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Chair

Mr. John Williams

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• (1640)

[English]

The Chair (Mr. John Williams (Edmonton—St. Albert, CPC)): Order, please. We're now meeting in public.

I'm sure you're wondering what this is all about; so let me read to you the transcripts of the public hearing of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, under the Honourable Justice John Gomery, volume 27, Monday, October 25, 2004.

I'll start to read at page 4,616. If you want to listen carefully... Interpretation will have a copy of this as well.

Mr. Commissioner: I have been thinking about why the House of Commons has given you the mandate that it has given to you, and I am no more entitled than anybody else to inquire into the motivations of the House of Commons. They have the motivations that they have. But I can't inquire into it but I can speculate, and for the life of me, I can't understand why they have invoked their privilege.

I would think, with due respect for your client and with respect for the House of Commons, that the House of Commons would want to encourage the inquiry that is taking place before this Commission. That the House of Commons, as I have already mentioned, through its Public Accounts Committee, was making the same kind of inquiry that we are making here and I would think that they would want to facilitate and even encourage this inquiry. If you read statements made by prominent politicians, at least some of them think that what is occurring here is a healthy thing; that it is desirable that witnesses should be heard and that the truth should be uncovered.

So why would they want to inhibit the normal process of cross-examination that would take place, including questioning about prior inconsistent statements by invoking their privilege? I am puzzled by that. I am puzzled about why you—they are—if they are seeking to defend their privileges because they want to make sure that no precedent is set and so on, then it seems to me they can better protect their—avoid an unfavourable precedent by waiving their privilege and not putting me in the difficult position of having to decide whether or not to apply the privilege to the present circumstances. Do you follow me?

If I am forced to make a decision, I may make it one way or I may make it another way, and don't ask me now which way I would decide because I don't even know. But what I am saying to you is that the House of Commons, if it is trying to preserve the integrity of its immunity, might be better served by waiving its privilege in this particular instance and avoiding an unfavourable decision.

So I'm going to ask you—because it is not my intention to make a decision. I am persuaded by Me Lussier and Me Doody and by, I think, Mr. Pratte—I am persuaded by all of them that there is no urgency that I make a decision on this difficult question immediately and I am not going to. I have listened to the arguments. I'm going to preserve the authorities that have been given to me preciously and I am going to hope that the issue doesn't arise. But if the issue does arise, then I think that I have a problem and with respect, your client has a problem, because the problem is that I have to reach a decision and the decision might be favourable to your point of view and it might not. If I make a decision which is unfavourable to your point of view, we may be involved in a long and tedious and costly litigation until the higher courts have decided who is right. But in the meantime, I wonder if the objectives of this inquiry are not impeded and I wonder if the House of Commons really wants those objectives to be impeded.

So I am going to suggest to you, with respect, that you discuss this question further with your client with a view to determining if your client would be prepared to waive its privilege should the issue arise here. I understand the importance of the immunity and of the privilege. I am just saying that the immunity or the privilege is to some extent put at risk if I am forced to make a decision.

So then maybe you could give some thought in consultation with your clients to that. Maybe we can avoid the problem. Okay?

• (1645)

That's the end of the reading.

As chair of this committee, I will tell you right off the bat that I am very perturbed by the comments made by Mr. Justice Gomery, putting us in a spot of suggesting that we waive our privileges. In order for us to understand this issue—and I don't think we're going to deal with this lightly or quickly—I've asked Mr. Rob Walsh, the law clerk of the House of Commons and our legal counsel, to appear before us as a witness and to start the debate, because he has to leave and he has another meeting to go to at 5 p.m., I understand.

Am I correct, Mr. Walsh?

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): That's correct.

The Chair: This will just be the start of the debate. Mr. Gomery has asked the House of Commons counsel at the inquiry to consult with his client, and we are the client. So let the consultation begin.

Mr. David Christopherson (Hamilton Centre, NDP): I have a point of privilege.

The Chair: You have a point of order, yes.

Mr. David Christopherson: I just want to ask a couple of questions, if I could, about process.

Number one, I am assuming you know that the House leaders are dealing with this matter this afternoon. If not, the other members should know that it is there. It's not that that's the be-all and end-all, but it's important for us to understand it is on their agenda today.

The second thing—and this is just procedure, so help me out—I thought the first order of business was going to be hearing the legal presentations on how much latitude we have with regard to the inquiry happening and our ability to continue.

The Chair: That was definitely my intent; however, this issue had to take precedence. That's why, as I mentioned, I was quite perturbed that the committee wasn't able to just continue on and deal with its business. It now has had to be seized with this issue, and as I say, I don't even know how long this is going take us.

Mr. David Christopherson: May I ask another? I won't stay on this long, Mr. Chair.

Have we received some kind of formal request from his honour asking us to provide him with our thinking on this? Has there been some mechanism? Perhaps you can enlighten me, just to make sure the transfer from the inquiry to here is one that's acceptable to all concerned.

The Chair: I asked that question of Mr. Walsh already, so Mr. Walsh, please.

Mr. Rob Walsh: Mr. Chairman, the formality, if you want to call it that, with respect to the request of the House is nothing more than the remarks of Mr. Justice Gomery in open session of the commission of inquiry. I believe it's in the segment of his comments that the chairman just read to the committee that he suggests to counsel appearing on behalf of the House that counsel basically seek instructions, go back and talk to his client and see whether it really is the case that they wish to assert their privilege here in this commission of inquiry. That's how it comes before this committee today, basically, and that's how it's come to the House leaders' attention today.

The Chair: Mr. Walsh, the floor is yours.

Mr. Rob Walsh: You were inviting me to join the debate, Mr. Chairman, and that's hardly what I want to do. I'm not joining any debate, certainly. But I can perhaps offer some information, by way of background, to any debate that might ensue.

I must say I have some concerns about the remarks of the commissioner in the passage you just read and the unfavourable light in which it casts the House of Commons. Nonetheless, by way of background, this matter came to my attention late Sunday afternoon, a week ago Sunday. The information I had was that it would be addressed the following Monday morning at 9:30—which was a week ago this Monday—in the commission of inquiry hearings. Accordingly, I instructed counsel to appear on our behalf, on very short notice, to address the issue.

This is where I take exception to Mr. Commissioner Justice Gomery saying he's puzzled that we're there. It was commission counsel who brought this to our attention; it was commission counsel who recognized that there was a legal issue here. One of the lawyers at the commission of inquiry had indicated an intent to put to some witnesses in cross-examination the transcript of their testimony before this committee in the spring. His intention in doing this would be, of course, as is not uncommon in litigation situations, to try to challenge the witness, perhaps discredit the witness, show how the witness on the later occasion of testifying before the commission is saying something different from what the witness said some months earlier when appearing in front of this committee—on which occasion, presumably, the witness was telling the truth as well.

This is called prior inconsistent statements. It's a well-established legal practice in evidentiary practice that when you have a witness who is saying things you don't think are as truthful as the witness might like you to believe, or for whatever reason, on behalf of your client you want to try to challenge that witness, you put to the witness prior inconsistent statements and you say, how do you explain?

Well, the reading of transcripts of the House of Commons proceedings, whether at committee or in the House, or in a court of law or any other legal proceeding, is in our view, and clearly established to be, contrary to the provisions of the Bill of Rights of 1689, which is part of the constitutional law of this country relative to parliamentary privilege.

Because this was brought to our attention, as I say, by commission counsel, we went to the commission as what our counsel described as *amicus curiae*, that is to say a friend of the court, a friend of the commission, to present to the commission the law on parliamentary privilege. It was a lengthy and thorough presentation. That was a week ago Monday. And then Justice Gomery asked for other counsel who wanted to respond to be afforded a week to prepare. So this Monday other counsel responded, and it was this Monday that Mr. Justice Gomery made the remarks he made, which the chair has just read to you.

Now, with respect to the prospect of a waiver of privilege, let me first explain the concern I felt was arising out of the events of the spring, for which reason I thought we had to have counsel before the commission immediately, as it was arising the next morning. When this committee met last spring, February through May, I guess it was, it was the committee's concern on numerous occasions to assure witnesses that their testimony would not be used elsewhere against them. That's the law of parliamentary privilege: what you say here stays here. I have spoken to the committee about this in the past.

In my view, if it were the case that this rule were to be disregarded and persons who appeared in front of this committee were to find themselves confronted at the later proceedings of the commission with their testimony from this committee, that would be a direct violation not only of parliamentary privilege but of the assurances these witnesses were given, with the result that in the eyes of those witnesses this committee might look poor, and it might be increasingly difficult for committees to give those same assurances in the future to witnesses and expect to be believed.

It may also be the case, if Mr. Justice Gomery were to make an unfavourable decision...and I'm not suggesting he would, although he suggests he might have to. But were he to make an unfavourable decision, a couple of things would start happening.

Do we then go, as he suggests might be the case, into the courts to challenge that decision and override it? Do we not let the decision stand? Or do we not even intervene, as we have done here, and then have a ruling? And if it's unfavourable, so to speak, and he decides he's entitled to use the evidence before this committee for his own purposes, then witnesses in future will show up with a lawyer, because now the witness is entitled to get legal advice as to whether the witness should or should not answer a question since now it's been demonstrated that the witness's evidence could be used against them.

• (1650)

The Chair: You're talking about before a parliamentary committee.

Mr. Rob Walsh: Before a parliamentary committee.

And then, if the witness maybe shows up without a lawyer because he can't afford one, you have appeals to help them get a lawyer.

In my view, with parliamentary business you basically have to avoid the “lawyer-fication” of your proceedings, avoid being constrained in your deliberations. By parliamentary privilege there is meant to be unrestrained, open, and free debate, full inquiry. That's not to say you're licensed to act irresponsibly, and I know committees don't do that.

There it is. That's why we went before the commission, met with these comments by Mr. Justice Gomery. The question now is, might there be a possibility of a waiver? I've been in discussions on the question of a waiver. Arguably, there is a possibility of a waiver here in the sense that parliamentary privilege...and this is just my view I'm expressing here. I'm not representing anybody else when I say this. I'm just advising you as a legal adviser. Parliamentary privilege, and all the protections it affords, is not a protection to persons who mislead committees, who misrepresent the facts to committees, who, in short, lie to committees. It is not a licence to lie. You do not have the protection of parliamentary privilege against lies. Parliamentary privilege is meant to encourage truth, full and complete disclosure, without fear of reprisals or other adverse actions caused to you as a result of your testimony. If persons come before this committee and mislead this committee, or fail to tell the whole truth, they ought not to think that parliamentary privilege is available to give them an immunity from the consequences of that misleading of the committee or those untruths.

In this sense, what is sought here by the lawyers before the commission is to use the testimony of witnesses here, as I said earlier, for the purposes of determining whether the witness before the commission is telling the truth before that commission, or whether we are now getting a different story before the commission from what was said earlier, and therefore the witness is perhaps not to be believed or perhaps not much weight is to be given to the evidence of that witness before the commission.

It is not the evidence of the witness before the committee that's being examined; it's only being presented to the extent that it is inconsistent, as a challenge to the witness before the commission as to why the story of this witness is now different in some material respect from what it was before. There may be a good explanation on the part of a witness before the commission as to why that witness's testimony differs from his testimony before the committee. Arguably, these witnesses ought to be afforded an opportunity to explain themselves.

On the other hand, it could be that counsel for one of the other witnesses who doesn't like the testimony he's hearing from a given witness wants to discredit a witness and so wants to use these prior inconsistent statement as a basis on which to show that the testimony of this witness before the commission on this later occasion is not to be given much weight.

In my view, it is consistent with privilege and the assurances given to witnesses before this committee to allow a waiver of the privilege to the extent that it is used for this limited purpose. This committee, like all committees of the House, and like the House, is interested in the truth, and in the truth being made manifest, as it were. It wants

only the truth from witnesses. It doesn't want half-truths, it doesn't want exaggerated truths, it doesn't want untruths; it wants truth.

That's what the commission of inquiry is seeking to do, and that's the purpose of the exercise with this use of the public accounts committee transcripts as a tool by which to challenge witnesses when they later say something quite different from what they said on an earlier occasion of giving sworn testimony—that is, before the public accounts committee.

That's where it's at. I'm asked to go to another meeting now at 5 o'clock, on the same topic. It's something for this committee to consider, obviously. I think this committee and all committees, in my view, and all members of the House hope that Mr. Gomery and his commission are successful in getting to the bottom of what happened in the sponsorship inquiry.

Contrary to Mr. Gomery's remarks, it was never, to my knowledge, the intention of anyone to in any way impede those hearings. I don't know why Mr. Gomery should say he's puzzled by this, insofar as it was his own lawyers who told us about the point arising there. It had arisen enough that his own lawyers recognized the legal problem. We were told about it. We went and gave the full nine yards, as it were, about it. He had the benefit of a full presentation by our counsel, and responses by other counsel, and yet he remains puzzled.

● (1655)

If Mr. Justice Gomery has a decision to make, and he may well have a decision to make, the House will consider its position accordingly at that time. We're not there yet. It is the case that Mr. Justice Gomery is inviting the House to consider the matter further, and it's up to the House to do that, of course. This committee, as being the committee involved, may itself have a view, and it may well wish to facilitate the Gomery inquiry in the manner I'm describing, or it may not. It's a matter for this committee to discuss and to come to its own decision. It's certainly not my place to make that decision for you, or even, for that matter, recommend any particular course of action to you. It's intrinsically within the discretion of members of Parliament sitting in the House as to whether the House wants to waive its privileges in part or not at all. The privilege belongs to the House, and it's only the House that can waive a privilege, in part or in whole. This committee might well make a report to the House in that regard with its recommendations as to what it thinks the House might do, but that's the committee's call.

● (1700)

The Chair: Thank you, Mr. Walsh. We do appreciate your advising us of the situation and your succinct legal summary. You are excused, because you do have another meeting to attend. Unfortunately, I'm not sure we're going to make any decision on this today, so I expect we'll see you back.

Mr. Rob Walsh: Thank you, Mr. Chairman.

The Chair: Mr. Murphy, followed by Mr. Lastewka, but unfortunately, I have to let the witness go.

Hon. Shawn Murphy (Charlottetown, Lib.): Thank you, Mr. Chairman.

I was going to ask Mr. Walsh, but I assume he would tell us that he feels it's wrong and improper to even consider a retroactive waiver.

The Chair: I've had discussions with Mr. Walsh, but as you know, I am not a lawyer, and I'll answer as the chair of the committee on my understanding. This is not a legal opinion, as you all will acknowledge and appreciate.

There is some debate going around the House of Commons. As I say, he's off to another committee to discuss the issue. Should we allow a waiver if it's obvious that two different stories are emerging, one story to the committee last spring, a different story to the inquiry? That would need to be reconciled. Therefore, we may want to grant a waiver to allow that issue to be reconciled. That's about as far as the debate so far has gone. That's about as far as we'd want to go. There has been no decision. This is just the talk at this time. As I say, there are other people meeting to discuss this issue. We, the public accounts committee, did hear the testimony. It's my opinion that the committee has something to say on this. Privileges are being challenged by this; our privileges collectively are being challenged by this. So any individual member could feel obliged to rise in the House of Commons and have their say on this issue if waiver is to go forward.

So it's a very difficult issue. As far as I understand it, only twice in the history of Canada have we made a waiver, once about 1872, the other time being in 1976, with the McDonald commission that investigated some wrongdoing in the RCMP. This would be only the third time this has been done.

Mr. Lastewka.

Hon. Walt Lastewka (St. Catharines, Lib.): I guess I have much the same opinion as you, Mr. Chairman. Credibility is very important to me as an individual, and the credibility of the committee is very important. I have great concern that after receiving legal advice as a committee, then advising the witnesses of their rights and proceeding to hear witnesses, we as a committee would go back on our word. That bothers me, because if I were a witness for future items, I'm not sure I would be listening to any advice you or the committee or the committee's lawyers would be giving me. If we go back on our word, we are setting a precedent. I really have a concern about that, and I think legal advice is really going to be required by this committee as a whole.

• (1705)

The Chair: Thank you, Mr. Lastewka.

Mr. Fitzpatrick.

Mr. Brian Fitzpatrick (Prince Albert, CPC): I find this kind of discussion fairly challenging. I wish Mr. Walsh could have stayed, because there are a lot of questions that should be asked.

It did cross my mind, with the privilege we do have in this House, if somebody lies, what can you do about it? It seems to me there are measures we as a committee and House of Commons can take if that happens. It seems to me Gomery is saying it's up to him to deal with it, and maybe he'll take it away from us. I'm not exactly sure that's the way I would like to handle this thing.

Mr. Walsh also explained that he could see a limited type waiver for special circumstances, but it wouldn't be a wide-open thing. I'd sure like to know more about what Mr. Walsh was alluding to with a

limited waiver, but he's gone. We'll have to get him back to get this clarified.

He also made it clear that it's not a privilege for the witness, it's our privilege as members of Parliament. It's up to us to decide whether anything is going to get waived.

The Chair: I understand that if a person lies under oath before a parliamentary committee, it's just the same as a Criminal Code offence, perjury. If they lie to a parliamentary committee and they're not under oath, it is a contempt of Parliament, and Parliament would decide what to do.

Mr. Brian Fitzpatrick: Were they under oath?

The Chair: Initially they were not, but later they were.

Mr. Christopherson.

Mr. David Christopherson: Thank you, Mr. Chair.

Like the chair, I'm not a lawyer, but this appears to be an incredibly important issue, given that we're talking about the rights of Parliament. There are few really important powers that Parliament has. When we do use those limited powers, such as bestowing upon someone a guarantee of protection, then I share Mr. Lastewka's point of view. That really throws me. At the same time, I do appreciate what Mr. Walsh sets up as the dynamics here. It seems to me a lot of it is going to depend on the whole question of whether or not someone has told a lie. Until you prove otherwise, someone has told the truth. The question is, what is the process to determine whether or not someone has lied and whether the testimony remains under the protection of Parliament or not. That's about as far as I can go into the legal thinking.

To that end, I would also hope, Mr. Chair—and all I'm doing is adding to the debate, I'm not reaching any final conclusions either—that we would allow legal representation for the witnesses to come forward and make a contrary argument. If they believe differently, I'd like to hear that. I accept the responsibility of making the final decision. I'll stand up and state my position, I'll own up to the responsibility, but I would like to hear from both sides equally on this. I hope others feel the same way, so that we're making as educated and knowledgeable a decision as possible.

My last thought is that it seems to me there's a possibility here that if it all does hinge on the whole question of how you determine whether someone has told a lie or not, that's not something new. It seemed to me that what we heard from the lawyer was that if you lie, you are jeopardizing the protection you're offered, because it's not there for you to lie, it's there for you to tell the truth. It may be possible to provide some kind of test that would extend the definition of what that means, but it would be an extension we're all comfortable with, and it would be a test that would happen every time this comes up: here's the process for determining that, and once you've reached your determination, it either is deemed to be the truth and the protection remains, or it's deemed to have been untruthful and you do not have that parliamentary protection any further.

Thank you, Mr. Chair.

The Chair: I did actually talk to Mr. Walsh about other witnesses we could bring forward to present both sides of the argument before we come to a conclusion. We're still mulling it over, but if you have any suggestions on that, I'd certainly be more than glad to hear them.

Mr. Allison.

• (1710)

Mr. Dean Allison (Niagara West—Glanbrook, CPC): Thank you, Mr. Chair.

As a new parliamentarian, I think we'd all agree that our word and what we say is very important to our constituents and to the people of this land who vote us in. So I go back to what Mr. Lastewka said, that when we give our word and we say that you're under a protection it should carry a lot of weight. I believe that we only undermine our own credibility as parliamentarians should we look at removing this carte blanche and making it something that could be negotiated. I think we need to be very careful that when we tell people they have our word as parliamentarians when they come here to this committee, or to other committees in the House of Commons, what we are assuring them is that they can have faith and trust in what we say. So as Mr. Lastewka said, I think we need to be very cautious as we move forward that we don't open up something we regret down the road.

[*Translation*]

The Chair: Go ahead, Mr. Perron.

Mr. Gilles-A. Perron (Rivière-des-Mille-Îles, BQ): It's all Greek to me, Mr. Chairman. I'm very upset. If we make a decision, it is bound to have serious repercussions. Regardless of whether we decide to back down or to maintain the status quo, what impact will our decision have on upcoming witnesses and on the other committees?

Since I'm only here temporarily, the decision will not be mine to make. That pleasure will go to my colleague Mr. Sauvageau. However, I urge you to exercise extreme caution and to think about the decisions that I will have to make where my own committee is concerned. We must proceed very, very carefully when we make decisions that relate to the serious problem we are currently facing.

[*English*]

The Chair: I appreciate your intervention.

Mr. Wrzesnewskij, please.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): I'm curious about the two previous precedents that were noted and what were the circumstances around those precedents and whether or not they were coincidental with a public inquiry.

The Chair: The one regarding the McDonald commission was a public inquiry. I really don't know. My memory doesn't go back to 1872.

When Mr. Walsh returns, that question can be put to him, and I'm sure the answer will readily be available. In addition, of course, the House of Commons' memory is much longer than mine, and the clerk advises me that the table officers will get that and circulate it to all members.

By the way, the transcript that I read out today will be translated into both languages and distributed with a high priority tomorrow. It should be available to everybody tomorrow.

Mr. Borys Wrzesnewskij: As a final comment, perhaps after the speakers list is done, because we don't have our legal counsel here, we will require him to come back. Perhaps we could finish this point.

The Chair: Yes.

Mr. Holland and Mr. Carr.

Mr. Mark Holland (Ajax—Pickering, Lib.): I think it's apparent from discussion around the committee table that there's unanimous consent—at least I haven't heard any dissenting opinion yet—that if we were to waive the privilege that had been granted it would not mean carte blanche. It would not be just a wholesale removal of what we had guaranteed. I think there have been a lot of good reasons put to that.

The concept that if somebody lies before committee they waive their privilege is one I would certainly agree with. The principal challenge in that is it's extremely laborious and somewhat controversial to try to determine who is lying, and who is the one who pores through that and makes the determination of who is lying? I can see an enormous amount of resources being put to that and a lot of games, potentially, played by both sides trying to catch it and waste a lot of time in the process. What happens if you make a mistake? What happens if you ultimately make a decision that somebody lied and you allow that testimony to go forward, you waive privilege, and then you find out the person didn't lie? Then they're obviously going to be coming back not very happy with this committee, and we would have waived that privilege in such a way that was clearly inappropriate.

I think the comments around being very cautious on these deliberations and aware of the ramifications beyond this one issue into subsequent issues and subsequent parliaments are extremely important. I just raise a flag on that window of what is this exception that we would allow, because I can see it to be extremely problematic and perhaps to ultimately undermine our process. I just think we need to tread cautiously.

• (1715)

The Chair: Mr. Carr.

Mr. Gary Carr (Halton, Lib.): As the former Speaker in Ontario, I know we had issues of privilege to deal with all of the time. In fact, Mr. Finkelstein was my lawyer, as the Speaker in Ontario, dealing with the question of privilege on a number of occasions.

One thing I will say to the committee for food for thought is to look at the other side. If Mr. Justice Gomery does rule, we would be in a long court case, which almost assuredly would be going to a higher court. If in fact we lose that case, there will be significant consequences for parliaments forever.

The issue of privilege hasn't gone, but surely it will go, to the Supreme Court. It will be a long fight. What happens to the Gomery commission in between will be interesting. I think he was very clear in pointing out that he wasn't in any way trying to indicate how he was going to rule, but there is food for thought, that if we do go down this road, we will be into a long court challenge. Of course, when you ask for legal opinions, you'll get five different lawyers. But we should think, because there will be serious consequences for the way Parliament operates if, down the road, we lose the privilege argument .

I'm not suggesting we would lose that. I'm also not a lawyer. We'd better think very clearly. I know in other circumstances, if it is waived, there wouldn't be a challenge and then it doesn't sit out there forever.

If we don't do that, just make sure that we know we're going down the road to a major decision on the issue of privilege, which we may or may not win, and it may or may not take a long, extended period of time.

I throw that out as a caution to take the other side of it, because everybody was arguing on the one side. We should know that before we go into it. And Mr. Christopherson talked about the House leaders; I think it's something that will be far too important for just this committee to decide. Obviously, the House as a whole needs to decide on it.

That is my word of caution on it, that when we go down this road we're going down a very serious road for parliaments, and it will affect parliaments for the rest of time.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Carr.

I'm not going to start a second round.

Mr. Kramp hasn't spoken yet. So I think you'll be the last speaker, Mr. Kramp.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Thank you, Mr. Chair.

I have two or three thoughts. As Mark Holland has stated, there's almost unanimity around the table regarding our position here. Also, to complement the remarks by Mr. Carr and Mr. Christopherson, we definitely need the other side of the coin. We need that information here.

However, I still have this little something in here that goes right back to the initial statement from Mr. Lastewka. In my understanding of this committee—being a new member, though—we have a primacy to protect the operation of the parliamentary process. My understanding is, and correct me if I'm wrong, we're not here to pass judicial argument on the Criminal Code of Canada and/or to make new laws for this country, but we're here to protect the privilege of Parliament and the operation of Parliament, the efficiencies, and the integrity and the accountability of Parliament itself.

I think that if we get so deeply involved in the what-ifs—what if Justice Gomery says this, what if Justice Gomery says that—we're really overextending our capacity, our judgment, our training into another area that really isn't our concern.

I think we should keep our focus on what is important, what is our duty, what our responsibilities are here, and let's deal with those. As we deal with those, then let's let the other people involved in the whole process deal with their responsibilities. In other words, do what you do well and do a good job of it.

The Chair: Thank you, Mr. Kramp.

Yes, Mr. Lastewka.

Hon. Walt Lastewka: I'd like to ask you a question because you're the chair of our committee. Knowing, as I think Mr.

Christopherson talked about, that the House leaders are dealing with this, and as you know, the committee itself has its own destiny, not to be overruled, my question to you, as chair representing us, is this. If the House leaders decide on a decision, is that then forced upon us?

● (1720)

The Chair: No. I said at the beginning that because all privileges, collectively and individually, are at risk here, collectively and individually there is no requirement that we are bound by any decision of our House leaders, but I'm sure that we would want to take any direction from them into consideration. We are a committee of Parliament; they are a communications vehicle among all parties. If all parties agree, then I'm sure that would send us a strong signal.

But we are, as you say, the masters of our own destiny. Each and every member of Parliament is a master of his own destiny. All members of Parliament have their own personal privileges. We collectively also have these same privileges. The committee is a creature of Parliament. We can't really speak to the world at large, we can only speak to Parliament. If we decide what to do, we would report back to Parliament. It would then agree or disagree with what this committee has decided, and then they would speak to the world. This committee does not speak to the world.

You had a quick question.

Mr. Brian Fitzpatrick: I have a question for the chair, too. It's a point that's been on my mind. We had the two inquiries, but they were both pre-charter inquiries. I think the charter does have a provision that is very similar to the Fifth Amendment in the United States. It crossed my mind that if this thing is not handled correctly, what you will have in parliamentary proceedings is witnesses coming in and pleading the Canadian equivalent of the Fifth Amendment.

Do you know, Mr. Chair, whether this particular issue has been judicially tested or dealt with since the charter?

The Chair: Again, I'm not a lawyer and we're not going to get into a legal debate here, but I understand that in a criminal proceeding an accused is not required to take the stand. There is no "I plead the Fifth" concept in Canada, but they're not required to take the stand to incriminate themselves. I know there are lawyers around here and I'm not going to get into a legal debate on this.

The other point is for Parliament. You may recall, for those who were here last spring, you're not entitled to refuse to answer a question to Parliament, which is quite different from a court of law. There was more than one occasion where the witnesses would have preferred not to answer the question and I had to instruct the witness, yes, you will answer the question. And that puts us in an entirely different game compared to someone in a court of law who has the protection of not incriminating themselves, whereas here in Parliament witnesses do not have the privilege of refusing to answer the question, and I did actually have to say, you will answer.

Mr. Brian Fitzpatrick: But I think Gomery is suggesting this may get tested in the courts here.

The Chair: Well anyway, I have apprised you of the issue. We're not going to make a decision today. We are going to fill your mailboxes with paper. You can rest assured that the transcripts I read are being translated and will be delivered as quickly as possible. The clerk will be doing some additional work. If the law clerk comes up with rulings you wish to be apprised of, you will be getting these as well.

I presume I do have the will of the committee that if this needs to be discussed at an appropriate time, I'll set the agenda aside on that particular day and bring it forward, if need be. You'll get as much notice as possible.

For the new members, I'm sure you never thought you'd get into a historical debate right on the very first day. Welcome to Parliament Hill. Welcome to public accounts.

Now, before you run off, I do need to get a little bit of direction, because we never really did get into.... We have five more minutes. Perhaps we could switch off the public broadcast and move back in camera and back to our agenda.

[Proceedings continue in camera]

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