr. Michel Guimond:** Perfect, excellent answer.

**The Chair:** Thank you, Mr. Guimond.

John Harvard, Marlene Catterall, Yvon Godin, Jacques Saada and Jay Hill.

[English]

**Mr. John Harvard (Charleswood St. James—Assiniboia, Lib.):** Thank you, Mr. Chairman. The Profumo scandal had a sexual element to it. There's none here. This is boring.

**Some hon. members:** Oh, oh!

**Mr. John Harvard:** Anyway, it has been noted, Mr. Corbett, that Speaker Milliken did not find a prima facie breach of privilege. Now, Mr. Milliken is our chief presiding officer. Should we not give his decision considerable weight?

**Mr. William Corbett:** I think that is for the committee to decide, Mr. Chairman, through you to Mr. Harvard. I certainly know that the decision was carefully crafted and the words were placed there with care.

**Mr. John Harvard:** For my part, Mr. Chairman, Mr. Milliken is our chief presiding officer. I have a lot of respect for him, and I am sure he reached that conclusion after much deliberation.



Through you, Mr. Chairman, again to Mr. Corbett, you mentioned the two ingredients that must be found before there can be contempt cited. One is that there has to be a misleading statement. Secondly, it really has to be intended that way, as a misleading statement.

Do I understand it properly that you must take those two ingredients together, that they must both be found together to find against, in this case, the Minister of National Defence?

**Mr. William Corbett:** That is what the procedural authorities, Mr. Chairman, would lead us to conclude.

**Mr. John Harvard:** So if, in our opinion, only one of those ingredients is there, we must, according to parliamentary practice, find in Mr. Eggleton's favour. Is that correct?

**Mr. William Corbett:** This is a judgment best left to the committee, I think, but I offered that as procedural guidance to the committee.

**Mr. John Harvard:** Again through you, Mr. Chairman, one of the difficulties we face is this question of intent, because how do you read a man's mind? In your research, can you provide to us any practical tool that is a means of measuring intent? How do you measure intent?

• (2020)

**Mr. William Corbett:** Mr. Chairman, I have not been able to find in my procedural reading any test that I could share with the committee.

**The Chair:** Rob Walsh.

**Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons):** I share with my colleague—

**Mr. John Harvard:** Before Mr. Walsh answers, does that mean...? Let me just ask, is this then strictly subjective?

**The Chair:** He wants to answer you.

**Mr. John Harvard:** Okay. I just wanted to add that.

**The Chair:** Let him answer. He is our guest.

Go ahead.

**Mr. Rob Walsh:** Mr. Chairman, the question of intent, in a judicial context, is not a purely subjective matter. Obviously, the court cannot read the mind of the person whose intent is under inquiry, but there are rules, such as people are presumed to intend the natural consequences of their actions. While that is a simple proposition, you have to be careful how you apply it.

There is a concept that is not at play here, based on what the clerk has provided to you. In the legal context, you have this notion that someone knew or ought to have known that what he did would be a problem. You don't have the option here of saying if he didn't know his statement was inaccurate, he ought to have known. You don't seem to have the option of going that third route. You either satisfy yourselves that he knew it was inaccurate when he stated it, or he didn't know, in terms of contempt. However, if the committee were to find that it cannot say he knew it was inaccurate but would like to say he ought to have known, you may have that view, but it would not support a recommendation for contempt.

**Mr. John Harvard:** One more thing, Mr. Chairman, and that is the question around the benefit of doubt. I mean, we have a man who is basically accused of something that is unparliamentary. As we go

through this procedure and when we make a finding, is it your advice to us that if there is any doubt whatsoever, we must then find in favour of the Minister of Defence, that we have no choice but to find in his favour?

**The Chair:** You're into Marlene Catterall's time now. That's okay, as long as you know.

**Mr. William Corbett:** Mr. Chairman, through you, I would simply repeat what I said earlier: the only procedural authority that talks about this question at all, which is the New Zealand authority, talks about a standard of proof that is the civil standard of proof—on the balance of probabilities. But given the serious nature of such allegations—that is, allegations that members are deliberately misleading the House—this balance of probabilities requires a proof of a very high order. That is the only procedural guidance I have been able to come up with.

**The Chair:** Marlene Catterall.

[*Translation*]

**Ms. Marlene Catterall (Ottawa West—Nepean, Lib.)** Mr. Chairman, I would like to start by thanking the clerk for his very clear explanation on page one of his opening statement regarding the specific rights of members and of the House.

[*English*]

It's the clearest I have seen, and the simplest, frankly.

I want to focus on one thing. What is the significance of the order of reference from the House? Let me be clear about what I mean. The committee has been encouraged during earlier testimony today to cast its net very widely in terms of what it looks into here.

We are here considering this matter under an order of reference from the House that, it seems to me, is fairly specific. That order of reference was moved by a member of the House and adopted unanimously by the House, including by government members. I wonder if you could clarify for us what our role is, given a specific order of reference from the House. And in this particular case, what is this committee asked to consider and report back to the House on?

**Mr. William Corbett:** Mr. Chairman, in essence, this is the classic struggle of all parliamentary committees: between parliamentary procedural precedents that state that committees are bound by their order of reference and the countervailing procedural tenet, which is that “committees are masters of their own destiny”. And yes, a parliamentary committee that goes beyond its order of reference from the House, committees being creatures of the House, could indeed be the subject themselves of an accusation of being in contempt of the House, were they to vastly exceed their order of reference. Nonetheless, in our procedural practice, and over the years I've worked here, that is a dynamic that does indeed seem to get worked out in committee. Committees are entitled to interpret an order of reference fairly liberally—and I use that with a small “i”—but they're also bound by that order of reference from the House and by the words contained therein.

So it is in essence very much something the committee will have to grapple with.

• (2025)

**Ms. Marlene Catterall:** I wonder if the clerk should be sitting in my seat.

Have you any reference for us, any history, any precedent, on what kind of evidence the committee or Parliament might accept that a member knew at the time the statement was misleading? I mean, there's no question the statement was misleading.

**The Chair:** This will have to be very brief. I'm sure we could refer to it again with one of Marlene's colleagues.

**Mr. William Corbett:** Mr. Chairman, I'm saying in my reading that there is so little written on this whole question that I could sum it up on the back of virtually one piece of paper, and I certainly will try to do so for the committee. But I have found nothing that gives that kind of guidance to a committee.

**The Chair:** We would appreciate that, and I know Marlene Catterall would.

It's Yvon Godin, then Jacques Saada, Joe Jordan, and Jay Hill.

[Translation]

**Mr. Yvon Godin (Acadie—Bathurst, NDP):** Thank you, Mr. Chairman. I too would like to welcome our clerk and Mr. Walsh and thank them for coming this evening to consider this important matter and to try to shed some light on the situation for us and indicate how we are to proceed in the future.

This is not a very easy matter to deal with, when we hear the clerk say that there have not been many cases like this in the entire world, where a minister or a member has been in contempt of the House.

In this case, since we may not find anything on paper to establish the proof, Mr. Chairman, it is more of a question of determining what could have led him to mislead the House intentionally. I think that is where we will have to focus our work and try to make a decision.

I would like to make a few comments before asking a question. Mr. Gilles Duceppe, the Member for Laurier—Sainte-Marie of the Bloc Québécois asked the following question:

Mr. Speaker, the honourable member who is appointed Minister of National Defence should normally be sufficiently qualified to be appointed.

Since when did he know that Afghans had been captured by Canadians and handed over to Americans? Since when did he know that? And why did he not inform the Prime Minister who, as recently as Sunday, stated that there were no such prisoners? Why did he not bother to tell him during yesterday's caucus meeting, before oral Question Period?

What is going on with this minister? Did he know or did he not?

The question, Mr. Chairman, is quite direct. He did not beat around the bush with his question; it was direct. Here is how the minister responded:

Mr. Speaker, I first became aware of the possibility on Friday. It required further examination to determine whether in fact Canadians were involved.

That means that he examined the matter. Did he have a memory lapse at some point? This is where things became a little less clear. He continued: 1

informed the Prime Minister and my colleagues in Cabinet this morning to that effect.

In the middle of all of this, there was a meeting, and people on the Liberal side even questioned the Minister of Defence, who was aware of the importance of the issue. So I think that as a committee, we are going to have to state that there are too many sides to this matter, that he knew and that he was trying to hide it. I think we will have to ask this serious question.

Secondly, you have stated on several occasions that the committees are masters of their own destiny, that they can determine many things. So can the committee ask at the Prime Minister's Office to delegate people, since it is involved in this affair, to appear before this committee, or ask the Prime Minister to do so, in accordance with the Standing Orders?

• (2030)

[English]

**The Chair:** Certainly.

Mr. Corbett, I would have to say the member is perfectly entitled to say and ask all that. My sense is it's getting pretty far from your mandate. Again, I would repeat to you that I know you know these things, but you should feel comfortable in refusing to reply, if you wish.

**Mr. William Corbett:** Thank you, Mr. Chair.

[Translation]

Thank you, Mr. Chairman.

Mr. Godin's first question is one that I cannot answer here. As an officer of the House, it goes beyond the scope of matters on which I am able to comment.

As to the nature of witnesses that a parliamentary committee can invite to appear before it, in accordance with Standing Order 108(2), the committee is empowered to send for persons or papers. It is up to the committee to determine the nature of the witnesses that it will call to appear or invite.

**Mr. Yvon Godin:** So, Mr. Chairman, that means that it is in order for the committee to call people from the Prime Minister's Office to appear, if it wants to do so.

**Mr. William Corbett:** If the committee wants to do so, it is allowed under the Standing Orders.

[English]

**The Chair:** The witness said we can call any witnesses we want. Go ahead.

[Translation]

**Mr. Yvon Godin:** Okay.

Let's go back to my first question, which he did not need to answer. The committee can decide, in light of the evidence heard, if there has been contempt of the House or not. I do not want you to respond to that, I just want to know if the committee can reach that conclusion.

**Mr. William Corbett:** Yes, Mr. Chairman, the committee may reach that conclusion.

**Mr. Yvon Godin:** So, Mr. Chairman, the committee's work involves gathering all of the information on what happened if it truly wants to get to the bottom of this matter.

**The Chair:** Thank you very much, Yvon.

Jacques Saada, then Joe Jordan.

**Mr. Jacques Saada (Brossard—La Prairie, Lib.):** Thank you, Mr. Chairman.

Thank you for your comments. I must admit that they are extremely clear and enlightening. I have a question for you. The tests that you submitted, which were established in New Zealand, refer both to misleading statements and intent.

However, the document that was distributed and that is entitled *An Introduction to Parliamentary Privilege* alludes to the case of Senator Carney. I have just read the summary, and so I do not know the details of the matter, but it alludes to something that reads as follows, and I quote:

[English]

It did not infringe....

**The Chair:** Colleagues, this is the article by Robertson and Moore that we circulated at the beginning. I just want to make that clear.

[Translation]

**Mr. Jacques Saada:** I apologize. I should have clarified that. It says:

[English]

It concluded that although the newspaper article was misleading, incomplete and inaccurate, it did not infringe Senator Carney's activities or her ability to function as a Parliamentarian.

[Translation]

I am not quoting that to talk about Ms. Carney's case, but because it evokes a more profound matter than this one. In determining if there has been contempt or breach of privilege, there is no allusion to the consequences of the action as an element used to weigh the situation.

Can, yes or no, the consequence of an action, in this context, contribute to determining if there has been contempt or not?

• (2035)

**Mr. William Corbett:** Mr. Chairman, that is probably one of the matters that this committee will have to examine, but based on the reading that I have done to date, it is not something that I can answer.

**Mr. Jacques Saada:** From the perspective of our prerogatives as members, our parliamentary privilege, if something occurs that prevents us from carrying out our duty, something somewhere needs to be corrected. I do not want to defend anything, I just want to ask an objective question.

The statements that were the source of this order of reference to the committee were made after the events occurred. So, the events had already occurred. That is an established fact and it is not debatable. The chronology is there. So nothing changed in terms of the influence that the member could have had over those events. I am asking the question to determine the role of the consequences, in this

very specific context where a matter dealing with a question of privilege is referred to a committee. A question of privilege supposes a reduction in a member's powers through a deliberate act.

Am I correct in thinking that the consequences, in the circumstances, will have to play an important role in our interpretation of what happened and in the decision we have to make?

**Mr. William Corbett:** I fully understand the question, but I think that is one of the aspects that the committee will have to examine. For my part, I cannot present one side or the other. We are way out of my field, which is parliamentary procedure. We are getting into a matter of substance.

[English]

**The Chair:** Jacques, may I interrupt?

Members are quite at liberty to rehearse arguments—that's fine—but at the end of the argument, you have to be very careful about putting Mr. Corbett in a difficult position. He will refuse, but I think it's embarrassing.

[Translation]

**Mr. Jacques Saada:** Mr. Chairman, I can assure you that that was never my intention. I am honestly trying to understand the impact that the consequences of this act may have in the assessment we have to do as a committee. That is my only objective.

[English]

**The Chair:** I understand that. I'm not talking to you specifically, Jacques, but to all members. Please continue.

[Translation]

**Mr. Jacques Saada:** I have one last question I would like to ask you. Since there are so few precedents—in fact, the only detailed precedent is that of Minister Profumo at the time—our decision around this table may well in fact constitute a parliamentary precedent.

To go back to what you said earlier, does that not mean that we should have a very high standard of proof, because we are creating a precedent for what follows and a proof of intent, are we not?

**Mr. William Corbett:** Yes, Mr. Chairman.

Since there are very, very few situations like that, I would say, based on my reading of all the authorities, that this is a matter that requires the strictest of proof, proof of a very high order.

**Mr. Jacques Saada:** Thank you, Mr. Corbett.

[English]

**The Chair:** Thank you very much, Jacques.

Jay Hill and then Joe Jordan, after which we will move on to the second round with Garry, then John Harvard, and then Pierre. That's the sequence we'll go through.

Jay Hill.

**Mr. Jay Hill (Prince George—Peace River, PC/DR):** Thank you, Mr. Chairman, and through you, thanks to our witnesses, Mr. Corbett and Mr. Walsh, for appearing at this late hour.

Mr. Corbett, I'd like to quote one line from your opening statement:

There has never been a case in the Canadian House of Commons of a Member being found in contempt of the House for deliberately misleading the House.

In other words, in 135 years no member has ever been found guilty of deliberately misleading the House. Are we wasting our time here, and the House's time?

• (2040)

**Mr. William Corbett:** Mr. Chairman, through you, even if I had a firm belief on that subject, I don't think I'd share it with the committee.

**Some hon. members:** Oh, oh!

**Mr. William Corbett:** But I do have to say that the Canadian record on these matters, both questions of privilege and contempts, has been one of considerable generosity where there are other forms of contempt, including statements by members about other members outside the House and statements by former members about members outside the House. The history of Canadian examinations of these sorts of accusations has been that the Canadian House does not assert its authority with a great deal of vigour, I would say.

**Mr. Jay Hill:** And never has. I mean, 135 years; it's not ever done it, I'd say.

I ask that question, Mr. Chair, because that's the very question I hear when I'm back in my riding. In other words, when we're outside the Ottawa bubble and back in the real world, talking to real people out there, they say "Well, here we go again, just wasting time pursuing something when nothing will come of it anyway", because they've seen this time and time again.

Perhaps you can give me just a short answer, Mr. Corbett, if you know the answer. How many times in that 135 years has a charge similar to this come forward that resulted in a committee conducting an investigation? Do you have any idea?

**Mr. William Corbett:** As I say, the only one in recent history that I've been able to find, Mr. Hill, was a case a number of years ago with an accusation by, I think, Mr. Allan Lawrence, a Conservative member, against the Solicitor General for having misled the House. A motion was put to the House to send it to committee, it was debated in the House, and the motion was defeated.

**Mr. Jay Hill:** In other words, Mr. Chair, it is unusual when an individual, that is a minister or an ordinary member of the House, not a cabinet member, admits to making two conflicting or contradictory statements in the House that actually brings the Speaker to rule and send it to committee. We are dealing with something I would call extraordinary. Your memory, history, and research shows it occurred only one other time.

I want to raise the issue Mr. Harb brought up. I was quite astounded actually by hearing this. He said since Speaker Milliken, in his referral to this committee, did not find a prima facie breach of privilege or prima facie contempt of the House, therefore, we should give his finding considerable weight. I think those were the words. I would put it on the table, as it were, that the Speaker did not have the evidence. It's the purpose of the committee. If we're going to presuppose the Speaker had all the evidence, then there's no point in conducting the inquiry.

In that light, Mr. Chair, I want to refer as well to a statement the witness, Mr. Corbett, made earlier. Committees that go beyond their order of reference from the House could themselves be found in contempt.

Mr. Chair, how do we prove an individual intended to mislead the House? From the evidence, I would suggest we have to go beyond the narrow confines of a referral from the House if we're going to be able to build. I raised this earlier with the subcommittee before we started this proceeding. We have to build the building blocks of a case until the evidence becomes so overwhelming that a reasonable person would be led to believe the individual had to know.

As the witness said, how do you get inside someone's head? The courts of law struggle with this every day. Every day they struggle with it.

To prove intent, which is what this is all about, we have to be able to prove it was reasonable to believe the minister intended to deceive or mislead the House. It was a deliberate intention. The only way, in my estimation, that we can do it is when the weight of compiled evidence is so overwhelming as to lead any reasonable individual to believe the person actually intended to mislead.

Would the witness, Mr. Corbett, agree that we have to be able to compile that degree of evidence? To do so, we have to be given latitude in order to build the amount of evidence. Otherwise, we're all wasting our time.

• (2045)

**The Chair:** I'm reading his body language.

**Mr. William Corbett:** In essence, Mr. Chair, I would pitch it back to the committee. It is a judgment the committee will have to make. I can't make a judgment on the committee's behalf as to what constitutes sufficient evidence or proof before the committee. I cannot even, Mr. Hill, give you the benefit of research and past cases because there have been none in Canadian parliamentary practice.

I pitch it back as a question that must be the subject of a judgment by the committee.

**The Chair:** Without taking any of your time, the reason I have allowed so much latitude away from what you might call the procedure in our previous meeting, and to some extent in this meeting, is exactly that. I think it goes beyond the procedural in developing the case you have described. It's a comment from the chair.

Please continue.

**Mr. Jay Hill:** I have a final comment, at least in this realm.

Mr. Chair, I think it's at least partially for the people who might find this remotely interesting and be viewing this. As this inquiry or investigation unfolds over the coming days and weeks, the committee must grant itself considerable latitude.

Mr. Chair, you're called upon, whether you like it or not, to be in the chair, in the same way as a judge in a courtroom, to grant both sides enough latitude to be able to see whether there is enough evidence to lead one to believe the individual intended to mislead. It's what this is coming down to. We've evidenced it this morning.

**The Chair:** Because it is not a court of law, Jay, I have been trying to do that.

**Mr. Jay Hill:** I appreciate that.

**The Chair:** I will now go to Joe Jordan, which is the last of the ten-minute rounds. Then I have five or six speakers for the five-minute rounds.

Joe Jordan.

**Mr. Joe Jordan (Leeds—Grenville, Lib.):** Thank you, Mr. Chairman.

Mr. Corbett, I want to thank you for coming, because I think you've cleared up some of these issues. If I'm reading this right, the fact is that all breaches of privilege are contempts against the dignity of Parliament, but all contempts against the dignity of Parliament aren't necessarily breaches of privilege. Is that right?

**Mr. William Corbett:** That is correct, Mr. Chairman.

**Mr. Joe Jordan:** So some of the quotes we used this morning concerning the scope and scale of breaches of privilege may not apply because what we're talking about is contempt. In order for it to be contempt, we have to show that it's been deliberate. Am I right so far?

**Mr. William Corbett:** That is certainly what the procedural authorities would indicate, Mr. Chairman.

**Mr. Joe Jordan:** Okay. In your view of analyzing... I realize there isn't a lot of history. In the Profumo case, the offender admitted it, right? Correct?

• (2050)

**Mr. William Corbett:** Indeed, Mr. Chairman, that is the case. He came before the House and admitted that he had indeed misled the House.

**Mr. Joe Jordan:** So the dilemma we're facing here is whether it was deliberate or not. We still have to hear from the minister on that, although we do have some statements he made in the House. I guess where we are is figuring out where the bar is. What I'm hearing is that it's an extremely high bar.

In your view, if a minister or a member of Parliament forgot something, is that a contempt against the dignity of Parliament?

**Mr. William Corbett:** I wouldn't think so, Mr. Chairman.

**Mr. Joe Jordan:** If a minister didn't inform the prime minister about something, is that a contempt against the dignity of Parliament?

**Mr. William Corbett:** I don't think that's anything that I ought to comment on, Mr. Jordan. The relationship between the ministries is not my expertise.

**Mr. Joe Jordan:** If a member of Parliament were repeatedly making allegations outside the House that a minister or prime minister had lied, would that be a contempt against the dignity of Parliament?

**Mr. William Corbett:** You're asking me to comment on a series of hypothetical situations, and without the specifics, I—

**The Chair:** Again, I think rhetorical questions are perfectly in order, but I urge all members, as a courtesy to our guest, to make it clear. If they're rhetorical, they're rhetorical. Don't put them in a

position of having to continually say no, because it sounds as though they're on the defensive when they're not. They're here for specific procedural reasons.

Joe Jordan.

**Mr. Joe Jordan:** My purpose, Mr. Chair, is just to try to further define this contempt against the dignity of Parliament. I realize that we don't have a lot of historical precedents to draw on.

Mr. Corbett, if a member of the House, when facing allegations about offending the dignity of the House, clearly states to the House or to a committee that it was not his intention to do so and if there is no evidence to suggest otherwise, what's the parliamentary practice in that situation?

**Mr. William Corbett:** The parliamentary practice is that if members have made a statement to the effect that it was not their intention to offend or to mislead, in most cases the custom of Parliament is that members are all honourable members and their word is taken.

**Mr. Joe Jordan:** With this particular committee, as I understand it, the steering committee got together and they kind of framed... The problem we're facing is that we don't know where we're going, and we're being asked to figure out how to get there. So it's a bit of a dilemma. But the steering committee, through good faith, has produced an initial map of where we're going.

I now am picking up from Mr. Godin that he's maybe not happy with that arrangement. That's fine. Your answer to him was that this committee can decide to call whoever it wants. Is that right?

**Mr. William Corbett:** I'm simply falling back on the Standing Orders of the House, which give the committee the power to call for persons, papers, and records. How the committee decides to interpret the power it's been given is the committee's matter.

**Mr. Joe Jordan:** The flip side would also be true. The committee can decide not to call people.

**Mr. William Corbett:** That is correct.

**Mr. Joe Jordan:** Thank you, sir.

**The Chair:** We will now go to a five-minute round with Garry Breitkreuz—we're going in the order of the parties again—John Harvard, Pierre Brien, Geoff Regan, Yvon Godin, and then Jay Hill.

Garry.

**Mr. Garry Breitkreuz:** Thank you, Mr. Chairman.

According to your expertise and the presentation you have just given us, did we go beyond the mandate of this committee in our proceedings this morning, or do you feel we are on the right track?

• (2055)

**Mr. William Corbett:** I might well be in contempt of the committee if I were to comment on the proceedings of the committee, Mr. Breitkreuz, but I was otherwise occupied, so I'm afraid I didn't see the proceedings of the committee this morning.

**Mr. Garry Breitkreuz:** Okay. Fair enough.

I guess that is what I really needed to know, because you do have the expertise. According to what you have presented to us, it would be very valuable to know how you feel about that, and whether we are on the right track. I think that is what we are trying to determine here at this meeting. It would have helped to know that.

I have a couple of other brief questions. Is misleading the House equal to obstructing the House?

**Mr. William Corbett:** These are linked concepts, but yes, misleading the House could, in essence, be obstructing the House.

**Mr. Garry Breitkreuz:** Okay.

Finally, we've been wrestling with this whole question of intent. Either the minister knew his statement was inaccurate or he didn't. Is that enough to prove intent?

**Mr. William Corbett:** I think the committee would have to arrive at some sort of consensus answer to that question.

**Mr. Garry Breitkreuz:** That seems to be cutting right to the chase. That seems to be what we have to do. I feel that's what we need to do in this.

There's one more thing. You stated there were many instances of ministers inadvertently misleading the House, and there were other previous cases of *prima facie* privilege for the minister inadvertently misleading the House. Could you supply us with some of those at some time?

**Mr. William Corbett:** I simply sit at the table in the House during question period, like all other members, and listen to the odd minister after question period get up on a point of order and simply say, "Mr. Speaker, in response to a question from an honourable member, I may indeed have inadvertently misled the House. Here are the facts of the case, and I want to correct the record."

We don't track those in any procedural sense, Mr. Breitkreuz. We don't keep a list of them. I'm simply a witness, as you are, to those occurrences.

I can certainly furnish your research staff with the information on the one case we have that I put on the record before, where there was a question of privilege that alleged a misleading statement had been made by a minister.

**The Chair:** Garry, you have less than a minute left.

**Mr. Garry Breitkreuz:** Okay. I just want to make one concluding comment.

I have listened to some of the comments here of my colleague, Jay Hill, that the Canadian House does not exert its authority with very much vigour. I think that was the phrase used. I know there has been a lot of concern expressed about creating a precedent with this case, and I feel it's important that this committee be more concerned about doing the right thing than creating a precedent. I would like to leave that on the record.

Thank you, Mr. Chairman.

**The Chair:** Thank you.

We'll go to John Harvard and then Pierre Brien.

**Mr. John Harvard:** Thanks, Mr. Chairman.

Mr. Chairman, one of the reasons why I alluded to Speaker Milliken's statement where he said he found no *prima facie* breach of privilege is that the statement by the Speaker contrasts sharply with the accusation made by the chief accuser in this piece, Mr. Pallister. Inherent in his motion is that he, Mr. Pallister, did find *prima facie* breach of privilege. So you have to consider the accuser making his accusation, and the Speaker—based on just "at first glance"—not being able to find *prima facie* evidence of a breach of privilege. I simply point that out, because they sharply contrast.

I want to touch on one other thing, because I think the integrity of this committee is at stake. I think we do want to do good work. The question I want to ask of Mr. Corbett, through you, Mr. Chairman, is whether we, the committee, can set any rules we want and ignore any case history that might have gone on before this particular case. Mr. Corbett has already mentioned that the case history is pretty thin, that we don't have a lot of precedents to go by. At the same time, I recognize that Mr. Corbett, in his presentation—which was very good—did cite Maingot. He cited Erskine May. He cited the Clerk of the New Zealand House. He did lay down, in my opinion, markers, parameters, precedents, guidelines for us to consider in our work.

I think for the sake of this committee, Mr. Chairman, we would be irresponsible if we acted as a rogue committee, set any rules we felt were appropriate, and perhaps went on either a "witch hunt" or some kind of fishing expedition. It seems to me that while the case history is thin, it is instructive to us. We would be fools to ignore it.

So I guess my question to you, Mr. Corbett, is, can we just do anything we want? Or should we be very cognizant of what has gone on before?

• (2100)

**Mr. William Corbett:** Through you, Mr. Chairman, if I understand correctly, the question from Mr. Harvard is what sorts of guidelines, what sorts of criteria or practice elsewhere would give the committee guidance in how to conduct this kind of inquiry, given the fact that there has been virtually no equivalent undertaken by the Canadian House.

All I can do is share—and I will, through the research staff of the committee—that which we have been able to find in terms of our reading outside of the Canadian parliamentary context. There are, indeed, some instances where parliaments—specifically the U.K. House of Commons—have tried to lay down a series of guidelines as to how this kind of inquiry ought to be conducted, where they posit that contempt and a charge of contempt is a very serious matter and that procedures followed in investigating such matters should probably match contemporary standards of fairness. They lay out to some extent what those might be, in their context. I am certainly happy to offer those to the committee if that is of help to it.

**The Chair:** We'd be grateful to have them.

John, you have time for a very short comment, if you wish.

**Mr. John Harvard:** No, I think Mr. Corbett has explained it very well. I just think it behooves all of us to recognize what has gone on before and take instruction from those precedents.

**The Chair:** It's Pierre Brien, then Geoff Regan, Yvon Godin, Marlene Catterall, and Jay Hill.

[*Translation*]

**Mr. Pierre Brien:** Mr. Corbett, I would like you to tell me how it is possible for someone to make a statement knowing that it is incorrect without intending to mislead.

**Mr. William Corbett:** It can be made inadvertently, when someone makes a mistake. If I had not prepared properly for tonight's meeting, I might have made a mistake. As a result—

**Mr. Pierre Brien:** That is not what I am asking. How can you tell me something that you know is incorrect without intending to mislead me?

**Mr. William Corbett:** You were talking about—

**Mr. Pierre Brien:** I am speaking generally, philosophically. If an answer comes to you in the middle of the night, I will give you my telephone number and you can call me whenever you want. I would like to know if it is possible to make a statement knowing that it is incorrect without intending to mislead.

• (2105)

**Mr. Rob Walsh:** Mr. Chairman, to answer Mr. Brien's question, I will say that it is a matter of using logic. He is right when he says that it is impossible to say something knowing that it is incorrect or inaccurate without intending to say so. That is clear. But for you, the question is to determine if the person who said that really knew that statement was incorrect. It is a matter of logic, that is all.

**Mr. Pierre Brien:** Thank you for reassuring me in my logic, because I was having a bit of trouble working it out.

I want to know if I am interpreting you correctly. Before leaving this evening, I want to make sure that I have fully understood what you were saying.

Given that it is virtually impossible to prove intent, it is very difficult to prove breach of privilege. Consequently, you are suggesting another alternative, which is establishing the facts, determining if the House has been misled in any way or if the situation has impeded or obstructed the work of the House, in which case there could be contempt, but on the basis of something other than breach of privilege.

Are you trying to send us in another direction in your recommendation by saying that it is possible for there to be contempt and that we must proceed in such a way, but that breach of privilege is virtually impossible to prove?

**Mr. William Corbett:** Mr. Chairman, I am not sure if I fully understand Mr. Brien's question. All procedural authorities state that deliberately misleading the House constitutes contempt, but they never mentioned breach of privilege. Privileges are specified. But all authorities, whether they be British, Australian or Canadian, state that when someone misleads the House, there is always the possibility of contempt.

**Mr. Pierre Brien:** You said two things that seem irreconcilable. On one hand, you said to Mr. Harvard that yes, we have to prove the deliberate nature of the mistake or of the false statement for there to be contempt. On the other hand, in response to Mr. Guimond, you said that you were not recommending New Zealand procedure, but rather that we establish the facts and determine whether the House has been obstructed or interfered with. You are not imposing the double standard of deliberate intent. There is a difference between

the two, to my mind. How do you reconcile the two points of view that you have offered? You said one thing and the exact opposite.

**Mr. William Corbett:** All I was trying to do, Mr. Chairman, was to present certain authorities from outside Canada that had examined such circumstances. I provided them to the committee as tools or options. I was neither for nor against one or the other.

**Mr. Pierre Brien:** But your suggestion does not refer to that model. Your recommendation to us is not based on proving intent. You are not suggesting we take that approach.

**Mr. William Corbett:** I have always said—and all of the authorities are clear—that deliberately misleading the House was contempt. The committee must examine that aspect. Is there sufficient proof to say that there has been contempt?

[*English*]

**The Chair:** Geoff Regan is next and then Yvon Godin.

**Mr. Geoff Regan:** Thank you, Mr. Chairman.

We have spoken a lot tonight about the privilege of members to perform their duties and how that can be breached and what a contempt is.

What we haven't talked about is what responsibilities we on this committee have to be mindful of the rights of the individuals, whether those individuals come before us as persons accused of a breach of the rules of the House, an act of contempt, or as witnesses before our committee, or they have been mentioned by members in these proceedings. I think it's important that we understand what our responsibilities are in relation to those, because I think people have rights that we must consider when we are making statements and bringing them before us.

I want to particularly ask about the rights of one member. We've talked about the rights of all of us and the collective rights of the House, but let's examine for a moment the rights of the person who's accused of a breach. It seems to me that a person who is accused of a serious contempt has a number of rights, including the right to due process, the right to the application of natural law, the right to the presumption of innocence, and the right to the rule of relevance. It seems to me that those are all important rights that we must consider. I wonder if the Clerk would agree.

• (2110)

**The Chair:** Mr. Corbett.

**Mr. William Corbett:** Mr. Chairman, these are all good questions. All of the procedural authorities are clear that when any parliamentary body, be it the House itself or a parliamentary committee, gets involved in the investigation of a matter such as this, these are all matters that should be of the highest concern because these are allegations of the highest order and can be very damaging. So it must be taken seriously and principles of natural justice to some extent respected. That's what the procedural authorities from other parts of the world, which I will share with the committee, would indicate.

**Mr. Geoff Regan:** Mr. Chairman, I want to respond to the assertion from Mr. Hill and Mr. Breitzkreuz that the view on the part of the public is that we waste time and don't handle these things the way they feel we should. It strikes me that every member on this committee knows full well that the real determination is not being made by this committee. The most important determination is in the court of public opinion. Every member here knows that, and that's what they're after.

In fact, Mr. Chairman, it's not a waste of time to have this proceeding because we are in fact calling the minister to account. The minister has to come before this committee and account for his two statements. That's what we're all about. That's bringing accountability to the system. And to suggest that we're not performing a useful or important role by doing that is inaccurate and unfair, Mr. Chairman.

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

Next is Yvon Godin, followed by Marlene Catterall, Jay Hill, and Joe Jordan. Yvon.

[*Translation*]

**Mr. Yvon Godin:** Thank you, Mr. Chairman.

My colleague Joe Jordan said that Mr. Godin was not happy because he was not successful in calling people from the Prime Minister's Office to appear before the committee. I think that is false. That is not what happened. When the steering committee met, members on the government side said that they did not want people from the Prime Minister's Office to come here, because the Speaker of the House had not given that mandate to the committee and we had to stick to what the Minister of Defence had—

I asked the clerk if the committee had the power to do so and to not listen to what the Speaker of the House had said, and Mr. Corbett clearly replied that the committee was empowered to do so. I wanted to clarify that. It is not a matter of being unhappy. The Speaker is not the one who prevented us from doing that, but the governing party.

Mr. Chairman, I would like to ask Mr. Corbett a question. In all of the cases, in any country, do they always have the same system as we have in Canada, where the government majority always wins when there is a vote in committee? That is why Jay Hill and the other Canadian Alliance colleague said that we were wasting our time here, because at the end of the day, the committee will vote. Do we vote this way or that way? In the other cases, that is what happens. The government majority makes the decisions in committee. Such cases could have arisen in other countries. That is perhaps why it has never been possible to prove that in the 135 years that Parliament has existed.

• (2115)

[*English*]

**The Chair:** I think the question that could be answered is the question of whether parliamentary committees of this type, in these other jurisdictions, have a government majority.

**Mr. William Corbett:** Mr. Chairman, I have to confess that my research in these matters didn't indicate clearly in each case that a question like this might have been under consideration by a committee. There are situations in other Commonwealth countries where there may be a minority government, there may be

differences—I wouldn't know at any given time. But generally speaking, these matters are indeed referred to a committee and the committee makes a determination as to the facts and makes a recommendation to the House.

**The Chair:** His question really was.... Is it difficult then, Mr. Corbett, to obtain that information? For committees of this type, for example, the equivalents of our Standing Committee on Procedure and House Affairs, would you be able to say normally, for Yvon, that they would have a government majority or not?

**Mr. William Corbett:** I would say certainly the equivalent committee in the U.K. right now indeed would have. That's the Standards and Privileges Committee, and it is indeed constructed in much the same way as our parliamentary committee is constructed.

As to Australia and New Zealand, I really would be out on a limb speculating at this point.

**The Chair:** Yvon.

[*Translation*]

**Mr. Yvon Godin:** Mr. Chairman, would it be possible to ask the clerk or his office to do some research in order to determine what is done in other countries with respect to the question that I have asked? I believe it is important. It appears to me that a line is being drawn. Who is on what side? It is important to know how this committee intends to proceed. We are trying to find an answer and it looks like some people are attempting to defend their actions rather than to move in the same direction to try and determine whether or not this was done deliberately. That's why it is important to know how things are done elsewhere, and how we can determine whether or not a minister has deliberately misled the House or another member.

[*English*]

**The Chair:** Mr. Corbett, the committee would be interested.

**Mr. William Corbett:** Mr. Chairman, I can certainly commit to doing the research necessary to give you the construction, shall we say, and the membership of equivalent committees in a random sample of Commonwealth countries. Whether I can go back in time to find specific cases where these questions have been considered by committee and then try to reconstruct the committee at that particular time, that might be almost a life's work.

**The Chair:** Mr. Corbett, a reasonable reply will be satisfactory. I see the member is nodding.

**Mr. William Corbett:** We will certainly be able to undertake that and get it back to the researchers.

**The Chair:** Marlene Catterall and Jay Hill.

**Ms. Marlene Catterall:** Continuing virtually on the same point, Mr. Chair, much has been made by Mr. Godin, as well as by our colleague, Jay Hill, of the fact that a committee of this Parliament has never found a minister guilty of contempt for lying, for deliberately misleading the House.

I'd be interested in knowing two things. First, how often has the question been referred to a committee of the House of the Canadian Parliament? Second, my expectation, my suspicion, is that in the past, when a minister has lied and has been clearly found to be lying to the House, the matter was dealt with by the resignation of the minister before it had to be considered by the House.



I'm trying my best to recall from my own memory what happened in the case of Minister Hees around the Gerda Munsinger affair, for instance. My recollection—and it may be wrong—is that the minister resigned.

Can the Clerk provide us with information on when ministers have resigned because they've been found to have lied to the House without it having been referred to committee? The implication is that committees have been derelict in their duty. I suspect the fact is that when there's been a clear case of deliberate misleading of the House, it hasn't come before a committee. The action has been dealt with in other ways.

So I would like to have that clear, because I think there isn't a member of the committee who doesn't want to do a straight and honest job here. We respect each other as members, but we respect the institution of Parliament above all. And we respect the truth, for heaven's sake.

• (2120)

**The Chair:** Mr. Corbett.

**Mr. William Corbett:** Thank you, Mr. Chairman.

I may have to call upon the services of the research branch of the library to assist me, and you may get it faster than I do through your researcher, but it's certainly something we could look into. We could try to get sample cases.

**The Chair:** Jay Hill, and then Joe Jordan, briefly. Then, colleagues, my intention is to bring it to a close, if the committee wishes.

Jay Hill.

**Mr. Jay Hill:** Thank you, Mr. Chairman.

I want to reply to a couple of comments made by Mr. Regan at the outset here, and then perhaps to one just made by Madame Catterall.

First of all, I believe our first and foremost responsibility is to get to the truth. Certainly I would hope that all members of the committee are of this mind. When Mr. Regan was talking about the responsibility of the committee, I would say the responsibility, first and foremost, is to get to the truth if possible. This should be our prime responsibility. And yes, along the way, while endeavouring to find out the truth, we want to assure that the accused has the benefit of the doubt. I think we're all in agreement on this. He is, after all, regardless of political stripe, a colleague in the House and deserves the benefit of the doubt.

There are a couple of reasons why I made the comment about whether we are just wasting our time. One is because this can be viewed as a waste of time; indeed, that's how constituents of mine voiced their concern about our proceedings when they found out this was coming up.

It's not just because of this particular incident referred here. Ministers have been referred to this committee before. This isn't only the second time in history this has happened. It's perhaps only the second time we've dealt with this type of alleged contempt where there were misleading and contradictory statements, but it's certainly not the first time ministers have been before this committee.

In most cases, indeed, it ends up that we go through a protracted investigation, an inquiry. And from the point of view of the general public, not much happens. This is why the public may be viewing this as a waste of time. I wanted that on the record.

As to Madame Catterall's statement that I was implying the committee has been derelict in its duty, or that Mr. Godin or myself—I can't speak for him, but for myself... That's not the case. This is not what I was implying by my statement. I wrote down exactly what was said—"the implication is that the committee has been derelict in its duty". That is not the implication I was making. I was merely trying to imply how extremely difficult it is to prove intent—obviously, if it's never been done in 135 years. That was the implication I was making.

Now on the issue of how do we prove intent, as I said earlier, I believe we must be able to get to what would motivate, what would prompt a minister—in this case a minister, a member—to deliberately mislead the House. I'd be curious to know if the Clerk has any idea. What would be a list of things that would possibly motivate a member to do this? If we are going to get at whether the individual deliberately intended to mislead, then we must be able to figure out why it would be done, what would lead to the doing of it.

I suggest it would be quite a short list, possibly to provide false information to try to cover up for something the individual or a colleague has done, or to cover up for the Prime Minister because the individual knew the Prime Minister knew something he said he didn't know.

That is why I have been saying, Mr. Chairman, that if we are going to get to the truth in this matter, we must have, as you have been granting us, considerable latitude to try to find out exactly what the information flow was, who knew what when. In order to prove intent, I believe we have to be able to prove that the minister was endeavouring to cover up the information that he knew.

I don't want to put the witnesses, Mr. Corbett or Mr. Walsh, on the spot, but how would we, the committee, go about proving intent?

• (2125)

**The Chair:** That's your question?

**Mr. Jay Hill:** That's my question.

**The Chair:** Mr. Corbett, or Mr. Walsh.

Mr. Walsh is the logician.

**Mr. William Corbett:** I defer to the law clerk, my logical specialist.

**Mr. Rob Walsh:** Let me offer what might seem a merely logical response. Try to avoid getting hung up on the word "prove", as if in some physical sense you can prove intent as you can prove it's raining outside. You can't prove it that easily, but you might have a series of facts that lead you to draw inescapably the conclusion that the member must have known, when he said what he said, that what he said wasn't true.

You need to satisfy yourself, I would argue, in a case of this kind, that the testimony we have heard leads us inescapably—even allowing a benefit of the doubt—as reasonable men and women, to that conclusion. If you can honestly say that, then I think you have probably, as it were, proved your case. But that's a fairly high threshold, I would have thought.

**The Chair:** Mr. Jordan.

**Mr. Joe Jordan:** Thank you, Mr. Chair.

Again I want to thank the witnesses, because I think it's a very timely and helpful discussion we're having.

Small business owners in my riding tell me in various ways that in order to get a loan from the bank you have to prove you don't need it. If you've read the statement by the minister in the House and make the assumption, rightly or wrongly, that it is going to be the basis for his testimony before this committee, we're going to be in a situation where the minister is going to make a statement, provide assertions, give evidence, essentially to provide an explanation for the two conflicting statements and to say he didn't intentionally mislead the House.

Then we're at a situation where you either believe the minister and accept him at his word or you don't. This is where the loan from the bank comes in. You're going to need some evidence that the minister is not being truthful in order to pursue further investigation into whether he's truthful or not. I guess that's the dilemma we're faced with as a committee. This dovetails, I think, with what Mr. Hill was getting at. I don't disagree with what he said; that's the dilemma the committee is going to be in.

Mr. Walsh, you talk about a series of facts. Then in the absence of a confession by the minister you would have to provide a series of facts. Motive alone is not going to meet that bar, so what are we talking about in terms of facts? Would it be an e-mail from the Minister of Defence to the Prime Minister saying, "By the way, this happened", and that pre-dating the statement?

Can you shed some light on whether I characterized our dilemma reasonably accurately? And what kinds of facts are we going to need in order to pursue this above and beyond a plausible explanation by the minister?

**Mr. Rob Walsh:** Mr. Chairman, the members are going to have to find facts they believe. Now, there were many years of widespread belief that the earth was flat, and that was a fact the best educated people in the world believed to be true. It was a fact they acted on.

Well, you're going hear a bunch of representations from various witnesses purporting to tell you some facts you should put a lot of weight on. Your task is to determine which of those facts warrant your taking them as true and acting on them. Facts, in this context, are whatever you believe to be true.

**An hon. member:** We are the finders of fact.

**A voice:** Is that what we are?

• (2130)

**The Chair:** Colleagues, I'm going to thank our witnesses at the moment, but I don't want you to leave, because we have one item of business before we conclude this evening.

Mr. Walsh and Mr. Corbett, on behalf of the entire committee, we want to thank you. This was an extremely informative meeting, very useful to us. You were very patient. As I tried to say before, people often say in some ways this is like a court of law. It is not. Had it been a court of law, we would have been in bed long ago, because the judge would have ruled many things out of order.

We do thank you, and we look forward to the various pieces of information we've requested.

**Mr. William Corbett:** Thank you, Mr. Chairman and members of the committee. I will get that information to you as fast as I can.

**The Chair:** Thank you both.

Colleagues, I'd like to refer you now to the letter to Commodore Jean-Pierre Thiffault and the questions submitted by members that you received. We only circulated the questions during the meeting because the final parts of the translation were only then completed.

I'd like you to look particularly at the letter. We looked at the questions, and my sense is, by the way, that they are no further off base than questions that have been posed at our regular meetings. So they're fine in that regard.

I also note there is duplication in them, and you will see the letter refers to that. In the English version, I've already found—and I thank two members—the typo in the fourth paragraph. The second sentence begins, in English, "If your responses"; it should be "In your responses".

I've asked you to look at the letter carefully, *dans les deux langues officielles*, but while you're doing that, it has been suggested to me by one member that we should perhaps include a sentence or two to indicate that the committee is empowered to ask these questions and to receive the responses.

This is the first that Jamie Robertson, our researcher, has heard it. Patrice has heard it before, and he's going to.... Just a minute.

Okay. In Marleau and Monpetit there are these sentences, and I'll read it slowly in English:

A witness may object to a question asked by an individual committee member. However, if the committee agrees that the question be put to the witness, he or she is obliged to answer.

I would suggest to you, and to Garry Breitkreuz, who made this point, that those sentences should be drawn to the attention of Commodore Thiffault. Are you comfortable with that?

Marlene Catterall

**Ms. Marlene Catterall:** With that, Mr. Chair, I would like to make another point when we dispose of this.

**The Chair:** Are you comfortable with that?

**Ms. Marlene Catterall:** I'm comfortable with that.

• (2135)

**The Chair:** Okay. I probably should have explained already, because people are watching this and don't know what we're doing, that it was agreed that one of the witnesses, Commodore Jean-Pierre Thiffault, be questioned in writing. These are the questions the committee members are submitting to him. He has until 5 p.m. next Tuesday to reply.

The reason we're doing this is that Commodore Thiffault is in charge of Operation Apollo, which is our contribution to the international aspect of the war on terrorism. The coalition headquarters are in Florida, which is where Commodore Thiffault is, and he cannot be with us.

I'm going now to Marlene Catterall, Jay Hill, and then Joe Jordan. Marlene.

**Ms. Marlene Catterall:** On a quick review of the questions, Mr. Chair, I agree that any question the member wants to have submitted should be submitted. But on a quick look, I can identify a couple that I wonder whether they might not infringe on issues of either national security or the security of forces in the field. I'm simply raising the question of whether your letter should raise that possibility, because I don't think we would want the commander to feel, in the context of his obligation to respond to the committee, that he would have to jeopardize either national security or the security of our forces, especially as they relate to JTF-2, which is, as we all know, highly specialized.

**The Chair:** What I don't want to do this evening is get into the questions and our editing the questions. This would be something to do with the letter. The suggestion essentially is that we would have a sentence that says, in effect, that the committee understands there may be matters related to national security that you may not wish to include in your answers, or words to that effect.

I'm going to you, Jay, anyway, but Jay Hill on this point.

**Mr. Jay Hill:** First of all, on this point, I would prefer, Mr. Chairman, that if we're going to include some sort of proviso to that effect—this is what I'm understanding—in the covering letter, that it state that where Commodore Thiffault decides to not reply, citing reasons of national or unit security or whatever, that he specify the exact question he is dealing with, rather than giving him carte blanche and then find out, all of a sudden, that he only answers half the questions and you're left to sort of believe the other half weren't answered because of that reason.

**The Chair:** Keeping to this point, before I go back to the list, Jamie, do you want to read out what you have?

**Mr. James Robertson (Committee Researcher):** The committee understands that some of the questions may relate to national security, which you may not feel comfortable in answering. In such cases, we would ask you to specify which questions.

**The Chair:** Okay, and we'll work on that.

Going back to the list, Jay Hill and then Joe Jordan.

**Mr. Jay Hill:** I have a couple of questions, Mr. Chairman.

First of all, we've just been handed a new list of when the witnesses are to appear.

**The Chair:** No, I think you have the same list you had this morning.

Oh, I'm sorry. I do apologize. Please continue.

**Mr. Jay Hill:** I had some e-mail dealing with Mr. Cappe and Mr. Fadden that would show that Mr. Cappe was going to appear before the committee on Wednesday evening and then Mr. Fadden this Thursday.

**The Chair:** That was the second last one. The one this morning, Jay, had this time, and the change in this one, which I haven't seen....

As I mentioned this morning, I'd heard that Jim Wright, of the foreign affairs department, was going to be in Russia on the Monday. So the only change from the one that was circulated this morning is that Jim Wright has gone from Monday, the 25th, to Thursday, the 28th, at 11 o'clock, and as a result, we've asked Joseph Maignot to be here at 3:30 on the Thursday instead of 11 o'clock.

**Mr. Jay Hill:** Okay.

The only other comment I have in regard to the witness list is that we had some discussion—at the first meeting of the entire committee, I think, when we were trying to decide on the witness list, and so on—about calling, for example, the Deputy Chief of the Defence Staff prior to the Chief of the Defence Staff. I see they're in the other order there, and I wonder if we could interchange them and have the deputy chief come first. Could we check on that at least?

**The Chair:** I have to confess that I don't recall that.

**Mr. Jay Hill:** There was a discussion.

**The Chair:** No, I was there, because I was chairing the meeting.

I'm looking around here, colleagues....

By the way, the committee should do what is proper, but you do have to understand that we are dealing with people who have very tight schedules, and every time we juggle—as this one change, Jay, that you've pointed out—it sets off a series of changes. It's like musical chairs.

Is there a comment on this?

**Mr. Jay Hill:** I have just a request, then, Mr. Chairman, if I may, specifically to the Chief of the Defence Staff and the Deputy Chief of the Defence Staff, if they could change them around. Currently, they're both scheduled to appear on the same day, one in the morning and one in the evening. Obviously we could at least ask them if it would be possible.

**The Chair:** I would assume that this could be discussed, colleagues—and by the way, I'm more than willing to ask. They are almost certain, as long as their schedules are okay, to say yes, but on the other hand, I think it's a question of courtesy here. So would someone care to discuss it a bit more before I decide?

Jacques Saada.

• (2140)

[Translation]

**Mr. Jacques Saada:** We would like to hear those witnesses. For the sake of consistency, it might be more logical to hear them by order of rank. It does not seem fair to me to have them appear in random order, since it is almost as if we were trying to trick them.

I would have liked to hear each of the witnesses, starting by the highest rank and proceeding downwards.

[English]

**The Chair:** Joe Jordan, on the same point.

**Mr. Joe Jordan:** Thank you, Mr. Chair. It doesn't concern me what order they go in; I'd just be interested in the rationale for the order. Why is that order significant?

**The Chair:** Jay, by all means respond, but then it's Pierre Brien on this point.

**Mr. Jay Hill:** Very briefly, Mr. Chairman—and I actually provided this rationale when I put forward the argument previously to the whole committee—I guess that is exactly what Jacques is alluding to, that if our intent is to just have the boss come and then have the subordinates come after that, we might as well have them all come at once, because they're all just going to say the same thing. As far as I'm concerned, if we put some questions to a subordinate, prior to the boss making his testimony, we might be enlightened as to what's revealed. But I would assume that it certainly won't be the other way around.

**The Chair:** Pierre Brien.

[Translation]

**Mr. Pierre Brien:** If we apply Mr. Saada's logic, who is suggesting that we first hear the highest-ranked witness, then I would like the same principle to apply next week when we hear the witnesses from the Privy Council, which means that the Clerk of the Privy Council would appear before his assistant.

The same procedure would apply in all cases. I agree with that.

[English]

**The Chair:** I've heard Jay's arguments, but I'm looking around, and I hear the people who are comfortable with the top-down approach, but that we would ask Mel Cappe to change on the following day.

Yvon Godin.

[Translation]

**Mr. Yvon Godin:** Mr. Chairman, I only have one comment. I don't think we are trying to trick anybody. We are expecting the witnesses who appear before us to answer our questions to the best of their knowledge. It's as simple as that.

If we want answers from these witnesses, we have to decide how we are going to proceed. We must not worry about how they will answer our questions. If they fall into a trap, it means that they might be telling the truth. I don't think we need to be concerned about that.

[English]

**The Chair:** Rather than having a vote on this, unless Jay is very keen.... I want to apologize. There's a wrinkle in this thing that I've been trying to juggle for a week now that I must have missed.

I hear agreement—and by the way, for me it would certainly be simpler to ask Mel Cappe to come first and Richard Fadden to come second. Jay, I know it doesn't satisfy you, but would you be satisfied with that?

**Mr. Jay Hill:** No.

**The Chair:** John Harvard, then Joe Jordan, on this point.

**Mr. John Harvard:** Mr. Chairman, scheduling is very difficult. I don't think there is anything at stake here. I think we should leave well enough alone. We actually have both approaches. We have top-

down in one section and bottom-up in the other. Everybody's happy. Leave well enough alone.

**The Chair:** Joe Jordan, on the same point. Let's get on with it folks, if we can.

**Mr. Joe Jordan:** I think in the interest of progress, although I'm uncomfortable with the premise that we're starting out by indicating that the order may impact the testimony, I don't have any problem with us deciding on what it is now, but let's not change it again. We may have to vote.

**The Chair:** Jay, do you want to move a motion?

**Mr. Jay Hill:** Mr. Chairman, it would be interesting to go back and review the minutes of the meeting when I raised this previously. I believed at that time, and I stand to be corrected upon reviewing the minutes, there was agreement from the chair, there was agreement from the committee, that we would call the witnesses, subordinates first, building up to, in this case, the Chief of the Defence Staff. I stand to be corrected when I review the minutes, but I think that was the general agreement, if possible. I remember the chair saying something along that line and I said, "That's all we can ask; if it's possible, we'll do it." Now there seems to be some problem with that and I don't quite understand why.

• (2145)

**The Chair:** I'm going to Jacques Saada because there were only a few of us there, and there were several meetings. I must confess, I don't recall anything as concrete as that.

Jacques Saada, briefly.

**Mr. Jacques Saada:** We discussed the matter of who was going to appear and we discussed the matter of not having two witnesses appear together at the same table. We never agreed. I don't even remember if we discussed it, but I know one thing, we never agreed to having a specific order in this regard. The best proof of it is that there was also a question of having the chief of staff come before the minister, and the minister would have a choice of coming before or after.

So we never had an agreement on that. I also stand to be corrected, but there was no agreement on this issue.

**The Chair:** Perhaps, members, since these meetings were in camera, I can just check the record. If in fact it appears there was some sort of agreement, I for one would certainly go along with that.

So I will check it, and perhaps when I have the record, Jay, you and I can look at it together.

I'll bring it back tomorrow. I know members won't want to deal with it at great length tomorrow, but perhaps Jay and I will have some resolution so that it doesn't interrupt tomorrow's meeting.

Okay? That will give us time, then, to deal with these witnesses.

Joe, do you have one more point? You're on the list.

**Mr. Joe Jordan:** No, that's fine.

**The Chair:** Okay.

Going back to the letter, we're going to send it, and there's going to be an indication in it that we have the power to require these answers and so on, as described in the Marleau and Montpetit item we described. There's also going to be a line in there about the national security matter that we understand, including that he will indicate which questions he has not answered on the basis of national security, or unit security, as Jay said.

Colleagues, do you agree with that? Okay.

We meet again tomorrow, in this room, at 3:30, and the witness is Art Eggleton, the Minister of National Defence.

The meeting is adjourned.

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