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Chair

Mr. Leon Benoit

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Standing Committee on Government Operations and Estimates

Thursday, June 2, 2005

• (1535)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)):
Good afternoon, everyone.

Today we have the Minister of Public Works before us to deal with two issues. One is the issue of the lease agreement between the federal government and the Alexis Nihon REIT, for the building located at 550 boulevard de la Cité in the City of Gatineau. The second is, pursuant to Standing Order 81(7) and 108(3), the review of the operational and expenditure plans of the Department of Public Works and Government Services.

We will deal with both issues as members wish throughout the afternoon. We will start with the minister making a brief, ten-minute statement. The minister can introduce the people he has with him here at committee.

Please go ahead, Minister Brison.

Hon. Scott Brison (Minister of Public Works and Government Services): Thank you very much, Mr. Chairman.

First of all, you all know Walt Lastewka, our parliamentary secretary. Then there is David Marshall, our deputy minister; François Guimont, our associate deputy minister; our senior financial officer, Lysanne Gauvin; and Tim McGrath is the executive director of our real property branch.

One of the questions you may want to direct to some of our officials is on the air conditioning, or the heating and cooling, in the parliamentary precinct today. I think it would be germane, given the humidity in the room.

I am delighted to be here today and to have an opportunity to discuss some of these issues.

I'd also like to address some of the issues around the scheduling of this meeting. We tried to schedule meetings twice, and when there were postponements, both times we did offer alternative dates. I want to tell you that I take appearances before committees very seriously. I enjoyed the last interaction with the committee in the fall; I found it constructive.

As for the first meeting, as you know, anyone who enters public life does have personal issues from time to time preventing their fulfilling professional obligations at particular times. Sometimes they are family matters and sometimes they are medical matters, but these do occur.

On the second occasion, it was in fact the day of a fairly significant vote, which I'm sure many of you remember. On May 19, it was not exactly a business-as-usual day, and it would not be a surprise to anybody that I, as a member of cabinet, was involved in some pretty significant meetings at cabinet to be prepared for any potential outcome, which was the responsible thing to be doing.

After that, we also tried to reschedule for the following day or for that Friday, but unfortunately the committee was not able to do that. So I'm delighted to be here on the first possible date after that.

[Translation]

Let me remind you that I already appeared before this committee on November 2 last year. Let me assure you, Mr. Chairman, I have the utmost respect for the important work done in committees and by committee members.

[English]

Now, to address the issue around Place de la Cité and Alexis Nihon and Senator Massicotte, I'd like to say a few words about that up front. Our department is looking very closely at the situation, as we would at any compliance issue that would inevitably arise during the life of any of the 2,100 leases we handle each year.

The contract for Place de la Cité was awarded after an open, transparent, and competitive process, which was actually overseen by an independent fairness monitor, KPMG. At the time the contract was awarded in December 2001, Mr. Massicotte was not a senator. When the lease was officially signed in January 2004, he had become a senator. I have been informed by my officials that they were not in fact aware of any change in the status of Mr. Massicotte. He was not a direct signatory of the lease. Again, it is up to the individual companies that sign leases with us, the contracting organizations, to comply with those leases.

Still, Mr. Chairman, as soon as we became aware of the situation, our department acted decisively. We immediately sent a letter to Senator Massicotte on May 6, calling on him to take appropriate action. We also sent a follow-up letter on May 17 to indicate what we could do to redress the situation, including the potential withholding of base rent. I can tell you that it was followed by a third letter on May 20, informing Alexis Nihon that we would be taking corrective action after June 30, which provided an appropriate period of time.

The third letter also reflects the fact that there has been a material change in the situation. As you are no doubt aware, the Senate passed its conflict of interest code for senators some two weeks ago on May 18. This is a significant new development. It means that section 14 of the Parliament of Canada Act will no longer apply; instead, a Senate officer will oversee the ethical conduct of senators. In fact, section 14 has been repealed by order in council because of the passage of the Senate code of conduct and the existence now of a Senate officer to oversee the ethical conduct of senators.

We are now working to assess the impact of the new code, and we're dealing with the situation appropriately.

I'd also like to discuss, as part of the estimates, some of the important actions that have been taken within our department and some of the plans to transform the way our department does business. The committee will recall that in my last appearance here I described a three-point strategy: buying smarter; exploring savings in real estate; and taking better advantage of information technology systems to deliver better and faster services at a reduced cost.

I'd like to give you an update on "The Way Forward" plan. Budget 2005 gave the department a very clear mandate to move ahead with changing the way we do business as a government. The budget provides for investments of \$190 million over five years to refine our procurement system and to improve the management of our real property.

The return on this investment will be impressive. Public Works is expected to deliver almost one-third of the \$11 billion in government-wide savings that have been targeted by the expenditure review process over the next five years.

Let's look briefly at procurement. Our goal is to save \$2.5 billion over the next five years in this area alone, while cutting the time it takes to purchase goods and services by half.

• (1540)

[Translation]

And I'd be pleased to take questions later on on how we intend to achieve this.

[English]

I also want to credit our parliamentary secretary, Walt Lastewka, for his important work with our officials to help make that happen.

We are already having some success stories in this regard. Our department recently saved the Government of Canada, or the taxpayers of Canada, \$80 million in negotiating new software contracts. On furniture, volume discounts have resulted in a 16% savings government-wide.

Smarter buying offers the greatest opportunities for efficiencies and economies of scale. However, we also intend to aggressively pursue cost savings in the management of our real estate portfolio through better planning and management. Our goal is to reduce our expenditures on real estate by \$925 million over the next five years—and I would also be pleased to take questions on that as well.

We're spending or investing about \$20 million this year in the real property area, which will result in about \$150 million savings in the

short term. That's a pretty impressive return on investment if you're looking at it from a business perspective.

These savings exist outside of the discussions we're having around the potential of other ownership models and potential outsourcing of management. As you know, there's currently a draft RFP in which we are seeking proposals from the investment and consulting communities on better ways to potentially harness private sector capital to get better results for Canadians.

The third pillar of "The Way Forward" is to continue building on information technology. At the centre of this is the secure channel, so that Canadians can confidently and conveniently do business with the government online 24/7. We are also looking at implementing a government-wide approach to IT services of all kinds to yield better results for our clients as well as taxpayers.

[Translation]

I'm also delighted to tell you that Public Works and Government Services Canada is taking on a heightened role in the "greening" of government operations.

[English]

Good environmental policy can also be good economic policy. In fact, I'll be speaking at a Monday breakfast of the National Press Club to mark Environment Week, talking about how the greening of government is playing a central role and what we are doing as a department in that.

Public Works will emphasize green procurement. We want to use more alternative fuel vehicles. In fact, as a government, we have the largest alternative fuel vehicle fleet in Canada. I now personally have a Honda hybrid. The last time I met with you, one of the questions was whether or not I did, but we now have a hybrid car.

Our new buildings are being designed to the LEED gold or silver standards, the optimal design for energy efficiency. We recently announced the creation of an Office of Greening Government Operations within the department, which serves as a centre of expertise to develop and implement sustainable practices in the daily operations across the government.

Mr. Chairman, my officials and I would certainly invite any questions you have on any specific initiatives.

I just want to conclude with one thought, that our top priority is to continue to build a department that is acknowledged to be an organization that gets the best possible value for the Canadian taxpayer and at the same time provides the best possible services to Canadians and the other departments and agencies we serve, and to be a leading organization in terms of ethical conduct.

In her February 2004 report, the Auditor General concluded that Public Works has one of the most comprehensive values and ethics programs in government. We have learned the importance of constant vigilance, and we will continue to do more. Beginning this fiscal year, our department will hire ethics officers in every branch, special operating agency, and region.

• (1545)

[Translation]

In conclusion, Mr. Chairman, Public Works and Government Services Canada is showing respect for tax dollars, respect for the environment and respect for ethics.

[English]

By doing so, we will work to earn the confidence of Canadians. I am sure the committee endorses this goal and will want to support us and in fact be partners in progress as we move forward.

Thank you, *et merci à tous*.

The Chair: Thank you, Mr. Minister, for your opening statement and for keeping it to the agreed time.

As chair of the committee, I would like to make a correction. You said that you and your office had twice tried to schedule appearances at the committee. In fact, what did happen is that twice you had agreed to come on a set date; you had scheduled meetings and twice you did not appear. That is a concern to the committee, as it does show a lack of respect for the committee.

Mr. Minister, saying you had an important vote and that it is an acceptable reason to back out of agreement to come to this committee, I find quite disturbing. I would hope, Mr. Minister, that in the future, should you agree to come to this committee, you do appear.

Hon. Scott Brison: Mr. Chair, my point was that on both occasions when there was a postponement we offered alternative dates, and in good faith worked to find that.

In terms of the vote, I can tell you that given the gravity of that vote, it was important from a stability-of-government perspective that cabinet be fully engaged and work individually and collectively to ensure that Canadians continued to be served well during what was an unstable period. I know that during the entire process when we were trying to schedule, no doubt a complicating factor was due to the fact that some opposition parties effectively refused to participate in Parliament and the committee process for several days.

The fact is, I'm here today, and I'm delighted to be here today to work with your committee. I can assure you of my respect for the committee process and of the work the committee members do. I served on several House committees for a long time. I took my work very seriously, and I know all of you take your work seriously.

So please accept my commitment to work with you as part of that. I look forward to your interventions today.

The Chair: Again, Mr. Minister, the members of this committee were here that day, they were here to hear from you, they were looking for your appearance, and it didn't happen. And there was no alternate; you broke the commitment to be here, and then you tried to offer some alternative. Well, that breaks the schedule of the

committee, and it makes it very difficult. I just want to make that clear.

We'll go to questioning, starting with Mr. Poilievre, for seven minutes.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Welcome, Minister.

You said to me, in questioning in the House of Commons, that the reason for your department's payment of rent over a 10-month period for a vacant building was just that this was the amount of time it took to move our employees into the building itself: nothing out of the ordinary here, just a little logistical hiccup.

According to your remarks here, you handle 2,100 leases each year. This is just sort of a normal hiccup when moving employees.

Can you perhaps give us one example—two examples, other examples—out of the 2,100 leases you handle every year of where we have paid, month after month, for vacant buildings?

• (1550)

Hon. Scott Brison: First of all, this was an unusual circumstance. Part of it came from the merging of two agencies during a period of time, which created operational complications. Usually it does take 10 to 14 months to do a fit-up of any building of this size. This building in fact had people moving in within 10 months.

I think it's important to recognize, Mr. Poilievre, that overall, the vacancy rate in Public Works buildings was 1.7%, in 2002, compared with 4% in the private sector—

Mr. Pierre Poilievre: But my question is very specific: can you give us other examples of where, for 10 months, or any number of months, your department paid for an empty building?

Hon. Scott Brison: Once again, this was an unusual circumstance because of some of the operational issues.

I'll ask Tim McGrath from the real property group to address this.

Mr. Tim McGrath (Executive Director, Real Property Branch, Department of Public Works and Government Services): In terms of unproductive rent, as we call it, we include that number as part of our ongoing vacancy. Similar to what the minister was saying, when you look at our overall vacancy, it is only 1.7% of our entire portfolio, where national averages run in excess of 4%. The important—

Mr. Pierre Poilievre: My question is very simple: do you have any other examples of where we have paid rent, month after month, for vacant buildings?

Mr. Tim McGrath: There have been some examples of where we've paid maybe one or two months of rent while we've been in the process of moving in.

Mr. Pierre Poilievre: Ten months, ever?

Mr. Tim McGrath: Not to my knowledge; not 10 months in terms of a vacant building for that period of time.

Mr. Pierre Poilievre: So never for 10 months; you've said one or two. Then this is a highly unusual situation.

I think you can all understand the legitimate concern we have that this exceptional circumstance, where we paid 10 months before we moved into the building, happened to occur with the company of a Liberal senator.

Hon. Scott Brison: I'd like to respond to that, please.

Mr. Pierre Poilievre: Please.

Hon. Scott Brison: I think the important thing to recognize, Mr. Poilievre—

The Chair: Please, Mr. Brison, let Mr. Poilievre ask the question, and then you can answer the question.

Hon. Scott Brison: Sure, but he just said “please”, and I assumed he wanted an answer.

Mr. Pierre Poilievre: Well, if you're going to give us another example of a building we've paid to leave empty for 10 months, then that would be an answer to the question.

Hon. Scott Brison: In terms of the issue of Senator Massicotte, again, it's important to recognize that this building, or this whole provision of real estate, was done through a competitive process that was overseen by a fairness monitor. Furthermore—

Mr. Pierre Poilievre: That falls well outside the competence of my question.

Mr. Paul Szabo (Mississauga South, Lib.): [*Inaudible—Editor*]

Mr. Pierre Poilievre: He's not answering anything.

The Chair: Mr. Szabo, let me chair the meeting, please.

Mr. Minister, Mr. Poilievre had not asked another question after the question about a specific example, so let him ask the question, please, and then please answer the question. Thank you.

Mr. Pierre Poilievre: I was generous enough to give the minister another opportunity, but he is not addressing the question I posed. So I'm going to move on to another question.

I have just pointed out that this is a highly unusual circumstance. It just happens to be that we paid 10 months' rent before we actually moved into this building, the company is that of a Quebec Liberal senator, and it would be no different anywhere else in the country.

I am going to quote from subsection 14(1) of the Parliament of Canada Act. Before I do that, I'm going to point out the patently obvious, that it does not matter that this act was repealed two weeks ago, because from December 2001, when this deal was signed, until two weeks ago, this law was applicable. It was the law of the land, and the repeal is not retroactive. So this law should form the basis of our discussions about the ethics of the entire arrangement.

It says, and I quote:

No person who is a member of the Senate shall, directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

Reading this law, it's very clear: no member of the Senate “shall, directly or indirectly”; he has both a direct and indirect interest as a \$30-million shareholder and a CEO. He is knowingly involved, he is wilfully involved, in a contract under which \$100 million of public money is to be paid. As I read it, this is a violation of the law.

Perhaps you can explain to us why you felt comfortable being engaged in a contract that violates the Parliament of Canada Act.

Hon. Scott Brison: First of all, it's important to realize that when the contract was granted, the individual was not a senator.

Beyond that, it's important to realize that our officials were not aware that in fact the individual had become a senator. Because he was—

• (1555)

Mr. Pierre Poilievre: That's not important.

Hon. Scott Brison: No, no, it's important—

Mr. Pierre Poilievre: It's not important at all.

Hon. Scott Brison: Yes, it is, Mr. Poilievre. It is actually very important.

In this type of contracting activity, the onus is on the individual contracting with the Government of Canada to comply with the actual rules for which...and in his case, he has to comply with the Senate rules. That is up to him. That is between him and the Senate.

Beyond that, Mr. Poilievre, if you want to review on a more thorough basis the members of your own caucus who are in the Senate, some of whom are on boards of companies that do business with the Government of Canada, I think you'd find a fairly exhaustive list of senators who do business with the Government of Canada.

Mr. Pierre Poilievre: I think you'd also find that none of them received 10 months' worth of rent for a vacant building.

I'm going to read here what the parliamentary counsel and deputy law clerk said about the matter you first raised, which is that the senator was not in the Senate when the contract was first agreed to, even though he was when it was signed.

It says here, from testimony in front of this committee, that:

It doesn't matter when the person either became a senator or when a contract was entered into.

So the deputy law clerk and parliamentary counsel have effectively demolished your principal defence, which you've been making before the House of Commons, that the senator was exempt from the law because he became a senator after the contract was agreed to.

It does not matter—it is not important—when the contract was signed or when he became a senator: he was breaking the law from the time he became a senator until two weeks ago, and maybe still is today.

Hon. Scott Brison: The responsibility is for a senator or a member of Parliament to comply with the ethical guidelines of the House or the Senate. And that is up to—

Mr. Pierre Poilievre: Do you agree that he was breaking the law during that period?

Hon. Scott Brison: —those individuals. Beyond that, Mr. Poilievre, when our department became aware of the fact that he was not acting in compliance with section 14, we in fact acted. We in fact communicated in writing, to Alexis Nihon, that they had to come into compliance with that, and if they were not to do that, we would in fact withhold rent.

Mr. Chairman, that is significant action when a department writes a letter to a provider of services, in this case a landlord, telling them that we will withhold rent if in fact they do not comply with the contract and with the obligations. That was significant action.

So when we became aware of the issue, we took significant action, which is exactly appropriate and the right thing to do. Beyond that, it's important also to recognize that in this kind of contractual arrangement, the onus is on the firm signing the contract, in this case with the Government of Canada, to comply with any external ethical guidelines, in this case the rules governing the conduct of senators.

The Chair: Mr. Minister, for the clarification of the committee, you say two things here. You say, on the one hand, it's the responsibility of the senator and the company, and yet, on the other hand, the public works department actually wrote out of concern about the fact that this individual, now a senator, was continuing to operate in this contract.

Those are two different things, and I'd sure like you to clarify.

Hon. Scott Brison: When our department became aware of the fact that the senator was in fact an executive of the company, we took action, which was the appropriate thing for us to take.

It's also important to recognize that he was not a direct signatory to any of the leases. As CEO of the company, he was not signing the leases; that was done by other individuals within the company. And it's absolutely reasonable, and in fact it's accurate, that our officials were not aware at the time of the signing of the lease that in fact there had been a material change in the executive ranks of the company, and in fact that he had become a senator.

Again, the material thing, Mr. Chairman, is that at the time of the granting of the contract, there was an open, competitive process, overseen by KPMG, that selected the lowest-cost alternative.

The Chair: Monsieur Sauvageau, eight minutes.

[Translation]

Mr. Benoît Sauvageau (Repentigny, BQ): Mr. Brison, I should remind you that this committee meeting is being broadcast. You did manage to maintain a certain degree of credibility, and I stress a certain degree of credibility, in the House during the Gomery affair. Now, however, you are trying to tell us that the public servants in your department were unaware that Mr. Massicotte had been appointed to the Senate when the lease was signed in January 2004. What you are telling us is that Senate appointments are a secret to which your department is not privy.

Allow me to refresh your memory: the other chamber here on Parliament Hill, albeit a further 500 feet from the House of Commons, is the Senate chamber. You told us that you and your representatives were unaware that Mr. Massicotte had been appointed to the Senate. Are you joking?

• (1600)

[English]

Hon. Scott Brison: First of all, when the contract was signed he wasn't a senator, but when the lease was signed, my department officials...and that was one of the questions I asked: were you aware, was the department aware, of the fact that he was a senator? In fact they were not, and I take them at their word that they were not.

In fact, it's perfectly reasonable that when we're doing business, the directors of all those companies.... As you know, we have 2,100 leases, and it would be pretty impossible to track all the activities of those individuals, both volunteer or professional, in this case an appointment to the Senate. It would be pretty difficult to do that, so I think it's a perfectly reasonable explanation from our department officials.

[Translation]

Mr. Benoît Sauvageau: There are no words to describe this. It is unbelievable, it defies comprehension. My mother would say that it is a crock, but I would not dare quote her, as it would not be very kind.

I have another question for you. One of your predecessors, Alfonso Gagliano, said that a minister is not responsible for his department. Reg Alcock told me that a minister is responsible for his department. To which of these schools of thought do you adhere, which of these two philosophies do you apply? Are you responsible for your department, as Reg Alcock says he is for his, or are you not responsible for your department, as Mr. Gagliano believes?

[English]

Hon. Scott Brison: I'm much closer to Mr. Alcock's vision of that. I believe in ministerial accountability. When a minister becomes aware of a situation, I believe he ought to take corrective action, which is exactly what I did within our department. That is why we have now sent three letters, including letters that said if the issue was not addressed and was not brought into compliance, the rent would be withheld.

So yes, I believe in it, and that's why we took action—

[Translation]

Mr. Benoît Sauvageau: With all due respect, Mr. Brison, I know that you know that I only have seven minutes. The longer you take to answer my questions, the less time I have to ask questions. I know that you would not use such tactics, but I would be most disappointed if you did.

You found out about this situation recently. Was it Mr. Poilievre who brought it to your attention? You said in your presentation, and I quote: "Still, [...] as soon as we became aware of this [...] our department acted right away." How did you find out about the situation?

[English]

Hon. Scott Brison: When we became aware that in fact Senator Massicotte was acting in what would appear to be a way inconsistent with section 14, and also with the lease itself, our department took action.

[Translation]

Mr. Benoît Sauvageau: Did you just happen to stumble across the fact that there were senators there while surfing the parliamentary Internet site, or did somebody draw the issue to your attention? If so, was it Pierre Poilievre? In short, when did you become aware of the situation, and who drew it to your attention?

[English]

Hon. Scott Brison: I believe the House was functioning well. As a minister who participates in and enjoys question period, I learn from question period sometimes, and I think that was a constructive way to—

[Translation]

Mr. Benoît Sauvageau: So it was Pierre who drew it to your attention. When your Prime Minister spoke to the nation, he said that his government had not been sufficiently vigilant and promised Canadians that it would be in the future.

Were you being vigilant with regard to this contract, a contract which is worth some \$10 million?

[English]

Hon. Scott Brison: Yes, I was vigilant.

[Translation]

Mr. Benoît Sauvageau: You were vigilant?

[English]

Hon. Scott Brison: Absolutely. And I can tell you—

• (1605)

[Translation]

Mr. Benoît Sauvageau: Signing a contract with the chairman of the board of directors of Plaza Alexis Nihon, who is a senator, placed you in contravention of the law; yet you say that you were unaware that Mr. Massicotte was a senator.

Do you at least know the members of cabinet?

[English]

Hon. Scott Brison: With respect, Mr. Chair, I would like to answer the question.

When a minister becomes aware of a situation, he is responsible for what actions he takes at the time. The fact is that over the last period of time, we have taken corrective action, including the potential withholding of rent. In fact, there are negotiations now to ensure that Senator Massicotte and Alexis Nihon act in compliance with the Senate code of ethics.

Respectfully, Mr. Sauvageau, that represents strong action. And that is what a minister is responsible for, the action he takes when knowledge is received.

[Translation]

Mr. Benoît Sauvageau: I have one last question.

There have been problems at Public Works and Government Services Canada regarding contracts granted under the Sponsorship Program; there have also been problems regarding advertising contracts, as well as in several other areas.

What accountability principles apply when PWGSC signs leases with people who are not part of government? Do you request references? Do you check whether the person is receiving welfare? Do you contact Equifax to determine whether the person is solvent, or do you apply standards and restrictions that are a little tighter than those used by a landlord renting a duplex?

[English]

Hon. Scott Brison: First of all, we have as a department an ethics and integrity package, judged by the Conference Board of Canada to be a best practice model for both the private and public sectors.

Secondly, we do use a competitive process. In many cases, we actually use external fairness monitors to guarantee the openness, transparency, and competitiveness of those processes. In fact, KPMG oversaw this particular contract.

I have confidence, whether it's the signing of leases for office space or the procurement of any of the \$13 billion worth of goods and services we procure a year, that in fact our processes are sound. And we are strengthening those processes on an ongoing basis.

Again, this contract was awarded to the lowest-cost bidder in a competitive process, which was overseen by KPMG, a highly respected body, as a fairness monitor.

[Translation]

Mr. Benoît Sauvageau: Now that four or five years have passed, now that the contract is in force and 70 per cent of the building is occupied, would you be able to provide us with details of the other bids?

[English]

Hon. Scott Brison: In terms of that process...

[Translation]

Mr. Benoît Sauvageau: You said that the contract was awarded to the lowest bidder. Five years have since passed, and I would like to know whether you would be revealing state secrets by showing us the other bids. I find it rather difficult to believe you, Mr. Brison, when you say that you do not know who is a senator and who is not. I also find it rather difficult to believe that, when you sign a lease, you do not know with whom you are entering into a contract. I therefore find it rather difficult to believe you when you say that you awarded the contract to the lowest bidder.

Could you prove this to us?

[English]

Hon. Scott Brison: I have been informed that we can in fact provide that information to you, that in fact you can have the results of that process. That is public information we can make available to you.

Thank you.

The Chair: Thank you very much, Minister Brison. We'll be looking for that information from you.

Mr. Szabo, for eight minutes.

Mr. Paul Szabo: Thank you, Mr. Chairman.

We seem to be covering a lot more than simply Public Works. We're talking also about Senator Massicotte.

My understanding is that there were between 20 and 25 interested parties when the first proposal for tender was issued. Is that correct?

Hon. Scott Brison: Yes.

Mr. Paul Szabo: Thank you.

It was on December 20, 2001, that Alexis Nihon was advised that Public Works had accepted the tender, and that with the acceptance both parties then were legally engaged and also would be required to put into place significant guarantees. So this was a contract. And KPMG in fact ensured transparency and fairness at every stage of the process.

Is that correct?

Hon. Scott Brison: Yes.

Mr. Paul Szabo: Okay.

Is there at this point anybody who has suggested to Public Works, or to anybody of your knowledge, that the process was not fair, and that Alexis Nihon was in fact favoured in the process? Is there any allegation there?

Hon. Scott Brison: Let me begin by saying there has been no indication of that. In fact, the taxpayer did get the best value in terms of the selection of this.

David, do you have anything to add?

Mr. David Marshall (Deputy Minister, Department of Public Works and Government Services): There has been absolutely no indication that this contract is not good value for the Crown.

•(1610)

Mr. Paul Szabo: At this time, and I guess to your knowledge, the chronology of the senator's involvement in this is that in fact this contractual arrangement was reached over a year before he even became a senator, so there is no possibility that the senator could have influenced this contract.

Hon. Scott Brison: That's correct.

Mr. Paul Szabo: Okay.

I may want to look at a couple of these items, at least, with regard to the building. As a former parliamentary secretary for Public Works and Government Services, I was well aware that from time to time the real property division actually would take up building space that came available, anticipating longer-term plans. I suspect that from time to time there have been arrangements whereby space has been taken up with no specific tenant actually in mind.

Is that the case, and is that good practice in terms of the real property division?

Hon. Scott Brison: Mr. Szabo, you touch on an issue in terms of when there is a greater public policy issue or principle to be addressed. One of those is the 75%-25% rule, which has existed for about 30 years in the national capital region, whereby about 25% of the federal public servants in the national capital region would be housed on the Quebec side and 75% would be on the Ottawa side.

In fact, we are short of that on the Quebec side. I think it's around 22%, and we're 78% on the Ottawa side. We're working to address that on an ongoing basis. We take that very seriously. In fact, that is one of the public policy items we consider, and from time to time it may represent a legitimate reason why we may, on spec, move to secure real estate in anticipation of potential moves.

Mr. Paul Szabo: There is an insinuation that because 10 months of rent was paid without the tenants moving in, this was somehow an improper activity. What was going on during the 10 months? After

the lease was engaged in and we signed, what was going on during those 10 months, precisely, to account for the period during which there were no tenants?

Mr. Tim McGrath: Mr. Chair, at the time we had identified libraries and archives as the potential tenant, and we had negotiated an agreement with them. During that time, the two organizations amalgamated into one. As a result, they were reorganizing themselves. They were the first group we'd identified, and they are still the main group that's going in there, and are in the process of moving in right now. But during that time, they were going through the process of amalgamating their organization and coming up with what their functional programming would be.

Mr. Paul Szabo: Now, does that mean you can't configure the interior until you know precisely what the client's demands are?

Mr. Tim McGrath: It was very difficult to configure.

Actually, in order to be proactive, as part of "The Way Forward", we're looking at a whole-of-government approach where, when we come into those situations, we will start designing space to a more generic standard.

Mr. Paul Szabo: How long did it take before you had all of the information you needed before you could configure the interior?

Mr. Tim McGrath: It took as much as seven months before we had all the information—

Mr. Paul Szabo: Thank you kindly. That's all I wanted to know.

With regard to Senator Massicotte—unfortunately, it comes up, because the member has raised it, although I don't think we're here to examine Senator Massicotte—you've probably looked into the details, Minister. My understanding is that when he became a senator, it was September 2003. I understand he met with the Senate's legal counsel, where he learned of section 14, and that he also sought independent legal advice from McCarthy Tétrault, as well as from Mr. Wilson, who was then the Commons ethics commissioner.

Is that your understanding?

Hon. Scott Brison: That is my understanding.

Mr. Paul Szabo: Okay.

The conclusion from this consultation was that there was much confusion in the interpretation of section 14?

Hon. Scott Brison: Yes. In fact, it affects a significant number of senators from both parties who were involved in commercial activities with the government. I think there's more clarity now, frankly. With the new code and with the new officer being established to oversee ethics in the Senate, I think it will be much clearer and much more realistic.

Mr. Paul Szabo: Subsection 14(1) in fact exempts the senator with regard to being a shareholder. The fact that he's a shareholder is an exempted item, and it's really not relevant in this whole discussion.

Is that correct?

•(1615)

Hon. Scott Brison: To be honest, on that, not being a senator, I'm not...

Mr. Paul Szabo: Okay.

The issue really comes down to the fact that a contract was entered into before he was a senator. Subsequently, he became a senator. In theory, if you read this literally, he should either resign as a senator or resign as a CEO. But section 14 was put in, in the first place, to ensure that there was no bias or unfairness in a contract like the one we're dealing with. You can't have it both ways. It was established that he had no influence on the contract in the first instance, and therefore, whether or not he was a senator...so that you can understand how, in a transition situation, this could come up, and why the Senate....

In fact, legal counsel basically gave the opinion, as I understand it, that in this situation no further action would be necessary. Is that your understanding?

Hon. Scott Brison: That was what the senator informed us when we raised it with him, particularly with the first letter. That being the case, we did feel it was important, in terms of compliance with both the lease and section 14, that he move into compliance.

The rules have changed now, with the new code of conduct and with the new Senate ethics officer. I think that will provide greater clarity and a more realistic environment.

The Chair: Thank you, Mr. Szabo.

Mr. Martin, eight minutes, followed by Mr. Poilievre.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chairman.

Welcome, Minister, and welcome to your advisers.

I don't want to be repetitious, so I'll start at the point of recognizing and yielding the fact that Senator Massicotte wasn't a senator when the contract was entered into. But we've learned from the Gomery commission that he was the senior bagman for the Liberal Party. His name and Marc Lalonde's name came up: they were such proficient fundraisers for the Liberal Party there was nothing left for the Quebec wing of the Liberal Party when they went to shake those bushes in the corporate community. So he was very well connected at that time to the Liberal Party.

The point I'm getting to is this: there isn't much in this world that I know, but as a carpenter by trade, I do know the value of a commercial building, a *new* commercial building. We should note that this building was only built in 2003. It was built to suit your needs.

The price should be about \$200 a square foot for an office building. Hospitals are more, because they're more technically difficult. Warehouse space is less, because it's just empty space. But \$200 a square foot builds a well-appointed office building: \$60 million.

I guess what I'm getting at is the business case here. It seems that this well-connected Liberal, who wasn't a senator then but is now, got a hell of a sweetheart deal, the kind of deal a developer would dream of, to build a \$60,000 shell of a building and get a \$100-million, full-anchor tenant, the federal government.

Why wouldn't you, as the federal government, simply build your own building, or go and buy some of the abundance of empty space

that's available because of the difficulties in the high-tech sector in this region?

This looks like a sweetheart deal for a Liberal insider, and I guess I challenge you, with all due respect, to show us the business case for this kind of handover.

Hon. Scott Brison: Thank you, Mr. Martin, but first of all, my knowledge of the intricacies of the Liberal Party of Canada in 2001 probably is tangential at best.

Mr. Pat Martin: You are following the Gomery commission, though, certainly—

Hon. Scott Brison: On the issue of whether or not best value was delivered in terms of the tendering process, I assure you that in fact the tendering process was open and transparent, and in fact was overseen by KPMG, and resulted in that.

I don't know whether Tim McGrath would like to add to that.

Mr. Pat Martin: I would simply say that there are ways to structure a tender to wind up with the desired successful bidder.

• (1620)

Hon. Scott Brison: Yes, but that would be very difficult to do with the existence of an external fairness monitor, in this case KPMG, overseeing every step of the process.

Mr. Pat Martin: Perhaps I could ask you why new construction, then, versus the abundance of empty space made available due to the decline in the private sector, the high-tech sector.

Mr. Tim McGrath: With this particular building—and it was actually far below what we'd asked Treasury Board approval for, the final pricing, and as part of our undertaking we'll come back with the business cases and the costs of the other competitors—this was to address the 75%-25% ratio issue that we were having and that we were falling further behind on.

If you look at the amount of space the federal government occupies on the Outaouais side of the river, we represent 80% of the market and we occupy 80% of the office space. At the time, there was no vacant space available for us to acquire. We'd acquired every piece of space available on the Outaouais side, and as a result came out with a tender for new construction. That was the competitive process we went through.

Mr. Pat Martin: I don't think you're bargaining hard enough, frankly, as a representative of the taxpayer. Had we owned that property, had you simply built a new building at 550 de la Cité Boulevard, we would own that building in six years at the rent you're paying now, and we would have a capital asset. We wouldn't be paying out all this money to a well-connected Liberal senator month after month, year after year.

What is it, \$7.5 million a year in rent? Wouldn't it be better to own rather than to farm that out to the private sector? It seems like a gift.

Hon. Scott Brison: With respect, we lease about 45% of the 6.7 million square metres of office space we manage in Canada. In fact, we are currently seeking proposals to evaluate an overall strategy of what is the best mix in terms of getting the best possible value. That's a different debate—

Mr. Pat Martin: Here's one graphic illustration of where you could save the taxpayer a fortune by building in-house instead of going outside for this. I think we're getting fleeced on this, notwithstanding the insider connection, or what appears to be, that this well-connected Liberal learned that the National Library and the National Archives were going to merge and would need a new space. So they build a building on spec, and then they get it occupied with this sweetheart deal that pays for it twice in the lifespan of one single lease.

That's a licence to print money.

Hon. Scott Brison: Once again, Mr. Martin, it's important to realize that this was an open and competitive process, that in fact it did go to the lowest bidder. There were a number of participants in the process. It was overseen by KPMG.

Now, the general—

Mr. Pat Martin: If the prices came in that high, you should have built it yourself.

Hon. Scott Brison: I do not necessarily agree with that analysis. You were talking about the tech meltdown and the impact on real estate. That had a far greater impact on the Ottawa side than it did on the Quebec side in the national capital region.

Notwithstanding that, as a government we remain committed to a 30-year policy of 75%-25%. We believe it is in the public interest to have 25% of public servants in the national capital region on the Quebec side.

Mr. Pat Martin: Sir, you could have done that by building your own building. It seems you believe in farming off our public assets to the private sector; that's your ideological bent.

Hon. Scott Brison: No, we believe in best possible value, and in fact we do believe in the role of the—

Mr. Pat Martin: It's not good value, take it from me. Take it from me, I have some experience in this.

Hon. Scott Brison: You said you were a carpenter, so you know how to build them. I have some background in investment banking, so I know how to finance them.

The fact is that there are different ways you can achieve best value, and the private sector in some cases can provide some of that.

Mr. Pat Martin: The payback on a building like that is beyond any developer's wildest dreams, and you're handing it over to him, with a wheelbarrow.

Mr. Tim McGrath: Just to clarify, I think we have made copies of the lease available to the committee. You'll see under 2.1 that the actual annual rental payment is just a little over \$4 million per year. The \$550,000 that people reference includes the operating and maintenance costs. Anyone who owns a house, anyone who owns an apartment or business, knows they have to pay taxes, and lights, and

heat, and hydro, and everything else associated with the operating of a building.

So when you look at the actual amount we're paying on an annual basis for the base rent, which would equate to the value of the building and financing costs associated with the value of the building, it is slightly over \$4 million a year.

Mr. Pat Martin: How much per month is \$4 million a year?

Mr. Tim McGrath: It's \$360,000 per month.

● (1625)

The Chair: Mr. Martin, you're out of time.

Mr. Poilievre, for seven minutes.

Mr. Pierre Poilievre: So ministers learn from us in question period. I'm delighted to hear that.

I just want to confirm, for the record, did you in fact learn of the senator's contravention of the law from me in question period?

Hon. Scott Brison: To section 14, which is internal, that is, guiding the Senate; as such—

Mr. Pierre Poilievre: Just so I'm clear, you learned that he was contravening section 14 of the Parliament of Canada Act from me in question period?

Hon. Scott Brison: That's correct.

Mr. Pierre Poilievre: That's correct. That's interesting.

Thank you very much.

I was just congratulated here.

You're admitting that the senator is in contravention of the law now. I think you've admitted that he contravened section 14 of the Parliament of Canada Act. That's a very remarkable admission to make.

Hon. Scott Brison: No, that interpretation is up to the senator, within the Senate, with the laws governing the Senate, and—

Mr. Pierre Poilievre: Sorry, it's up to his personal interpretation?

Hon. Scott Brison: No, no, no, it is up to the Senate to interpret that and to take action. If there's ethical misconduct—

Mr. Pierre Poilievre: But you've already admitted today that you think there has been a contravention of that law. You are on the record already.

Hon. Scott Brison: No, no, no, if there is a breach of section 14 with the Senate, and if it's viewed as such, it is up to the senator to comply with that.

Mr. Pierre Poilievre: I understand that, but you already today are on the record, three or four times, admitting that he contravened the law. You know, you actually have said that.

Hon. Scott Brison: No, that's false.

Mr. Pierre Poilievre: If you learned, then you're acknowledging it to be the case.

Hon. Scott Brison: No, no, no, I'm speaking specifically to the lease. I'm speaking specifically to conditions of the lease. I'm not speaking to conditions of section 14.

Mr. Pierre Poilievre: Regardless, you did admit that he contravened that portion of the law. You admitted that you learned it from me in question period.

I'll just reiterate now why you were right a few moments ago—

Hon. Scott Brison: Mr. Poilievre, please, do not misrepresent what I said.

Mr. Pierre Poilievre: No, I'm not misrepresenting—

Hon. Scott Brison: Yes, you are.

Mr. Pierre Poilievre: —I'm taking your words, as the records will show.

Hon. Scott Brison: You are misrepresenting, actually. The fact is that section 14—

Mr. Pierre Poilievre: It says:

No person who is a member of the Senate shall, directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

So when you conceded moments ago that he contravened the law, you were actually right. And that interpretation is not subject, as Mr. Szabo tried to indicate, to when the lease was signed or when he became a senator. In fact, once again, according to Richard Denis, parliamentary counsel, it doesn't matter when the person either became a senator or when a contract was entered into.

So I want to confirm for you, to give you comfort, that you were right in saying that he was breaking that law.

Hon. Scott Brison: Mr. Poilievre, I did not say he was breaking that law.

Mr. Pierre Poilievre: You did.

Hon. Scott Brison: No, Mr. Poilievre, with respect, you are misleading this committee when you say that, because I did not say that.

The fact is that there are codes guiding the conduct of senators. It is up to the Senate to enforce those codes. Senator Massicotte has not been disciplined by the Senate for any contravention of a code.

I think in fact you are wrong to assert that somehow I have inferred that he has violated the code. That is up to Senator Massicotte and the Senate, and there has been no disciplinary action against Senator Massicotte.

I think, in fairness, you should be ingenuous and admit that.

Mr. Pierre Poilievre: You're running down the clock. It's all on tape, and you can't dispute the veracity of this one.

I'm going to move now to your three letters. You said you wrote three letters to the senator. On May 6 you wrote to him to take appropriate action. On May 17 you asked for a redress of the situation. On May 20 you asked for corrective action to be taken.

I have not yet seen those letters, although I congratulate you for your willingness to share them with us. Actually, if some of your staff could provide them right now, it would be very helpful.

I want to know, what exact redress are you calling for? Do you believe the senator should resign?

Hon. Scott Brison: No.

In fact, it is not up to us to address that specific part.

There is part of the lease that we have made available to the committee that has to be brought into compliance.

Mr. Pierre Poilievre: Which part of the lease is that?

Mr. Tim McGrath: It is section 25.10, which makes specific reference to the Parliament of Canada Act.

Mr. Pierre Poilievre: Okay, so you need redress there, because there is some contravention of the Parliament of Canada Act.

Hon. Scott Brison: We have to know that, but it refers specifically to senators and members of Parliament. In accordance with the Parliament of Canada Act, it states that no member of the House of Commons or the Senate "shall be admitted to any share or part of this Lease or to any benefit to arise therefrom". That is part of the lease. As such, we ask that Alexis Nihon take action to come into compliance with this specific clause of the lease.

It is our responsibility to ensure compliance when we become aware of a situation. It is up to the contracting body that is contracting with the Government of Canada to ensure that it in fact does comply with all of these.

● (1630)

Mr. Pierre Poilievre: Will there be any consequences for the non-compliance up until now? Will there be any consequences for Alexis Nihon or for this Liberal senator for the contravention of this section of the lease and, as I have pointed out, the relevant section of the Parliament of Canada Act? Will there be any consequences for him?

Hon. Scott Brison: The part we have to address, and we have in fact addressed, is section 25.10 of the lease.

We have said that if they did not come into compliance, or we felt, after evaluation and discussion, they were not in compliance, we would, among other things, consider withholding rent. Those discussions have continued, and in fact part of the discussion now is around the new code of conduct in the Senate.... Section 14 no longer exists.

Mr. Pierre Poilievre: You are getting off the question.

You are now considering withholding rent from Alexis Nihon because of this contravention. That is what you've just said, right?

Hon. Scott Brison: We urged that it was important that the company act in compliance with all clauses of the lease, including section 25.10. You in fact know—

Mr. Pierre Poilievre: That is not my question. My question is, are you saying that Public Works is now considering withholding rent as a result of the contravention of this lease on the part of Alexis Nihon?

Hon. Scott Brison: I believe I said that in my opening statement. In fact, it is part of one of the letters.

Mr. Pierre Poilievre: Sir, you could have answered that much more directly earlier on.

Hon. Scott Brison: You could have listened to my opening statement and you would have heard it.

Mr. Pierre Poilievre: I will say to you that it is my position that at the very least, the 10 months that we taxpayers paid for an empty building should be recovered, and if that is done through the withholding of rent, that would certainly be appropriate.

You've just said that Alexis Nihon violated a part of the lease agreement with respect to Mr. Massicotte's presence in the Senate. I think it's more than fair now that we as taxpayers seek some redress for the 10 months we paid this Liberal senator's company while not a single government employee occupied that building.

Are you considering any redress for the 10 months that taxpayers paid for this building when not a single employee was in it?

Hon. Scott Brison: Mr. Poilievre, there are a couple of issues here. One is the fact that we have already heard that there were legitimate operational reasons during that period of time, due to the merging of two entities within the government. Secondly, the public policy interest in the 75%-25% rule, to increase the presence of public servants on the Quebec side of the national capital region, is an overriding principle we are committed to.

Those are reasonable explanations of this unusual circumstance. They are completely separate from the fact that Alexis Nihon has, as a shareholder, someone who happens to be a senator. This does not have any material bearing on the fact that there was a period of time during which two agencies were being merged, which had an impact on the move-in period for this building. Those are completely separate issues.

The Chair: Thank you Mr. Minister.

To Madame Marleau, you have seven minutes to finish the first round.

Hon. Diane Marleau (Sudbury, Lib.): I'm satisfied that the contract was done properly, and all the rest of it. I think the Senate has to deal with the issue of conflict. I don't think it's for us to judge.

But I'm interested in whether you can give me a history of how it was decided to build this building. I understand the 75%-25% rule. Normally Public Works will accommodate different departments. Was it the National Archives that requested that Public Works go to tender for office space? Was it another department, or was it solely Public Works that made the decision to build the new building? That's of interest to me.

How did that happen? Who requested the space? Can you go back that far? Normally—not always—Public Works is a servant of departments. Departments say they're going to need more space, and they go to Public Works. Public Works says, "Well, I don't have any space here." So the negotiations go on.

Who requested this? Did it come from outside of Public Works, or was it a request from within Public Works to do this? When did it all get started?

• (1635)

Hon. Scott Brison: Thank you, Madam Marleau, for the question.

First, you're right that we work to meet the needs that are expressed to us by the departments. But there is also a process on an ongoing basis to monitor real estate markets in various environments to see if good opportunities exist for housing public servants.

In terms of this specific, I'll refer the question to Tim McGrath, who may have a more granular idea of this particular instance.

Mr. Tim McGrath: In this situation we had been negotiating with a number of client departments in trying to address the 75%-25%. At the same time, we had identified National Archives as one of the main candidates for that building, as a result of the recently built preservation centre that is located right next door to this location.

They were looking for a campus style of consolidation program. They were inhabiting the West Memorial Building, which was in desperate need of repair. As a result, we made a portfolio decision, with the support of Treasury Board, to go out to tender and include this area in the geographical boundaries for competitive tender. As a result, when this location came in as the low bidder, we then upped our negotiations with National Archives and the National Library and came to an agreement that the group located in the West Memorial Building would be relocated to this building.

During that time of discussions and finalization of designs the two groups merged, and as a result caused a delay in the overall timetable of the occupancy of this building.

But it was a portfolio decision, in conjunction with our space needs, in conjunction with trying to correct the 75%-25, but in full discussion with the Archives and Library prior to commencing the lease competition.

Hon. Diane Marleau: We haven't been building new buildings for some time now. If I'm not mistaken, this was one of the first in a number of years.

Mr. Tim McGrath: That's correct.

As rightly pointed out earlier by one of the members, on the Ontario side we had the meltdown of the high-tech industry, which provided quite a bit of leased space at very aggressive pricing for the department. That wasn't the situation on the Quebec side, where there was very little space. We had actually taken up all the vacant space that was available to us at that time. Then, in order to adjust the situation further, we had to go out with a tender that resulted in new construction.

Hon. Diane Marleau: But I'm under the impression that Archives has been really in need of space for a very long time. I don't understand why it took so long for them to take up that space. Maybe we should ask them.

Mr. Tim McGrath: Actually, we had been working with them. The delay came when the two parties became amalgamated—when the National Archives and the National Library became one entity. As a result there was a high degree of special purpose space required for this tenant. Not knowing who the tenant was actually going to be, in terms of the office special purpose space mix, caused the delay in the fitting up of this asset.

Hon. Diane Marleau: It's just a strange story. I know how the whole system works, and it's not a normal way of doing things, although it's not unusual to lease a building—if that's the case—that is not ready for occupancy.

I'm just curious about the whole process to get to the point where you decided to go to tender, and then you picked and did all the work.

Hon. Scott Brison: Madam Marleau, the 75%-25% rule is material here, but beyond that, in terms of the merger between those two client departments or agencies, it did have a significant impact.

We have had a shift within our department. Where traditionally we've looked at other departments and agencies as clients, we are now looking at them more as colleague departments. We are taking more ownership, frankly. We're not just getting them what they want; we're working with them more closely to ensure best value for the ultimate client, and that's the Canadian taxpayer.

• (1640)

Hon. Diane Marleau: Are you still moving ahead with more lease agreements rather than building your own and owning your own? I know you're very interested in that. We've had big discussions. I tend to agree with my colleague from the NDP. I'm not a big proponent of leasing buildings. I find that in the end they cost you a lot more, but I'm willing to have the argument with you again.

Are you doing many more of these across the country?

Hon. Scott Brison: About 45% is leased now—that has existed for some time—and 55% is owned. We're looking. We haven't made any decisions in terms of a macro strategy, but we are seeking proposals now to get all the information so we can make a good decision. There are several factors that can make a difference, even in terms of the capital markets and the relative access to private sector capital. The desire to invest in Canadian commercial real estate does create a market circumstance that's quite unique.

The other point I want to repeat is that Alexis Nihon delivered the building as promised in early 2004. The delay in occupancy had nothing to do with Alexis Nihon. Mr. Poilievre commented earlier that we ought to punish Alexis Nihon for the delay in occupancy, but actually the merger of two agencies within the government created the problem. Alexis Nihon did not contribute to that delay. They delivered the building as promised on schedule. The challenge really was operationally within the government, between two departments.

Hon. Diane Marleau: They delivered the building on time, on price, in the condition you wanted it.

Hon. Scott Brison: That's right.

Hon. Diane Marleau: So they were Public Works' problems, the Archives' problems, or the Library of Parliament's problems, but certainly not the problems of the owner of the building.

Hon. Scott Brison: That's correct.

The Chair: Thank you, Madam Marleau. Your time is up.

Mr. Lauzon is next for five minutes.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you very much, Mr. Chair, and welcome, Mr. Minister and colleagues.

You'll have to forgive me here, as I want to ramble a little bit, because as a new parliamentarian, I'm not used to the big numbers that are being bandied around.

You and I, Mr. Minister, have had discussions about my particular riding of Stormont—Dundas—South Glengarry and how we're losing lots of employment and have real difficulty with low average family incomes and have no government departments, and yet we are so close to Ottawa. So when I hear of \$100 million buildings being built close to Ottawa, I can only dream about them some day coming to a riding like Stormont—Dundas—South Glengarry, and I hope you'll keep that in mind the next time you're out to tender.

But to be honest, in all sincerity, I'm going to have a hard time with this as it becomes public. I've been having a hard time explaining government waste and how government operates generally, and now with the sponsorship angle, it makes people more cynical. Surely to God, you and your officials, or whomever was the minister at the time this deal was done—I'm not sure you were the minister—would have been sensitive to the political climate prevalent at the time and would have made sure this was absolutely squeaky clean.

I don't want to make accusations here, but there's something that doesn't fit. As someone here said—I think it was Mr. McGrath—we built a \$100 million building on spec. It was also said that when the senator became a senator, the officials weren't aware of it. How do your senior officials, who are learned people living in Ottawa, the most political town in the world, not realize that somebody's been made a senator, especially when that person is involved in a deal with Public Works?

Now this happened back in September 2003. Surely to God... I think as a minister you probably want to have a talk with some of the senior people in your department and say, how come this went by? It doesn't make sense that an opposition member of Parliament has to point this out to the minister.

Now I have to go back to explain, Mr. Minister, to my people, who work a minimum wage.... A third of the people who use the food bank in my riding are actually employed people—a third of them. That's how desperate the situation is, and here we talk about approximately \$6 million in waste.

In a former life, I was a manager at an HRDC centre, and when we moved, hell, we had to move on the weekend. Public Works used to do our rentals, and we had to get out on the first of the month and we couldn't even pay one extra month's rent. How do we get away with paying 10 months' rent? Can you explain this? For somebody who built this building or decided on this building, did the bells not go off?

• (1645)

Hon. Scott Brison: Thank you, Mr. Lauzon, for your question.

The first point is that the senator was not a senator at the time of the contract, and in fact at the time of the signing of the lease he was not a direct signatory to the lease. With the 2,100 leases our department is involved with, I absolutely believe our officials—and I'm going to defer to Tim McGrath on this—when they say they were not aware that somebody who was a shareholder of that company became a senator. It would be impossible in fact to police 2,100 leases and track the career meanderings of shareholders in all of those companies. If you consider it from that perspective, that would be difficult to do.

But I will defer to Tim McGrath on that, if you would permit.

Mr. Tim McGrath: Again, I think the committee has copies of the lease document, and you'll see in the lease—

An hon. member: [*Editor's Note: Inaudible*]

Mr. Tim McGrath: The committee asked for documents and we'd undertaken to supply documents to the committee.

Mr. Guy Lauzon: Regardless, I cannot believe that anybody, certainly not in private industry... Can you imagine building a \$100 million building and having it vacant for 10 months? That's not acceptable. Somebody's head would be on the chopping block. With all due respect, Mr. Minister, I think you have to have a look in your department. How can you permit that to happen?

Hon. Scott Brison: What happened in this case was the combination of a public policy imperative, and that is the desire to augment our space in the—

Mr. Guy Lauzon: He built it on spec.

Hon. Scott Brison: Please allow me to finish. We do have a public policy that in fact goes back 30 years—and it's listed under Progressive Conservative governments and Liberal governments—that on the Quebec side we would seek to achieve 25% of our national—

Mr. Guy Lauzon: Just a minute here. I'm in agreement with that, but why did you not wait another eight months before you started the building?

Hon. Scott Brison: Secondly, in this case, the fault really was within these agencies that were merging. There were operational challenges with that. I agree with you that where there are internal operational issues, these kinds of delays have to be avoided, and we seek to avoid them. In fact, our vacancy rate as government is 1.7%, which compares to 4% in the private sector.

Mr. Guy Lauzon: Anyone who has a ten-month vacancy—

The Chair: I'm sorry, you're out of time.

Mr. Minister, just before we go to the next questioner, to the Bloc, you said, how could you know all of the shareholders who are investing in companies that rent or lease to the Public Works Department? Who appoints senators? Of course, it's the Prime Minister. Before the Prime Minister appoints, would he not do a thorough background check into all of the assets...a complete background check on the individual he or she is about to appoint to the Senate? Of course, they would. Why there would be such a disconnect between the Prime Minister and a minister of the Crown at that point is beyond me. It doesn't seem like a reasonable disconnect.

We'll go to the Bloc, Monsieur Sauvageau, for five minutes—actually Monsieur Sauvageau and Monsieur Gagnon, I think you're going to share your time.

[*Translation*]

Mr. Benoît Sauvageau: I want to share my time with Mr. Gagnon so I will be brief.

Mr. Brison, I have a gift for you. It is a booklet which contains photos of all the senators of the 37th Parliament. Furthermore, without having to wait too long, thanks to the excellent service that we have here, I was also able to get you a booklet containing photos of the senators from the 38th Parliament. If you leaf through them, you will be able to avoid being taken by surprise by members of Parliament.

Come and get them, I have six copies. It was no trouble at all, Mr. Minister.

I will now hand over to Mr. Gagnon.

• (1650)

[*English*]

Hon. Scott Brison: Does that document have all of the investments that those senators may have made, and does it have all their past and current directorships, or is it simply a picture? Does that document list all their investments, their RRSPs, for example?

[*Translation*]

Mr. Benoît Sauvageau: I have flipped through it myself, and can tell you that it contains the senators' biographies. You can find, for example, Mr. Massicotte's biography. It says that he was the manager of... If you glance through the 8.5x11-inch photocopy, you will be able to find out what Mr. Massicotte did in his previous life. It is not a secret.

Mr. Marcel Gagnon (Saint-Maurice—Champlain, BQ): Mr. Chairman, I am going to take back the floor.

[*English*]

The Chair: Go ahead, Monsieur Gagnon.

[*Translation*]

Mr. Marcel Gagnon: I have a very simple question for Mr. Brison.

[*English*]

Hon. Scott Brison: I do want to respond to Mr. Sauvageau's important... It does say he has a background in real estate, and it does say he's an accountant. I'm not certain that is material...

[Translation]

Mr. Benoît Sauvageau: If you would like more comprehensive biographies, I am sure that I could ask the Library of Parliament to provide them for you. I would not charge for this service, it would be my pleasure to assist you in this. The Library has an excellent research service.

If you do not have enough officials or employees to do this for you, I will give you my business card.

I can provide you with comprehensive biographies of all senators. It would be my pleasure.

[English]

Hon. Scott Brison: We know where to find you, Mr. Sauvageau.

[Translation]

Mr. Marcel Gagnon: Mr. Brison, was Mr. Gagliano not minister at the time when what we are discussing today took place? And was Mr. Massicotte not a fundraiser for Mr. Gagliano?

Mr. Benoît Sauvageau: For the Liberal Party.

Mr. Marcel Gagnon: Was he not a Liberal Party fundraiser?

[English]

Hon. Scott Brison: I have heard that in fact he was a fund raiser, but my knowledge of Liberal fundraising at that point in history was, as mentioned earlier—

[Translation]

Mr. Marcel Gagnon: Mr. Chairman, I am finding it rather difficult to sit on this committee because I sometimes get the feeling that we are wasting our time, that we are a laughingstock. I am just saying what I think.

Mr. Ouellet appeared before the committee. He found jobs for his entire family at Canada Post and, following that, introduced corrective measures. He spent \$2 million, and cannot provide receipts for a large part of that sum, and then he introduced corrective measures.

Mr. Massicotte was appointed to the Senate, but nobody knew about it. Public Works and Government Services Canada provided \$250 million in sponsorship money, and although we know the issue is before the Gomery Commission, nobody seems to remember anything. It is often said in the House that this government is amongst the best managed governments in the world. We are always the best at everything.

Would it not be possible to start introducing corrective measures before a problem arises, rather than afterwards? Personally, I find it mind-blowing to see all that has happened and all the money that has been spent without anyone seeming to be accountable. I despair of the situation. I do not know what questions to ask. I was a businessman before becoming a politician, and I can assure you that I would not have signed a contract, even one worth far less than this, without taking minimal precautions, precautions which the department ought to take.

I do not know what questions to ask, because I find it difficult to believe the answers which we are being given. The same goes for other issues as well. I apologize for being so blunt, but it would seem

to me that this government cannot be taken as an example of good administration.

Thank you.

[English]

Hon. Scott Brison: May I respond to that?

•(1655)

The Chair: Go ahead, Minister.

Hon. Scott Brison: First of all, what's important to realize here is that there was an open competitive process, that it was overseen by KPMG, as a fairness monitor, and that in fact the lowest price provider was ultimately chosen. That is important to realize, so there wasn't an issue with the competition; the lowest price was chosen.

Secondly—

[Translation]

Mr. Marcel Gagnon: Carry on, Mr. Minister. Perhaps you will manage to improve your credibility, but, personally...

I personally know a number of people in the business world who would like to have been informed of a contract such as this one, even if there was an invitation to tender. I am the Member for Shawinigan, Mr. Chrétien's riding. The riding is now called Saint-Maurice—Champlain. I can assure you that many people come to my office to tell me about cases such as this one; I cannot tell you how many of them are based in fact, but some of them certainly are.

I am sitting here wondering how to get at the truth. I am sorry to be so blunt, but even though you have stated that the rules were respected, it defies belief that a government and such a large department would make so many mistakes. I'm sorry.

[English]

The Chair: Monsieur Gagnon, your time is up.

Do you want to respond briefly, Mr. Minister?

Hon. Scott Brison: If I could to the notion that the building was built purely on spec, which isn't really accurate. The notion of the building being built on spec without any possible tenants is absolutely wrong.

I'll ask Tim to address that.

Mr. Tim McGrath: As part of the Treasury Board submission going forward in the fall of 2000, we had identified a number of potential clients because of the amount of inventory we had. In the national capital area we have close to three million square metres of office space, which turn over at a rate of 15% per year. We have a high degree of turnover or volume. As a result of that, I had identified a number of clients to Treasury Board. With Treasury Board's agreement, we went forward with what we call a portfolio acquisition. I identified a number of particular clients, depending on where the site was finally selected. For the site selected in this case, the winner was in close proximity to the preservation centre, and as a result we then identified the Library and Archives as a suitable point for that space.

The Chair: Thank you.

For five minutes, Monsieur Godbout.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Thank you, Mr. Chairman.

Welcome, Minister and accompanying delegation.

I'm seeking clarification on this, but not on dates. You said a contract was signed in December 2001 and then a lease in January 2004. What was that initial contract of December 2001 on, and why did it necessitate a lease in January 2004? Wasn't the lease a pre-requirement of that contract of December 2001?

I just want you to explain that in layman's terms so that we can understand.

Hon. Scott Brison: Thank you, Mr. Godbout. I will defer to Tim McGrath on that.

Mr. Tim McGrath: When you enter into any type of lease contract, Mr. Chair, you enter into an irrevocable offer to lease. The irrevocable offer to lease is a binding contract that will allow the two parties to start the activity. In this case the activity was the construction of a building.

During that period of time you continue to have negotiations on finalizing the final lease document, but the signature comes with an irrevocable offer to lease. That is the binding contract to allow the two parties to commence the operation, which in this case was the construction of an asset.

Mr. Marc Godbout: Okay. So we were in fact bound by that lease that was signed in January 2004? The other aspects had to be dealt with by the individuals.

Now, Minister, when you were made aware of it, you sent three letters. We haven't really gone into the detail of what kind of a response you got from those three letters.

Hon. Scott Brison: We're having discussions now, and one of the factors that is being considered is the changes to the code of conduct in the Senate. For instance, section 14 no longer applies, and in fact beyond that there is a new code of conduct. So we are considering that.

More importantly, our goal is simply for the lease we have with Alexis Nihon to be complied with. That is what we are discussing, and we want that based on the rules of Parliament, and as such, the material change in the laws governing the Senate affects our interpretation of that lease as well.

● (1700)

Mr. Marc Godbout: But we don't have any conclusion whatsoever on any of these?

Hon. Scott Brison: There's a period of time that is reasonable—I think it is 120 days—during which we are having that discussion.

Mr. Marc Godbout: I'd like to ask, Mr. Chairman, just because it seems to be material in this case, about the 75%-25% ratio between Ontario and Quebec. Just out of curiosity, is it based on square footage, on the number of employees, on the total value of buildings, or on land? Does it include crown corporations?

I just want that to be clarified because it has been referred to often enough in the House. On what is that 75%-25% really based?

Hon. Scott Brison: It's based on the number of employees.

Mr. Tim McGrath: The policy is implemented according to the number of employees of the Treasury Board. It doesn't include crown corporations, and it doesn't include anybody who is not what's considered to be a Treasury Board employee.

We translate that into square metres, and as a result, about 20,000 square metres in the national capital area represents one percent of the total inventory. So we generally go by a 20,000-metre representation for one percentage point of the 75%-25%, but in fact the 75%-25% is an employment ratio for the number of people employed by the Treasury Board of Canada.

Mr. Marc Godbout: It does not include, for instance, the Museum of Civilization?

Mr. Tim McGrath: No, it does not.

Mr. Marc Godbout: Okay. That's interesting. And it doesn't include Canada Post for that matter. I just wanted to know.

You've referred to that new code, and I think we have to take preventive action for new contracts. What specifics are there in that new code? I realize it's from the Senate, Minister, and if you don't feel comfortable answering, you don't have to, but how would that facilitate situations like the one we're experiencing right now?

Hon. Scott Brison: Again, the onus is on senators or members of Parliament to comply with the code of ethics that governs either the Senate or the House. If they are not doing that, they are disciplined accordingly by the governing body, or in this case by the Ethics Commissioner at the House level and the new Senate Ethics Officer.

I think the rules governing senators and the rules governing ethics and codes of conduct have been in a bit of a flux and ambiguous for a number of years. I'll give you an example. Trevor Eyton is a Conservative senator who is a director of Brascan, which is owner of Brookfield Properties. They are buying the O & Y portfolio, and as such there are relationships with the Government of Canada.

Mr. Eyton is a Conservative senator, and I assume Mr. Poilievre will be equally vigorous in ensuring he complies with the Senate ethics code and whatever. I'm sure, Mr. Chairman, you would want to ensure that your caucus colleague, Mr. Eyton, and others are equally vigorous in addressing these concerns. Senator Massicotte is certainly working to do that.

But it is up to those individuals to act within the body within which they serve, and in this case it's the Senate code of conduct.

Mr. Marc Godbout: But if you are made aware of any other cases, you will act on them, like you did in this case.

Hon. Scott Brison: There are 2,100 leases, and there are differences between some of those leases. This one has a specific clause, and as such the onus is on us to work with the contracting body to ensure it's complied with.

● (1705)

The Chair: Mr. Godbout, your time is up.

Mr. Preston is next for five minutes.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Thank you very much, and thank you all for joining us today.

It's been very enlightening with regard to real estate. I've learned terms today that even as a builder of real estate in my past I've never heard. I'll get to one of those terms in just a moment.

You explained to Mr. Poilievre that the renting of this building was a bit exceptional, in its start and how it went. Then you went on to explain how somehow the renting of empty buildings made great, new, weird, real estate sense because we were joining two departments, so it gave us real luck in being able to design the building properly.

I'm here to tell you that in the real world, renting empty buildings is never good luck; it's bad luck and a waste of money. In this case it's a waste of taxpayers' money.

You entered into a contract to build the building. We passed the lowest tender test, and all of that was done appropriately. How much did paying 10 months' worth of rent sour that deal?

Hon. Scott Brison: That's an excellent point. First of all, on the macro point you raised, I agree it's not good business to rent office space that is not occupied. This was an exceptional circumstance, due to the merger of two departments, that did lead to delay.

Our vacancy rate is 1.7%, as compared to the average commercial vacancy rate of 4%. So we agree with your principle, and in fact do a better job than the private sector overall in ensuring that.

Again, it's extremely important to realize that Alexis Nihon delivered the building as promised within the cost envelope in early 2004. The delay in occupancy was not their fault. It had nothing to do with Alexis Nihon.

Mr. Joe Preston: I'm not questioning whose fault it was. I'm saying it certainly didn't make a good deal for us now, did it?

Hon. Scott Brison: On the overall deal and the contracting process that led to it, it was the best deal of any of the ones offered, and the lowest price. But again it's important to realize that the delay in occupancy had nothing to do with Alexis Nihon. It was due to operational issues between departments and agencies within the government.

Mr. Joe Preston: If I can touch on this a bit, you mentioned again your vacancy rate versus the standard commercial vacancy rate out there. The standard commercial vacancy rate is borne by the people who own the buildings. When you rent buildings that are empty you're paying that rent, and that's a waste of taxpayers' money. It may be a benefit to those commercial operators who you're renting the buildings from, but it certainly is in no way somehow a benefit to the taxpayers of Canada.

I wanted to get to this term because I absolutely loved it. I'm going to use it in the future. The new term is "unproductive rent". I love it that we have a term for it now. Wasting taxpayers' dollars is unproductive rent. This is rent paid for space we're not really using.

Hon. Scott Brison: Mr. Preston, the 1.7% figure, which is less than half of the 4% average for the private sector, is actually reasonably good overall. If we could have 0% we would, but the fact is it's almost impossible when you're housing 14,000 public servants across Canada, managing a portfolio of leased and owned space of 6.7 million square metres, and with departments merging—

Mr. Joe Preston: You mentioned 2,100 rental units.

Hon. Scott Brison: We strive, and will continue to strive, to reduce that number further, but 1.7% is actually a very low figure.

Mr. Joe Preston: You mentioned 2,100 rental spaces.

Hon. Scott Brison: Rental leases.

Mr. Joe Preston: Rental leases. How many of those did we let sit empty for 10 months, besides the one that was rented from a Liberal senator?

Hon. Scott Brison: Once again, Mr. Preston, what you're saying is based on a false premise. The fact is—

Mr. Joe Preston: It was leased from a Liberal senator. Where am I wrong?

Hon. Scott Brison: Again, Alexis Nihon delivered the building as promised, on time and within cost. If we had refused to pay them because we had between two departments an operational merger and a delay that existed that was not their fault, we would have been in breach of their contract. Frankly, it would have been bad business for the Government of Canada to be punishing a private sector provider, in this case a landlord, for something that was not their fault.

• (1710)

Mr. Joe Preston: I'm not suggesting we would at all punish the Liberal senator, but we instead punish the taxpayer by paying for the space.

I'd like to move on to one other thing. I have one question left.

You mentioned in your opening statement that you have an ethics program now in place to ensure that all of this stuff falls under fantastic ethics guidelines. You have ethics officers in every branch of Public Works and Government Services. Is this a new employee? Is this an old employee we've turned into somebody who is an ethics officer?

Hon. Scott Brison: I'll defer to David Marshall on this, but again you do raise the ethics integrity package. Our department has been rated by the Conference Board of Canada in terms of our ethics and integrity packages as having a best practice model.

In terms of your question, I appreciate your enthusiasm, Mr. Preston, but I defer to David Marshall, our deputy, in terms of the employees.

Mr. David Marshall: Mr. Chair, we've chosen employees, but we are going to run a competition so that the right qualifications are brought forward in terms of background and experience. In the interim we have appointed interim officers who have been trained in ethical matters and dilemmas that arise in our business. They are under the direction of our head of audit and ethics. We are in constant contact with practitioners as to how best to help employees with ethical issues and problems. In fact, we have had a large increase of employees who now are able to go somewhere to discuss the issues they face and receive assistance with that. It is a very valuable program.

The Chair: Thank you, Mr. Preston.

Mr. Szabo, for five minutes.

Mr. Paul Szabo: Thank you.

Minister, or maybe Mr. McGrath, has Public Works and Government Services, the real property division, ever been in a situation where it needed space before space could be acquired and would have to get hotel space for people, for instance?

Mr. Tim McGrath: There have been a few situations, yes, where we've had to acquire space in hotels in order to accommodate people, but on a very short-term basis.

Mr. Paul Szabo: How about space that was substantively outside of the reasonable catchment area?

Mr. Tim McGrath: Sorry, I missed the last part of the question.

Mr. Paul Szabo: Some distant space, but that's all that we could get.

Mr. Tim McGrath: The client will define an operational requirement.

Often in order to have fair competition we have to increase the size of that area to have a fair competition. Often we can't find space within the geographical boundary and we will have to move outside that geographical boundary to find space.

Mr. David Marshall: If I may add something, I think the fact that we are so low in the vacancy of our buildings, both leased and owned, is in fact a burden on the taxpayer because we just have no swing space. Often important repairs go unattended to because we can't afford to be able to move people out to repair something in an organized way. We are very squeezed. The fact is we give the taxpayer really good value in terms of the utilization of the money spent on accommodation.

Mr. Paul Szabo: With regard to the operations of the real property division, property will come available from time to time and we will know of tentative plans, or potential or long-range plans of government departments or agencies, but is it good business within the realty business to in fact take property even without a prospective tenant being known today?

Hon. Scott Brison: We monitor on an ongoing basis real estate markets, and we are also in constant contact with departments and agencies monitoring their needs, and we try to bring them together. In some cases, if we recognize a department or an agency has a need and we are monitoring the market, we can sometimes identify and inform those departments and agencies of that.

Ultimately, and increasingly, we want to see departments and agencies making the ultimate decision in terms of location, and we will help to identify that.

• (1715)

Mr. Paul Szabo: With regard to purchase or sale, have we ever made a capital gain on spec purchase of buildings and sold them off without ever having a tenant?

Mr. Tim McGrath: We're not property speculators.

Mr. Paul Szabo: Have we ever had buildings where we acquired building space and subsequently re-leased it because of the market? Markets over the years have had substantive swings.

Mr. Tim McGrath: This certainly is part of the Canada Lands Company. That's their mandate. When properties become surplus to the needs of the government, if it's a strategic property where gains can be made, Canada Lands works in that arena and has made substantial payback to the government in that regard.

Mr. Paul Szabo: I have a couple of last issues.

I have a letter here dated May 11, 2005, from McCarthy Tétrault with regard to the matter before us. This letter was to Mr. Alphonse Cormier, issues officer, assistant deputy minister, real property branch. They conclude, after having reviewed the obligations under subsection 14(1) and 25.10 of the ethics guidelines, "In light of the above, we are thus of the view that A.N. has fully respected its obligations under the Lease."

This was a legal opinion. From the corporate standpoint they are satisfied they have respected it, and yet the senator is still there.

Hon. Scott Brison: Ultimately this is a discussion where we raised the issue with the company simply to ensure that in fact there was compliance. That intervention from McCarthy Tétrault representing Alexis Nihon is an important one.

The other issue, which is simply the code of conduct governing the Senate and compliance with that code by individual senators is really the issue of this—

Mr. Paul Szabo: Mr. Chairman, I'd like to finish my time with a suggestion.

The Chair: Actually your time is finished, Mr. Szabo.

Mr. Paul Szabo: I'd like to make a suggestion to the committee.

Based on the testimony of the witnesses today, it appears that Alexis Nihon has discharged its responsibilities and that seven months of the non-occupancy was due to internal operational changes and negotiation on combining stuff.

But, Mr. Chairman, the issue seems to have come back to the senator. Unfortunately—

The Chair: That is a point of debate.

We will go to Mr. Sauvageau for five minutes, followed by Mr. Martin.

[Translation]

Mr. Benoît Sauvageau: Mr. Brison, I am going to quote what you said in your opening remarks. You stated that: “The Senate passed its conflict of interest code for senators some two weeks ago on May 18 [...] We will need to take some time to ascertain the impact of the new code [...]”

Could you please provide me with the name of the Senate's new ethics officer?

[English]

Hon. Scott Brison: Jean Fournier.

[Translation]

Mr. Benoît Sauvageau: Jean Fournier?

[English]

Hon. Scott Brison: Beyond that, as I said, section 14 of the Parliament of Canada Act was repealed recently, and before this new code of conduct takes effect there will be a transition period during which I expect all senators will be reviewing activities to ensure compliance.

[Translation]

Mr. Benoît Sauvageau: Do you think that the transition will be completed before the 30th of June, in other words, in two or three weeks' time? Will he be working effectively in a decision-making position, before the 30th of June?

[English]

Hon. Scott Brison: My information is that he is in that position.

[Translation]

Mr. Benoît Sauvageau: I have another question for you. You seem to be somebody who acts incredibly quickly. I am sure that Canadians who are having problems with the Canadian Revenue Agency would also like to see you as the Minister of Revenue; things get done in your department, and I congratulate you on that.

On May 17, you wrote the following to Alexis Nihon:

Therefore, pursuant to section 21.1, PWGSC intends to commence withholding base rent on May 31st, 2005, until PWGSC is satisfied that A.N. (Mega Centres) Inc. is no longer in violation of [...]

That was on May 17. Think of Canadians who have just filed their tax returns, and compare their wait to how quickly you acted. Three days later, on May 20th, you wrote:

Further to our telephone conversation this morning, we confirmed that we have recommended to our client that the cheque [for \$500,000] for this month's base rent be issued and that the decision about withholding base rent be deferred to June 30th in order to enable your client to meet with the Senate ethics advisor [...]

Does the government often say this sort of thing to people who owe us money, or to people from whom we are withholding money? One wonders what could have been said in a telephone conversation two days after having written to a client to forewarn him that \$500,000's worth of rent would be withheld. Two days after the first letter was sent, a telephone conversation takes place—it was not another letter—and then a letter was sent stating that actually a cheque for \$500,000 would be sent.

Are we going to receive a written document stating whether, on the 30th of June, you should write another cheque or stop payments to Alexis Nihon?

● (1720)

[English]

Hon. Scott Brison: I'm going to defer to Ellen Stensholt, our legal counsel, who's with the Department of Justice, but first of all, it's important.... You quoted from the original letter that said we wanted assurances that in fact Alexis Nihon was in compliance with the specific clause from the lease, and the response from McCarthy Tétrault, representing Alexis Nihon, was in fact that they believed they were, or are, and as such there is a discussion. We're looking for the assurance that they are, and if in fact they are, then no punitive action is required. It is up to the discussion that is currently occurring now to determine that they are, and in fact Ellen has been part of that discussion.

[Translation]

Mr. Benoît Sauvageau: Hang on a moment, please. You are saying that you asked the people at Alexis Nihon whether they were in compliance with the provisions of the contract, and they said that, yes, they were.

If I decide not to pay any more income tax, and you ask me whether I am complying with the Income Tax Act, and I say that I am, would you believe me?

[English]

Hon. Scott Brison: But again, you'd be treated fairly and you would have an opportunity to demonstrate that in fact you did act honourably, and if the government determined that you had, you would not be penalized. That's what would happen, Mr. Sauvageau, assuming that things worked as they ought to, and based on that same principle we are dealing with the company and working to ensure that they are in fact in compliance, and they believe they are and have represented themselves and made a case for that.

Now, Ellen Stensholt, our legal counsel, may wish to speak to this.

Ms. Ellen Stensholt (Senior General Counsel, Legal Services Branch, Department of Public Works and Government Services): Mr. Chairman, it was my letter that we're quoting from, and I am the person who spoke to counsel for Senator Massicotte. The conversation we had was as a result.

You pointed out correctly that we wrote—and it was a fairly direct letter—that we will withhold rent. I'd like to correct something. You said if you owed rent, would you be given that? In fact, it is we who owe rent to Alexis Nihon, and we said, you have *x* amount of time to comply and bring yourself into compliance with the lease.

There are two issues here. There is section 14 of the Parliament of Canada Act, and separate from that is section 25.10 of the lease.

We as tenants are enforcing the landlord's obligation under the lease. That's what we are doing, so we sent that. Mr. Bélanger telephoned me as a result of my letter and said, look, you're aware that the Senate passed a new code of ethics; this whole thing is in a state of transition. It became obvious that neither of us was an expert on how that new code was going to be interpreted. The interpretation of that code is the responsibility of Mr. Fournier, the new Senate ethics adviser.

I asked Mr. Bélanger if his client would be able to bring himself into compliance, would he start discussions, so that we would have an opinion from the Senate ethics officer as to his compliance with the new code of ethics. That was the discussion we had, and that being the case, we said, all right, the next rent is due June 30; let us know before that time how you have complied.

• (1725)

The Chair: Thank you. Your time is up.

Mr. Martin, you have not the full five minutes, just a couple of minutes. We have a little bit of committee business to do. Go ahead.

Mr. Pat Martin: To strip it down to its barest bones, then, the point here is that you can be a senator or you can be a landlord to the federal government, but you cannot be both. From what I hear, Minister, you don't disagree with that, nor do the people around you. So I think we're on the same page. Do you want to qualify that?

Hon. Scott Brison: I think it's important to recognize that the Senate interprets...and through its own code of ethics and enforcement mechanism it has not penalized any senator in the situation that either Trevor Eyton or Senator Massicotte.... From our perspective, we want to ensure that there is compliance. That's why the greater clarity of the new code is helpful, and the existence of an ethics officer who can give a judgment on this is helpful.

Mr. Pat Martin: The feedback we're getting is that the new code is worthless. It's worse than the House of Commons code, and there have been a lot of complaints already. Notwithstanding that, it was a simple statement, though. Do you agree that you can be a senator or you can be landlord to the federal government, but you can't be both?

I think your legal counsel certainly in the letter that... I don't have my glasses on, Madame, so I can't read your name, but in the letter you just read from, it says:

We cannot agree with your interpretation that in his roles as the Chief Executive Officer and a major investor in the Alexis Nihon Real Estate Investment Trust, which through A. N. (Mega Centres) Inc. is the owner of a building leased by the Government, Senator Massicotte's appointment to the Senate has not placed A.N. (Mega Centres) Inc. in violation of section 25.10 of the Lease.

I applaud your action of saying we're going to withhold your rent, because, in your opinion, you are in violation of the contract.

My question is I think similar to that of Mr. Sauvageau's. On the basis of a phone call, you sent them another half a million dollars rent. It must have been a heck of a phone call to lighten up to that degree, to go from threatening to withhold a half a million dollars rent, to saying, all right, have another month's rent. That seems like really not representing the interests of Canadians very aggressively.

Ms. Ellen Stensholt: Mr. Martin, if I may, what happened was the Senate passed its code of ethics on May 18 and the whole situation changed. We try not—

Mr. Pat Martin: But during the interim, he was in violation. From whenever he was made a senator until May 18, he was in violation of 14(1) and 25.10.

Ms. Ellen Stensholt: It's simply not clear. If it were that clear-cut, my job would be a lot easier than it is. It isn't that—

Mr. Pat Martin: The law clerk of the House of Commons said it was clear, because we had him as a witness here when I was in the

chair, and he was abundantly clear. He actually cited the Mayor of Moncton case, the Wheeler case, that went to the Supreme Court, which ruled quite clearly that... I won't bother reading it, but it ruled that no senator shall be directly or indirectly a party to a contract, as in 14(1), and that an officer is interested in his or her company when entering into profitable contracts. That means you are an interested party when you're an officer.

Hon. Scott Brison: He was not a senator at the time of the entry into the contract.

Mr. Pat Martin: While he was a senator and while he was a party to that contract, he was in violation.

Hon. Scott Brison: At the time of entry. You quoted specifically.

Mr. Pat Martin: We're splitting hairs here.

Hon. Scott Brison: No. With respect, Mr. Martin, you did quote specifically to make your case. You said at the entry of a contract. In fact, at the entry of the contract, he wasn't. There is ambiguity here, and in fairness—

Mr. Pat Martin: When the lease began, he was. We asked that specific question of the law clerk, and he said it has to be read in real time. At this current point in time, the senator is an officer of the company and he's a contractor to the federal government in the form of being a landlord. Therefore, it's a violation.

Ms. Ellen Stensholt: I think we would agree that there is an issue that requires investigation. It is not clear-cut. That language of section 14 in the Parliament of Canada Act is—

Mr. Pat Martin: The senior law clerk disagrees.

Ms. Ellen Stensholt: With respect, there are different opinions.

[*Translation*]

The Chair: Mr. Sauvageau on a point of order.

Mr. Benoît Sauvageau: I think that this is a point of order. If a decision is pending, why do we not withhold the rent until the ethics officer has handed down his decision?

• (1730)

[*English*]

The Chair: Monsieur Sauvageau, that is not a point of order.

All right, Mr. Martin, your time is up.

Mr. Pat Martin: Can I conclude with one final—

The Chair: One very short question. Go ahead, Mr. Martin.

Mr. Pat Martin: I conclude with one remark, which is that they must have felt there was a violation to threaten to withhold rent. This is pretty self-evident to me.

Hon. Scott Brison: What we wanted to ensure was that Alexis Nihon demonstrate to us that all efforts had been made to in fact act within the confines of particularly the contract with us—that's the most important part—and as such that if there was a violation that it be addressed. In fact, there is ambiguity around that, including the timing of the contract.

Again, the onus is on individual senators and members of Parliament to act consistent with the code of conduct governing their activities. Again, there are Conservative senators who are directors of corporations that are doing business with the Government of Canada, and I would hope that in fact Mr. Poilievre is going to speak to Trevor Eyton and ensure that in fact other senators who perhaps are directors of companies that do business with the Government of Canada.... Perhaps the Government of Canada ought to stop payment without any discussion with any of those companies. I don't think that would be fair. In fact, I think the fair thing to do would be to work to ensure that we work with those companies and that those senators respect and work within the codes of conduct of the Senate. I think in good faith we would expect that they would do exactly that.

The Chair: Thank you, Mr. Brison.

Mr. Martin's time is up.

Mr. Minister, you seem to imply that Senator Eyton is breaking the law in some way. Is that the case, that you believe Senator Eyton is breaking the law?

Hon. Scott Brison: I'm raising it as an example of an individual who is a director of companies that do business with the Government of Canada. In fact, I'm saying to Mr. Poilievre and others that we should all be ensuring that our colleagues comply with the rules governing both the House and the Senate. Those are separate from my responsibility as a minister.

The Chair: We have a point of order, Mr. Minister.

Mr. Poilievre.

Mr. Pierre Poilievre: The minister continually challenges me in particular, knowing full well that I don't have an opportunity to respond. He had plenty of opportunity to raise these points earlier on. The fact is there's only one senator who's had to be written a letter with a threat to withhold rent from his building. That was a letter that came from his actual department.

The Chair: Mr. Poilievre, it's not a point of order.

We have a short piece of business to do, so we have to get to that.

I'd like to thank you, Mr. Minister, for coming today, and all of your entourage.

We'll take 30 seconds literally to clear the witnesses from the table, and then we have two minutes of business to do, and we'll deal with that very quickly and get out of here.

We'll just go ahead with the business right now. The business is that in the motion that was passed asking for Mr. Brison to come to deal with this issue, we also agreed to have Senator Massicotte come, if the committee thought it was appropriate after hearing from the minister. So I'm at the will of the committee here. Is it agreed by all of the committee that we ask Senator Massicotte to come?

Mr. Paul Szabo: Who's responsible for this? How about the Speaker of the Senate and the Senate legal counsel who advised him, and maybe Howard Wilson, who advised him when he became a senator?

The Chair: Is there agreement that Senator Massicotte come? Are there any objections? Then we will ask Senator Massicotte to come.

Thank you very much, gentlemen.

The meeting is adjourned.

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