



House of Commons  
CANADA

# **Standing Committee on Procedure and House Affairs**

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**EVIDENCE**

**Thursday, February 26, 2009**

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**Chair**

**Mr. Joe Preston**

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• (1105)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I'll call the meeting to order. We certainly have enough quorum for listening to witnesses.

Today's meeting is pursuant to Standing Order 108(3)(a)(v), on matters relating to webcasting of the House and its committees. We are in public today.

I'd like to welcome Madam O'Brien and Mr. Walsh, good friends of this committee.

We're happy to have you here today. I guess we'll start with opening statements from you and see if you can help us along our journey.

**Ms. Audrey O'Brien (Clerk of the House of Commons):** Thank you very much, Mr. Chair.

First of all, I'd like to thank the committee for inviting me to appear today as it reviews the various issues regarding Internet broadcasting, or webcasting, of proceedings of the House and its committees. My staff in its usual remarkably diligent way prepared a very long opening statement that reviewed the history of things and what not. Rather than subjecting you to my reading of this, I've simply tabled that with the clerk. I'll give you a summary of that, and that will be available. Perhaps you might want to append it to the proceedings of today, because it has a lot of historical information that I don't think is necessary for me to go through personally with you today, but it might be helpful, ultimately, for the researcher and the staff of the committee when they draft the report, if that's okay.

I'm accompanied today by Rob Walsh, Law Clerk and Parliamentary Counsel. I'll be speaking to the question more generally, notably on procedural issues involved and with regard to practices in other jurisdictions. A lot of that material, I confess, is in the document I've tabled. I will ask the law clerk to speak on questions of copyright law and privilege.

[Translation]

As you know, this issue arose in the spring of 2007. An organization, the Friends of Canadian Broadcasting, was webcasting audio and video proceedings of committees on its website. On March 23, 2007, the Office of the Law Clerk and Parliamentary Counsel wrote a letter asking them to cease and desist webcasting, podcasting or otherwise broadcasting the House of Commons proceedings. The Parliamentary Counsel advised the group that, and I quote:

broadcasting committee proceedings without permission of the House of Commons could be raised in the House of Commons as a breach of privileges... broadcasting of excerpts of the proceedings of the Standing Committees of the House of Commons without authorization may also be considered a contempt of Parliament since the publication of a partial report of the proceedings may be considered by the House of Commons as an obstruction.

[English]

On April 16, 2007, a spokesperson for the Friends of Canadian Broadcasting replied to the letter by stating they did not wish to remove any of the material from their website but that they would be pleased to follow any reasonable procedure that the House would suggest to obtain the necessary permissions, and they would welcome the guidance of the House in that regard.

Later that month, the chairs of the Standing Committee on Finance and the Standing Committee on Canadian Heritage wrote to the chair of this committee to inform him that an organization, namely the Friends of Canadian Broadcasting, was offering to its subscribers for download the webcasting of proceedings of the respective committees without authorization. They asked this committee to look into the policies and recourses available to prevent this infringement on the House's control over the record of its proceedings. In its meeting of February 10 last, this committee agreed to hold a meeting today to look at the issues surrounding webcasting, such as establishing rules and/or adding new standing orders determining the authority responsible for this matter here at the House and how other legislatures deal with the issue.

In reference to the authority for dealing with this issue, as you know, pursuant to Standing Orders 108(3)(a)(v) and 119.1(2), this committee has the mandate to review and report on the radio and television broadcasting of the proceedings of the House and its committees and to establish guidelines governing the broadcasting of committee meetings. Consequently, in the absence of a reference from the House of Commons on a question of privilege dealing with the case outlined above, the Standing Orders do certainly give you the authority to deal with this issue more generally.

I don't want to review the history of broadcasting at the House of Commons or the role played by this committee and its predecessors in supporting this committee in this area. The document I tabled, as I said, briefly summarizes that whole history dating from 1970, when the general question of radio and television broadcasting of the House of Commons was referred to the Standing Committee on Procedure and Organization—as it was then called in 1970—following debates in the House in 1967 and 1969, through to 2003, when ParlVU was launched initially in April 2003 on the parliamentary Intranet site for members and their staff. The Canadian public has now been able to view ParlVU through the parliamentary website since February 2, 2004.

As this history has indicated, as the environment has evolved, so has the House, and the challenge has been to use the electronic media so as to exploit the opportunities they offer without compromising the integrity of Parliament. This is the same challenge you face today in grappling with the issue of information dissemination.

Again, for ease of reference, I've left with the clerk and asked that there be distributed these two sheets, eight and a half by fourteen, which are basically a chart of the audio and video of parliamentary proceedings. It just explains how these are made available today.

• (1110)

[*Translation*]

It is in both languages, of course. It is really an at-a-glance summary that explains the options available for those who want access to the audio and video recordings of the proceedings of the House and the committees.

I am ready to take your questions. This was of course prepared by Television and Radio Services, part of Information Services. My thanks go to them.

The House therefore controls the broadcasting of its proceedings; its intention has clearly always been that control of the entire system, especially maintaining the concept of an electronic Hansard, should continue to lie with the House, specifically with the Speaker, as the representative of all members.

The following licence to broadcast appears at the beginning and the end of all broadcasts and webcasts made by the House of Commons as well as on labels displayed on DVDs and tapes that are provided on demand.

It reads as follows, and I quote:

The Speaker of the House of Commons hereby grants permission to use this video content in schools or for purposes of private study, research, criticism or review.

Television and radio broadcasting undertakings, licensed by the Canadian Radio-television and Telecommunications Commission, may make use of recorded excerpts of these televised proceedings in their news and public affairs programs. Any other commercial use or rebroadcast of these televised proceedings requires the express prior written approval of the Speaker of the House of Commons.

In its 40th report of the first session of the 39th Parliament (March 30, 2007), you may recall that this committee made permanent guidelines for broadcasting committee meetings and, if I may, I would like to quote from the report the following:

The committee will continue to monitor the broadcasting of committees by the electronic media, and retains the authority pursuant to Standing Orders 108(3)(a)(v) and 119.1(2) to recommend changes to these guidelines.

[*English*]

I think the committee right now is facing something of a dilemma. On the one hand, it should be relatively straightforward to draft guidelines or standing orders to limit the exterior use of any kind of broadcast of the proceedings of the House and its committees. On the other hand, enforcing such guidelines will pose a major challenge.

The original objective of broadcasting proceedings, it's important to remember, was to disseminate to as wide an audience as possible the work of the House and its members. But those decisions were made in a much simpler time. Some of the 1972 report on broadcasting is downright quaint when you reread it. Paragraph 70, for example, reads, in part, "If it is decided to televise the proceedings of the House, it will then have to be decided whether to do so in colour or in black and white."

We live today in a very different time. Many members have their own websites where they regularly make available streaming of their own participation in the House or in committees. As technology grows daily easier to manipulate, it's only natural that concerns are raised about controlling how House proceedings are used.

What the committee needs, I think—again, this is a personal opinion, and obviously one that I've thought about—is to consider very carefully whether all of those concerns are entirely well-founded. In the great majority of cases, there's no malicious intent in the onward dissemination, if one can call it that, of these proceedings. In those specific cases where genuine concerns exist—where, for example, people might feel that their privileges have somehow been affected—then the House can always reaffirm its control and reassert its authority, for example, by punishing misuse as a contempt of the House.

As I said earlier, I'm joined by my colleague Rob Walsh, Law Clerk and Parliamentary Counsel. In order to round out this discussion, he will address the legal issues surrounding the reproduction and distribution of the recordings of House and committee proceedings by third parties and the means now available to the House to limit or control third parties in the use they can make of recordings or records of House and committee proceedings.

Thank you, Mr. Chair. I'll pass it over to Rob.

• (1115)

**The Chair:** Thank you.

Mr. Walsh.

**Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons):** Thank you, Mr. Chairman.

I'll briefly provide some background to the committee and then leave the rest of the time for questions from members.

Since 1993 a series of statements was included in several House of Commons publications to indicate the manner of reproduction permitted for the particular record to which it was attached. It is sometimes referred to as the "Speaker's licence". The licence in each case is specific to the kind of record to which it is attached.

There are currently three variations of the licence in use by the House. I have copies for members, if they would like to see them, of three generic licences...or not-so-generic licences currently used by the House.

[*Translation*]

On behalf of the Speaker, the Office of the Law Clerk deals with requests for permission to reproduce, for commercial or other purposes, recordings of House proceedings and other documents for which the House holds the copyright. These requests are made by private individuals and organizations. They are sent to us by the Crown Copyright and Licensing section, by the Library of Parliament, by committees and by other areas of House administration. Requests for use in documentaries, manuals and so on are usually granted.

[*English*]

Most requests are authorized without cost, but some examples of requests that may be denied are uses that would commercialize the proceedings, ridicule the proceedings, or enter the proceedings in evidence in court.

In considering such requests, reproductions of the records of the proceedings that are intended solely for dissemination on the Internet are also generally not authorized by my office, since, one, they may not facilitate the Speaker's control over the material, and two, they are not consistent with the limits to broadcast set out in the Speaker's licence, which limits broadcasting to CRTC-licensed broadcasters for news and current affairs programming.

Since the eventual encrypted webcasting by the House was anticipated and is now available, it was anticipated that this would ensure that the House maintained control over the integrity of the proceedings and would permit users to link to the official version of the proceedings available in both official languages.

[*Translation*]

The kinds of uses for which permission might be denied, such as for political or campaign purposes, for satire or ridicule, or for commercial purposes, follow the guidelines proposed to control broadcasting when the possibility of broadcasting proceedings was studied in 1972. These uses also match what is done in other legislative assemblies in the Commonwealth.

[*English*]

Beyond this, I am prepared to discuss what the options are to the House relative to going forward in respect to webcasting versus the rather antiquated technology of television. But I will stop here and respond to members' questions as they come forward.

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

Madame Jennings, would you like to lead us off?

• (1120)

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you.

I see from the report our researchers have produced, doing a comparison of other jurisdictions, that there are other jurisdictions that allow for the use through webcasting, and the copyright or

intellectual property is asserted but there's no charge. They can use it without any problem as long as it's for non-commercial purposes.

In some of those same jurisdictions, they also exclude the use of the proceedings in any medium for political advertising or election campaigning, except with the permission of all members shown—satire, ridicule or denigration, commercial sponsorship, or commercial advertising.

I would like your opinion, your best advice. Do you think we should come into the 21st century and allow for the downloads of whatever information is available on the House websites and the search engines, as long as there are these exclusions?

**Ms. Audrey O'Brien:** Madam Jennings, I have to say that I realize there is a certain unease with the idea of sort of throwing open the doors in that way, but my own feeling is that I think the time has come. I think we are at a point now where the technology makes this possible and where, really, we have to remember that the basic objective of all of this broadcasting was the idea of making this work and the proceedings available.

I know that the Hansard, the gavel-to-gavel, is a concept that is very dear to members. At the same time, I think that now, given how technology has evolved, it's perfectly appropriate that the House provide the gavel-to-gavel coverage, but it is also, I think, quite sensible that people would say, for example, "Okay, we are appearing as an NGO before a committee and here is our testimony". That's not gavel-to-gavel. It's much more restricted, perhaps, but it makes the point to their interested parties, their stakeholders.

So for the purposes of discussion, I think it's a good starting point. I would invite my colleague to comment on this, because again, looking at the notices that appear in other jurisdictions, he has prepared a draft of a notice—or we can make that available later, if you like—where such exceptions would be made, where you say, "This is available except for purposes of thus". I think that is a protection that's quite reasonable. You keep the control in principle, but you don't put upon yourself, in a sense, the absurdity of trying to police the thing; I mean in a proactive kind of sense. Obviously, you have to be able to address specific issues if there is flagrant abuse of the thing, but otherwise I think it's one of the few occasions when I'm inclined to depend on the goodwill of the people involved.

**Hon. Marlene Jennings:** I like the advice you're providing. I think we should be bringing our communication systems into the 21st century. I also like the idea of presumed good faith on the part of everyone, but also that there would be clear exceptions. I would say that in those guidelines it would be the first thing somebody would see when they go to the site; that is, what, if any, are the consequences if, for instance, these exceptions are not respected?

Now I would like to ask you this: do you believe that one of the exceptions should be the use of the coverage of the proceedings in political advertising and election campaigning, etc.? A number of jurisdictions precisely exclude its use unless there is prior authorization.

**Ms. Audrey O'Brien:** Obviously this is an eminently political question, and it's an issue, if you will, so I think it's really you, as the elected representatives, who would have a better sense of that than I would. Again, I think what they're trying to do is to make available, for instance.... Again, assuming the positive side of this, where one has, for example, members downloading their participation in statements by members or in question period or in debate, I think what they want to exclude is ostensibly something where you would be downloading another member to argue or to in some sense take issue with what that person said.

It strikes me that this kind of protection is not a bad thing to put in, simply because, in a sense, it says to members that we are going to police ourselves as we ask other people to. We're going to treat each other with the respect that we ask other people to use in terms of the actual proceedings; we won't use the proceedings for purposes of the political side of things, the party politics, if you will.

• (1125)

**Hon. Marlene Jennings:** Unless the member shown has given express authorization.

**Ms. Audrey O'Brien:** Yes, exactly—has agreed.

**Hon. Marlene Jennings:** Because not all of the jurisdictions allow it, even if there's authorization. If one looks at British Columbia, it simply says it's not allowed to be used by any political party “for political party advertising, election campaigns or any other politically partisan activity”.

So it doesn't matter if Marlene Jennings says “Yes, you can use that clip of me in the House or in committee” and if I tell my party or my official agent they can use it: I'm not allowed to do that in British Columbia.

**Ms. Audrey O'Brien:** And it might be that you want to look into that to see why they've decided to exclude it completely and not leave it to the individual decision.

I think my colleague would like to comment on this question.

**Mr. Rob Walsh:** What restrictions you do or do not want to include, of course, is obviously a decision for the committee to make. It's not a choice that I should make. But there are issues that go with the choice you make. The general notice that has been handed out is my attempt to draft a notice applying to all of the reproductions that may go out. Right now we have three—which I think have also gone out to you. There's one that's used for broadcasting; there's one that's used for minutes and evidence of committees; and another for journals, which you get copies of.

Well, we're attempting to do something that would apply to all of them. And if I may say this, what is fundamental here is that you have to ask yourself where you want to be on the range. The Americans put it all out in the public domain, which means you can do anything you want with it. You can turn a member of Parliament into a talking kangaroo, whatever. You can do what you want with it.

The other extreme, of course, is to impose all kinds of limitations, preventing those sorts of absurdities, certainly, but also preventing other misuses, including commercial ones. Then the question becomes, how do you enforce that? Now, in this general notice I provided to you, you'll see in the second paragraph an italicized

sentence. That's there simply to suggest a catalogue or listing of the various exclusions, some or all, or none, of which you might apply.

And I know, Ms. Jennings, you've pointed out that other jurisdictions include a restriction on the use of the material for political purposes. I just raise one question with you. It seems to me that this fundamental restriction that exists elsewhere ought to be thought about again, as if for the first time. In other words, in an institution like the House of Commons, where members are debating political issues, or debating them at committee, it would seem difficult to me to justify those debates not being used for political purposes. It's like taking an academic's lecture and saying you can record it, but you can't use it for educational purposes.

So that's a question that I think the committee ought to ask itself. Having said that, that's not necessarily to say it can be used for any political purposes. But in terms of electoral purposes, that's the issue for the committee. There was an incident—I can't remember in which election, but it might have been in 2006 or 2004—where there was a very short clip taken from a committee of a witness, a former minister, saying “I'm entitled to my entitlements”. You may recall that, and it was the gist of an ad. Clearly, there was a partisan purpose put to that, but you must ask if that was a misuse of what the witness said. The witness did say it.

These are the kinds of questions that the committee has to ask itself, because how do you control that happening? There wasn't anything that could be done about it. The electoral officer controls elections. Yes, the House of Commons could have launched into a series of processes leading to contempt, or whatever, but these are all very cumbersome, and even copyright action is cumbersome.

So I think at a practical level, you have to ask yourself to what extent you can insist that this material not be used for political purposes and still enforce it. Commercial gain and these other ones are the easier ones, if you want to include them. But that general notice is meant to indicate in the italicized portion that you could either take that sentence out altogether, or you could include it in some variation, selecting from those exclusions the ones you want to apply. But ask yourself the question of enforcement.

• (1130)

**Hon. Marlene Jennings:** Okay, that's very good advice.

Do I have any time left?

**The Chair:** No, you're at ten minutes.

Mr. Reid.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Thank you.

I want to start by making a general observation. Our clerk came here this morning and described the staff as being diligent, which is high praise indeed, given its source. It's a bit like the Buddha appearing and telling you that you are contemplative.

I was going over this stuff, and I was trying to think of when House of Commons copyright rules have ever come into effect that have had some kind of influence in causing it to banish the Internet. The example that occurred to me was this. I believe that on the Wikipedia pages, all of us have articles written about us, with varying degrees of relationship to the truth. At any rate, we all have articles about us on Wikipedia. Pictures are posted. On my own there was a picture put up that I'm pretty sure was the House of Commons photograph of me in probably the 38th Parliament, and then it disappeared. I think it was because they were going along trying to get themselves fully compliant with the various copyright rules. I suspect that this happened, although I haven't actually gone through and checked, to many members of Parliament on the same basis.

Several thoughts come from that. One is that what would seem to be a reasonably harmless use of copyrighted information is now being prevented. The second thought is that still images are, in some respects, different from video. There may be cause to consider these things separately as we design some kind of generic notice. There might be cause for having several of them.

That was just an observation.

In terms of questions, though, with regard to the italicized words in the proposed generic notice, it does refer to distribution or use for electoral or partisan political purposes, and also for satire, for that matter. Doesn't that represent an unconstitutional restriction on freedom of speech under the Charter of Rights and Freedoms? I realize that there is no protection for commercial speech. That's a matter that could be debatable in the United States but is not under our charter.

It is one thing to go from general copyright restrictions to saying that we are now moving to a different world. You can use this for all kinds of purposes, but not when it comes to actually trying to influence people's behaviour in voting. And that does not apply just during a writ period, when you have the normal rules about attaching approval based on official agent criteria. It is actually saying that I can never use this if my goal is to influence people's behaviour. Surely what we say and do in this place is a relevant consideration. If I want to refer back and explain that this person deserves your vote or doesn't deserve your vote, or that the content of what they are saying deserves or doesn't deserve consideration, it seems to me that if it were taken before the courts, it would be seen as being a restriction on freedom of speech. And I would argue that section 1 of the charter would not save it.

**Mr. Rob Walsh:** I will respond in two respects. You have to look at the question in terms of parliamentary privilege or in terms of copyright. There is a decision of the Federal Court dealing with crown copyright. The argument was made about freedom of expression, and the court held that freedom of expression under the charter did not override the copyright entitlements of the holder of the copyright, which in that case was the crown.

On the question of parliamentary privilege, freedom of expression is one part of the Constitution; parliamentary privilege is another part of the Constitution, and the courts have held that one will not trump the other. So if this House were to decide that it shall, in fact, restrict freedom of expression when its material is being used in some manner that is contrary to its policy, I would think that the courts

would uphold the privilege of the House to so restrict the use of their material. They are not restricting the comments someone wants to make about that material but are restricting the use of that material for purposes of comment.

**Mr. Scott Reid:** What I'm getting at here is that if you go from generally saying that this is all copyrighted material to saying that it's usable for certain purposes but not for the purposes that lie at the heart of what this speech is for... It's designed to be persuasive. So to say that persuasive speech cannot be used for persuasion and can only be used for...

What on earth defines a non-political use of political...? That's unless we're putting it up to say that, you know, I'm doing a study here on the fashion sensibility of members of Parliament: "Look how ill-dressed this person is. That one over there can't match colours". The very essence of this is to be persuasive in one form or another by referring to it either favourably or critically. Showing it either favourably or critically would seem to be appropriate. I can't see how paraphrasing the speech improves it. Nobody thinks that my drawing extensively on quotations from the House of Commons and publishing chunks of Hansard or republishing it in the newspapers, even if I do it out of context, is in any way a breach of any law or rule or copyright. I'm having trouble distinguishing how this would represent something different.

• (1135)

**Ms. Audrey O'Brien:** If I may, Mr. Reid, I agree that speech is meant to be persuasive, but I think there is something vivid about video broadcasting. It's one thing to say you want to object, for instance, to the policy position being taken by a member in a given speech, but we can all imagine how readily something could be just....

I think the gavel-to-gavel protection initially put in when the House decided it was going to broadcast its proceedings, both in committees and in the House, was to avoid the possibility that there would be things taken out of context that could be terrifically damaging to a person. You can't unring the bell once that impression has been left.

I think it's more in that context, the idea being that if you're using a full exchange between people, then people can make up their minds for themselves. It's part of your argument about your position.

I think it's very easy to take things out of context and hold somebody up to ridicule. It's the same thing with the still images that are sometimes made from video. We've seen that, and it's not uncommon, certainly in—

**An hon. member:** *Frank.*

**Ms. Audrey O'Brien:** And perhaps in more reputable publications as well.

It's a difficult question.

**Mr. Rob Walsh:** To go to your earlier point on Wikipedia, we can't monitor all the outlets on the Internet where material from the House could be used. We get reports that something is on YouTube, and we've called YouTube and had it taken off. We'll endeavour to do that whenever we get a call saying someone doesn't like what they're doing or that something shouldn't be there or whatever. We use the tool of copyright for that purpose. The response usually is favourable and the material is removed.

To go back to your other point, I was essentially saying the same thing to Ms. Jennings. You can talk about ridicule and satire in terms of being offensive to the dignity of the institution, but you can talk about satire and ridicule as being political comment. Members themselves may bring the House into disrepute in the minds of Canadians. We all know about that debate. I leave it to you to untie the knot. Where do you draw the line between use of material that is disrespectful of the institution and use of material that is disrespectful of the person making the speech?

I would draw your attention to the generic notice and the general proposition in the beginning of the second paragraph that you can use this material in any medium as long as the reproduction is accurate and not presented as official. Having said that, once you start changing the record in some manner, even to make a point, you're offending this permission. You can't change it. That's not to say necessarily that you have to go from gavel to gavel, but you can't change it.

Some of you may have seen—I saw it on YouTube the first time—a video of a committee meeting where the witness had words or sounds put into the witness's mouth, and that also happened to one of the members. In our view, that clearly was a distortion—even though it may have been ridiculing or satirizing the institution—but others might have argued that it was political comment. I don't want to go there. It was a distortion of the product, so it would fall outside this permission and we would take action.

• (1140)

**The Chair:** Thank you.

Madame DeBellefeuille.

[*Translation*]

**Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ):** Thank you, Mr. Chair.

Thank you for having come here this morning to discuss a topic that seems simple at first sight, but that is quite complex. I share Ms. Jennings' sentiments when she says that we have to bring ourselves up to date, that we have to move into the 21st century, the technological age. We have no choice. Even if we wanted to, we know that it is out of our control. Things move in all different directions on the web or via other technologies and we have no control over it.

I am quite concerned. It is all very well for us to pass a series of regulations, but, as Mr. Walsh said, we have neither the means nor the tools to control what happens on all the search engines. Even the police and the RCMP cannot detect sexual predators, for example. That is the difficulty we face. If we establish tighter regulations and stricter rules, we will have to give ourselves control mechanisms so that we can surf too, and react to each complaint and lay contempt

charges and so on. We would make things difficult to manage for the people who would be looking after those activities.

Parliament is a public place and, if we make our proceedings and our discussions more and more accessible, we may also be able to have an indirect impact on people and interest them in politics. When Mr. Mayrand came to see us this week, I was struck by his remarks about the lack of interest in exercising their right to vote shown by Quebecers and Canadians. He had a number of recommendations, including using the web as a tool to attract young people. They are more connected than you or I and they use the web everyday. If a Chief Electoral Officer is thinking of using the web to get young people to vote, we can think of making our proceedings accessible too.

This debate today notwithstanding, there has been more and more manipulation since the Internet has been in existence. You can take a photograph of a Member of Parliament or a public figure, you can change his nose, or put it at different angles. That is life and we have to get used to it. If an MP's words are changed, or if he is made to say things that are really unacceptable, there has to be some way for the MP at least to remove the words that have been attributed to him or to complain.

Like Ms. Jennings, I would tend to have some trust and to hope that the proceedings would be used in good faith. Mr. Guimond shares my view on the matter.

In the last general election, we were surprised to see things posted on party websites that were unacceptable. Subsequently, they were taken down. "Boys will be boys" is not a sexist comment, it applies to girls too. We all know that abuses can occur. There were abuses before our debate today and there will always be abuses. But I rather like the idea of giving people wider access to our proceedings. We will have to establish rules so that we have some recourse and that remarks can be withdrawn after they have been broadcast and pointed out.

As for this case of the site that used discussions back in 2006, that organization clearly made unauthorized use of the information.

Mr. Walsh, even though we are beginning a process of modifying the regulations today, what are we going to do about that organization? No question of privilege has been raised. What will happen to this organization under our old regulations?

• (1145)

**Mr. Rob Walsh:** Nothing will change because it is question of privilege or of copyright. Do we go to court for copyright matters or do we look at the matter of privilege in the House? The same limitations apply for matters of privilege. What do we do with matters of privilege when they involve third parties? It is a difficult question and I have no real answer.

**Mrs. Claude DeBellefeuille:** If it was not a matter of privilege, we could decide, after debate, not to begin a lawsuit and not to spend considerable sums of taxpayers' money.

**Mr. Rob Walsh:** It would be very difficult for the House of Commons to sue someone and seek damages.

**Mrs. Claude DeBellefeuille:** I do not understand what you are telling me.



**Mr. Rob Walsh:** If I understood your question correctly, I think it would be difficult for the House of Commons to apply its rules on copyright and privilege by filing a suit in court against third parties.

The clerk knows better than I do the limits on matters of privilege when they involve someone outside the House.

**Mrs. Claude DeBellefeuille:** If I understand correctly, the notice that you are tabling today is intended to broaden access and to allow use of the proceedings on the web, with certain restrictions.

**Mr. Rob Walsh:** It would be easy to put an end to the broadcasting on YouTube and to take down the text on Wikipedia. However, it would be difficult to have the courts enforce the rules of the House. In my opinion, all those things are in the public domain. It is a controversy, a big political debate. It is difficult to say that some comments are allowed and others are not.

It is a challenge that this committee has to face.

**Mrs. Claude DeBellefeuille:** You say that it is a political matter, but I think it goes beyond politics. Courts, police, artists are asking the same questions about copyright. Artists' songs are copied and put on the web and so on. This is a matter that is affecting society as a whole.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Mr. Angus, welcome. It's your turn.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you, Mr. Chair.

It's actually a real privilege to be here. I think this is a fascinating discussion, and it really speaks to where we need to be understanding of parliamentary interaction in the 21st century.

At the outset, I'll say that my three daughters never watch television. The only time I ever hear someone say they saw me on TV in the House, it tends to be a senior citizen or older. That's not any form of disrespect. YouTube is where almost everyone in the younger generation watches Parliament. They watch sections, because they're attracted by an issue. There is a wide network of people sending YouTube videos out. I think it's very exciting, because it is interactive and it is their television.

The question before us—and we really have to think carefully about it, because we want to encourage that parliamentary interaction—is that it is a balancing act between the obligation we have as parliamentarians within a jurisdiction, and our privilege and the honour we have of doing that, and the ability to manipulate an image very quickly.

I think the gavel-to-gavel question is important, because a ten-year-old can manipulate a YouTube video and someone ends up saying what they didn't say. Even if it's on a website, it might be damaging to some extent, but on YouTube it can be deadly to a politician's career. It's very easy to do. I don't think it would take anybody with more than a grade 4 education to know how to do it—well, someone who is in grade 4 today, not when we were in grade 4. Someone in grade 4 today can easily do it, but we would be more challenged. We'd have to hire a grade 4 to do it.

So the question, I think, in terms of limitations is on the manipulation of images that tarnishes or manipulates the work of a member, and I think the issue of parliamentary privilege has to come in.

You said you would contact YouTube in those situations. I've met with Google about issues of notice and take-down in the U.S., and notice here. What happens if a third party decides to manipulate a statement in the House of Commons and put it up? You contact them, and then what is the process?

• (1150)

**Mr. Rob Walsh:** I can respond only by saying that initially it has to be brought to our attention. I'm beyond grade 4 by several years, and I don't watch YouTube as regularly as those in grade 4 might, nor do my staff. But when it's brought to our attention and we've satisfied ourselves that it's a breach of copyright, which typically it would be, we contact YouTube, and YouTube removes it.

**Mr. Charlie Angus:** Right. We're looking at copyright, but we're looking at it in terms of the U.S., where the notice of fair use is very well defined. Here we're a little more airy-fairy on it. Some of their fair use, yes, you certainly can make a congressman look like a kangaroo if you want, and that's considered fair use. Here we might consider....

But are we looking at employing copyright against someone's misuse, manipulation of image, because it isn't within a fair use domain? They're not taking something that was accurately said, they're actually manipulating and twisting it and saying this is your member of Parliament. Is that how we engage?

**Mr. Rob Walsh:** That's the issue before the committee, obviously, and this generic notice means to put before the committee those choices. You either just say don't touch it, leave it, don't change the content—in which case, fine, you can use it and you can attach any comment to it that you want, but you don't touch it—or you go beyond that and say no, and don't use it for these various purposes that are indicated in that televised text.

That's the decision for the committee as to where you want to go with this. Do you want to accept that as long as they don't tamper with the material they can use it for whatever purpose? Or do you want to say no, you can't use it for electoral or political or so on? I can't answer that question.

**Mr. Charlie Angus:** I think one of the questions in terms of using it for electoral purposes, as some of our colleagues have said, is that we are elected on the fact that we represent our people and we're seen as fighters for our people, and if we're going to go back and be elected, we have to show that we actually stood up and spoke up. I think it's fair use to use what we've done in the House because we're saying to people this is what we did.

The question, though, and it's a discussion that I think is very fair, is about using other people's image to try to defeat them in an election. There is a notion of artistic right, where an artist can stop the use of a work because it denigrates their art, denigrates their image. Would we apply that notion to bring it to the procedure and House affairs committee if a member makes a challenge? He or she would make a challenge based on "they took my image, misused it, and are using it to try to have me defeated". Would it come to you as a copyright infringement, or would it come to this committee to establish whether or not that was again going beyond the realm of fair use?

**Mr. Rob Walsh:** As a matter of privilege, if a member rose in the House and objected to what he saw on the Internet and thought his privileges were offended and the Speaker were to find it to be *prima facie*, it would go to this committee for consideration by this committee. Copyright would probably come to our office. If the member came to our office we would try to do something by way of copyright.

**Mr. Charlie Angus:** YouTube is certainly very exciting, but it also makes you wonder what people do with their days. There was a video on YouTube the other night that I saw where the Minister of International Development was singing a Roy Orbison song. I don't think there was any malicious intent. It was just very odd that someone would spend many hours trying to piece that together.

So I imagine in her case she might look at it and think this is very odd. But she could come to you and say they've made her say something that is outrageous. So this is strictly complaints-driven. Is that how we would police our presence on the Internet?

**Mr. Rob Walsh:** We are not driven by any personal rights of the member. We are driven by the rights of the institution in terms of copyright or privilege. So if a person has a defamatory claim by virtue of what's done, that's for the individual member to see to advance through the courts. We only act for the institution, and indirectly, obviously, for members where the institution is made to look bad—

**Mr. Charlie Angus:** Or ridiculous.

**Mr. Rob Walsh:** —by distortion.

**Mr. Charlie Angus:** Distortion, yes.

I'm satisfied. Thank you.

**The Chair:** Good questions, Mr. Angus.

Madam Jennings.

[*Translation*]

**Hon. Marlene Jennings:** According to the research or briefing note that our researchers have prepared for us, British Columbia and Nova Scotia forbid the use of pictures from the legislature in party advertising, during an election campaign or in any other partisan political activity. Australia does so too, except if the member whose image is portrayed gives express written permission.

Mr. Angus' comments are important. We have already heard of one clearly defamatory advertisement made by one candidate against a member who was also a candidate. It was not on a website. The advertisement came out on the weekend before the day of the election. Luckily, the member got wind of it and was able to obtain

an interlocutory injunction from a court, and so on. With the new ways of communicating, if that advertisement had been posted on YouTube,

● (1155)

[*English*]

Forget about it, it's already been blasted. God knows how many places, how many people have taken it and then put it up on their website, their own Facebook, or whatever.

So I come back to your best advice as to whether there's been any challenge of British Columbia's and Nova Scotia's prohibition of the use of the material by political parties in their advertising election campaign or other political partisan activity. And if there has not, what is your best advice, Mr. Walsh, as a jurist, as to the wisdom of keeping this section in your proposed generic notion, but possibly adding "unless it's with the express advice of the member". Because some members may wish to do their own, or they may wish to authorize their party to do something that has their image in it and they don't have a problem with it. But that would need to be expressed.

**Mr. Rob Walsh:** Mr. Chairman, the problem for the focus of the member's question with reference to members is that it begs the question with reference to persons who aren't members, like witnesses before committees.

**Hon. Marlene Jennings:** You'll need the person, then.

**Mr. Rob Walsh:** Would you also say you'd have to have the witness's permission to use the clip of the person testifying before the committee?

**Hon. Marlene Jennings:** By a political party, you mean?

**Mr. Rob Walsh:** In the context of a partisan political purpose.

**Hon. Marlene Jennings:** Activity, election campaign?

**Mr. Rob Walsh:** Or you can limit it to an election campaign. That's fairly clear. But the problem remains, a weekend before election day it happens, it isn't broadcast again because the election has come and gone, and as a practical matter—and admittedly, I'm talking from the point of view of how you enforce these things—I'm left with asking what you are going to do, particularly when the member attacked got re-elected. Where are the damages? If he wasn't re-elected, can you attribute the loss of the election to that particular video, or might there be other...? It would be a very difficult thing to establish. In terms of the civil law process, you've got to show the offence was defamatory and so on.

Everybody here probably agrees with your concerns, but it's very difficult to enforce, I would think.

**Hon. Marlene Jennings:** I think that, yes, it would be difficult to enforce possibly in a timely manner, but my sense is that you could have a hundred cases or a thousand cases, but if one comes to your attention, and an action is taken, you can bet it would be widely publicized. So then it becomes part of common knowledge of ordinary individuals that there are certain things you can't do, and that would, in itself, cause self-policing on the part of individuals.

**Mr. Rob Walsh:** Typically, those examples that are taken up and prosecuted successfully are successful because they're rather extreme examples. And then there's a myriad of others who might think they're still okay because they're not going so far.

But I take your point, yes, one successful prosecution could well have a dampening effect on others.

**Hon. Marlene Jennings:** I'm sure that people have heard about the case in Ontario about that MP candidate, and I'll bet you anything that political parties in another election will be telling their candidates this is something you can't do, because the political parties themselves would take on that responsibility and send out the message and the education, at least to their own people and their candidates.

Right. Thanks.

• (1200)

**The Chair:** Mr. Albrecht.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Thank you, Mr. Chair.

I think the more we discuss this issue, the more complex it appears to all of us. I think we can all agree that we should not allow, or at least encourage, distortion of the message. But when it comes to identifying satire or ridicule, those are pretty subjective terms. I just wonder how we could possibly even agree on where the boundaries are.

But extending it to electoral or partisan purposes, I would question how we could possibly do our jobs well, in terms of contrasting certain political stances of a party with our opposition when it comes to a specific issue. And especially you've identified here in this other note you're not only talking about web, you're talking about journals, minutes of meetings, as well as broadcast. I think you'd virtually eliminate our ability to contrast our position with that of the opposition, or vice versa.

So I'm just wondering how we could possibly live with a statement that's as all-inclusive as the one that's in it. I realize it's a discussion starting point, but I would think it goes to the point of eliminating our ability to contrast our positions with those on the other side.

**Mr. Rob Walsh:** Mr. Chairman, I would agree with that observation of the member. It is difficult.

I think I'm right, Madam Clerk, and correct me if I'm wrong, but the bylaws or the manual currently allow for House resources to be used for partisan political purposes. If you were to say that reproductions of House proceedings could not be used for partisan political purposes, there's an inconsistency there. I think, again, it is partisan political material that's being recorded. Debates in the House are partisan debates. In committee, they're partisan debates—not necessarily unpleasantly so in every case, but sometimes even there.

How do you then tell members of the public who want to use this material that they can't use it for that purpose? You have, a fortiori, members of Parliament themselves wanting to use the material. The point you raised, it seems to me, is a valid concern.

**Mr. Harold Albrecht:** I don't have an answer; I'm just raising questions.

Thanks, Mr. Chair.

**The Chair:** Mr. Reid, did you want to share the rest of Mr. Albrecht's time? There's about five minutes left on that one.

**Mr. Scott Reid:** Sure. I won't use all of that.

My objective was to provide a rejoinder to what Charlie had raised. Charlie talked a little bit about the way in which copyright can be used with an eye to respecting artists' creations.

I think there are many merits to that model for artistic creations. I would hesitate to use it for anything political, because it's pointless, just as you don't want to use something relating to an artistic creation to denigrate the artist, diminish their overall artistic production, or turn the piece of art into something that's the opposite of its intended purpose. That's one thing.

But trying to denigrate us and cause us to lose our jobs is what elections are about, right? It's about one group of people trying to take the job away from the other person, and it seems like a preferable alternative to revolutions, *coups d'état*, or the alternative ways we could have of changing governments.

As you can probably tell from my earlier intervention in favour of pretty wide-open use of this stuff, I think you either have to come down in favour of wide-open use for everybody or no use by anybody, including the members themselves. It actually should be fairly easy to police the members themselves, such as the use of their own video on their own website. It's just an editorial more than anything else.

**Mr. Rob Walsh:** I'd be pleased to respond.

Not to make light of the comparison to artists, but there's a fundamental difference between artists and their artwork and what we're talking about here, in at least one respect. That is, art is property of another kind. It's property. The artist's interest in his or her art is as a matter of property; you can't distort it. But you can still say it's lousy art. You can still say unkind things about the artwork. You can't say defamatory things about the artist because it has nothing to do with his artwork, but you can say unkind things about the art, in terms of criticism. But you just can't change or distort it. That's a property interest.

In the same way, the House has a property interest in this debate, and you can't change or distort the recordings of the proceeding. But the other question, quite apart from that, is to what extent can that material be used for political debate, for showing the world how this speech was nonsense, or whatever the view is of the person who's choosing to show it out? That's a different issue.

• (1205)

**Mr. Scott Reid:** More to the point, here's the way in which I think it would be fully legitimate to use my words against me if the occasion arose.

I've run for election four times now, and, among other things, have promised to work on getting the gun registry abolished. If I were to sit up in the Commons and give a spirited defence of the firearms, the long gun registry—I don't know if our all-candidates debates have ever been televised in my riding, but probably not, being a rural area—here's Scott Reid saying that he will seek to end the long gun registry. Here's Scott Reid in the House of Commons saying that this is the best idea since sliced bread and that we've got to fight to preserve it.

Why not? It's perfectly legitimate. It's showing that I'm being a hypocrite on an issue. You could do the same thing in print form now anyway, but it's obviously a good deal more effective, and not illegitimately more effective, to juxtapose those two video clips.

**Mr. Rob Walsh:** I would agree.

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

Mr. Guimond, would you have anything? No? You're okay?

Mr. Angus.

**Mr. Charlie Angus:** Just to clarify, the artist's right is a moral right. And I agree, we're big people, we stand up in the House and debate, and sometimes those debates are fractious. The public has a right to know. But the question I would have concerns the manipulation of our voice and our words and our work. It's an issue of parliamentary privilege, and I was using moral right in terms of the copyright of someone who can say "That isn't what I said."

The House has to protect its members at that point from third parties or other parties cutting and splicing, because we're in a completely different realm, and seeing is believing. A video that is deliberately skewered a certain way can have 150,000 viewers in a week, and there's no putting the genie back into the bottle. So the House has an obligation. That, to me, is the issue of a moral right or a privilege.

On the other hand, obviously we are here to speak and to be heard. People watch us, and they keep a record of everything we say in the House. We know every time we stand up we are being recorded for posterity. We're all big people here, but there has to be, as with any copyright, a balancing act. So we certainly look forward to recommendations you would have on this.

**Mr. Rob Walsh:** The words "reproduction is accurate" are in the general notice. That doesn't mean there is no misrepresentation. "Accurate" could mean you've left out a significant portion that would change the meaning of what you reproduce, or it could mean you've tampered with it.

My own thought is that saying the reproduction must be accurate is more than just saying you haven't actually tampered with it; you've not taken something out of the context. We would obviously make a judgment in each case, and if so instructed by the House, we would take action against persons who were reproducing the House proceedings in a manner that's not accurate.

**The Chair:** Mr. Reid, I have you on the speakers list.

Is there anyone who has not yet had a chance who would like to ask a couple of questions? I have a couple of questions from the chair, if you wouldn't mind.

First off, Mr. Walsh, in your sample notice here—and I recognize that's what it is—you mention "standing committees" exclusively. I think we probably would need to say "committees", as there are other committees besides standing committees. I'm just wordsmithing from that point of view.

You had mentioned something, and I had thought of it also: If this happens from a telecasting, or broadcasting, or webcasting of committees, or whatever we're going to call this, must we then be warning witnesses also that everything they say has the right to be rebroadcast?

• (1210)

**Mr. Rob Walsh:** I wouldn't say "has the right to be rebroadcast". What they're saying could end up being rebroadcast—

**The Chair:** That's a better way of putting it.

**Mr. Rob Walsh:** —perhaps without the right to do so.

**The Chair:** Is that a pre-warning we would need to tell witnesses, and could someone refuse to be a witness because that was the case?

**Mr. Rob Walsh:** To use the analogy by Mr. Angus earlier, those in grade 4 probably will be already aware of that. But those of us who have long since passed grade 4 may need to be told that. Maybe there needs to be a caution to witnesses, but I doubt that. If we're all in the real world, we know—or most of us do—what can become of recordings of testimony.

**The Chair:** I apologize, because I headed down the same way I said I wouldn't. Let's not find all the different things that we could do wrong with this. Let's just say that it's good that we're being transparent and looking for a way to make this happen, and we'll deal with the negative pieces rather than try to find every negative piece we can about it and make some sort of solution to it.

If there are no other questions from the committee, I thank you for coming today, and I guess we'll leave it to the committee now to discuss which way we're headed with this and how we'll wrangle this one to the ground and come up with something that works for us.

Thank you very much.

We'll suspend for a moment or two while the witnesses leave, and then we'll come back and discuss what has been asked of us here today.

•

\_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** We will come back into session.

I'm looking for brief but very detailed discussion on next steps. Thank you all for joining in.

Mr. Albrecht.

**Mr. Harold Albrecht:** Just to start the discussion, I certainly don't consider this to be definitive, but as a result of our conversation, in the second paragraph, in the italicized portion, I would suggest that we leave in "This permission does not extend to reproduction, distribution or use for", and then jump down to "advertising, marketing or commercial gain".

**The Chair:** Are you reading from the document “Proposed Generic Notice”? Is that the one you're reading from?

**Mr. Harold Albrecht:** Thank you, Mr. Chair. That's correct.

In other words, it gets rid of the terms “electoral”, “partisan political purposes”, “satire”, “ridicule”, but it leaves in “advertising, marketing or commercial gain”.

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** What about “disparages the institution”?

**The Chair:** I guess I'll just take speakers and we can answer what Mr. Albrecht has suggested.

I have Ms. Jennings first, and then—

[*Translation*]

**Mrs. Claude DeBellefeuille:** Do the interpreters have the text? Great, thank you.

[*English*]

**The Chair:** Madam Jennings.

**Hon. Marlene Jennings:** While I am pretty much like-minded with Mr. Albrecht, before we actually finalize I would like to know whether there have been any court challenges to British Columbia's or Nova Scotia's legislation rules, proceedings, on the issue of webcasting—that part, not just political...but the satire, etc. I'd like to know whether there have been any court challenges on that. That's just the lawyer in me wanting to know before I say let's go with that.

• (1215)

**The Chair:** And if there has, what the results were so that we could decide—

**Hon. Marlene Jennings:** Exactly.

I'm very tempted to delete the section in the generic notice—the second paragraph that Mr. Albrecht has suggested be deleted—but I would like to know beforehand.

**The Chair:** I will show my rookieness as a chair again. Are we discussing a draft report here? Is that what we're discussing?

**Hon. Marlene Jennings:** Yes.

**The Chair:** Then we likely should go in camera if that's the case. How quickly I recognize my own mistake here.

I leave it to the will of the....

[*Translation*]

**Mrs. Claude DeBellefeuille:** Mr. Chair, Mr. Reid was speaking but his mike was not on, so I did not get the translation. I understand that I am the only unilingual francophone here, but I would like my rights respected. It annoys me to be always making the same complaint.

[*English*]

**The Chair:** I do apologize, Madame DeBellefeuille. Mr. Reid's comment was really only to me in jest as to what a rookie I was. So I do apologize, and we will try to watch that the microphones come on when someone is speaking.

Are we agreed to go in camera?

**Some hon. members:** Agreed.

**The Chair:** Let's suspend for a moment. We'll go in camera.

[*Proceedings continue in camera*]



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