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Thursday, May 6, 2010

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Chair

Mr. Paul Szabo

Standing Committee on Access to Information, Privacy and Ethics

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• (1105)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order, please.

This is meeting number 13 of the Standing Committee on Access to Information, Privacy and Ethics. It is being televised, as requested, with the orders of the day, pursuant to Standing Order 108(3)(h)(vi), being a study on allegations of interference in access to information requests.

We have two panels of witnesses this morning.

Our first witness is Mr. Sébastien Togneri, former parliamentary affairs director, Department of Public Works and Government Services, and he is accompanied by his lawyer, Mr. Jean-François Lecours. As we discussed earlier, Mr. Lecours is here to be able to advise his client, but he may not address the committee.

Welcome, gentlemen.

Before commencing, I want to confirm to the committee that I have a written opinion from the law clerk that I referred to and I'd like to read from it:

Simply put, no proceeding elsewhere prevents anyone—a Member, a Minister or a private citizen—from appearing before a parliamentary committee. Whether the *sub judice* rule should apply depends on the circumstances and the nature of other proceedings and on the willingness of the committee or committee members to apply the rule. Arguably, the *sub judice* rule applies only to matters before the courts.

This matter is not before the courts, and I would not believe that *sub judice* will be an issue, so we are free to proceed.

Also, colleagues, this morning I had a conversation with the Information Commissioner, who had indicated to Mr. Togneri...and we had received correspondence from his counsel a concern about appearing here. She has indicated to me that she's not aware of any questions at this time that should not be asked or that she would have some concern about—

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Point of order, Mr. Chair.

The Chair: Just a moment.

Mr. Pierre Poilievre: No, I do have a point of order.

The Chair: Just a moment, I will get to it.

Mr. Pierre Poilievre: No, but a point of order does interrupt your

The Chair: No. No, I will deal with it—

Mr. Pierre Poilievre: Actually, it does.

The Chair: —when I'm finished what I'm doing right now, okay?

She understands fully and appreciates and agrees with the position or the opinion advised to us by the law clerk, and she would be prepared to appear before the committee, should the committee wish so, to discuss this matter further.

Given that, I think committee members are also aware that there is another proceeding going on, and we don't want to frustrate it, but it's very clear that the committee's priorities and its ability to do the job cannot and should not be interrupted by any other proceedings.

Now, Mr. Poilievre, on a point of order.

Mr. Pierre Poilievre: You indicate that the Information Commissioner had communicated to you that no questions asked by this committee would cause any problems with her investigation. Can you table the letter in which she communicated that to you?

• (1110)

The Chair: That was a conversation this morning. She phoned me.

Mr. Pierre Poilievre: So you have no written—

The Chair: I will get her to put it in writing.

Mr. Pierre Poilievre: So we have your interpretation of that conversation?

The Chair: You have what I was told this morning, just about an hour ago, by the Information Commissioner.

Mr. Pierre Poilievre: And you have no documentation to carry that forward to us?

The Chair: It was a telephone conversation from her, at her request.

Mr. Pierre Poilievre: So do you have any documentation at all?

The Chair: No, I—

Mr. Pierre Poilievre: You don't.

I do, and it's from the Assistant Information Commissioner, Andrea Neill, who has a confidentiality order pursuant to sections 34, 35, 36, and 64 of the Access to Information Act, in which she writes that Mr. Togneri “shall not disclose” any of—

[Translation]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Is it an official document?

[English]

Mr. Pierre Poilievre: —“the questions asked, answers given, and exhibits used during his examination under oath before the Counsel to the Information Commissioner on March 23, 2010 in any manner to anyone until the Information Commissioner's investigation is complete, except to his counsel”, Mr. Jean-François Lecours.

So this is an order from the Information Commissioner, and you have now put this particular witness in a position where you are demanding of him something that he has been ordered not to provide.

You make a claim that you have had a conversation with the Information Commissioner's office. You have no documentation to support your interpretation of that conversation. We, on the other hand, do have documentation straight from that office, which I'm prepared to table.

The Chair: All right. Thank you. I appreciate that.

Mr. Poilievre and colleagues, we received a copy of this communication from Mr. Lecours that was raised at our last meeting. I undertook to get an opinion from the law clerk. I gave it verbally, but I have it in writing now.

The law clerk has clearly stated that, notwithstanding the Information Commissioner's communication, the committee's rights to hear a witness cannot be overridden by any other proceeding—any other proceeding. The commissioner called yesterday and asked to speak with me—actually, at 9 o'clock this morning. There were two matters. The first was not relevant to this committee, but she did want to offer with regard to the matter you have just raised... She confirmed to me verbally there was no concern from the Information Commissioner's office with regard to Mr. Togneri's appearance before this committee today.

Having said that, I appreciate the information, but we are going to proceed with this witness now.

Mr. Pierre Poilievre: Point of order, Mr. Chair.

The Chair: On a point of order, Mr. Poilievre, please.

Mr. Pierre Poilievre: You are asking the witness to just take your word for it when he has a written document from the office in question—

The Chair: Okay. Order.

Order. Mr. Poilievre—

Mr. Pierre Poilievre: —instructing to the contrary and it is not your role—

The Chair: Mr. Poilievre, please. Order. Order.

Mr. Pierre Poilievre: —to impose rules and interpretations—

The Chair: Just turn his mike off.

Mr. Poilievre, order. I've already ruled that the opinion from the law clerk with regard to the authority of this committee to proceed supersedes the other order. It does, in my opinion, and that's my ruling, and we are going to proceed now with Mr. Togneri.

Mr. Togneri, you told me you had—

Mr. James Bezan (Selkirk—Interlake, CPC): Point of order, Mr. Chair.

The Chair: Point of order, Mr. Bezan.

Mr. James Bezan: Since we are going to proceed with hearing from the witness, I wanted to draw to your attention the rules governing committees, in chapter 20, at page 1,068: “Particular attention is paid to the questioning of public servants”.

As we know, Mr. Togneri is a public servant with the Department of Public Works and Government Services. It states:

The obligation of a witness to answer all questions put by the committee must be balanced against the role that public servants play in providing confidential advice to their Ministers. The role of the public servant has traditionally been viewed in relation to the implementation and administration of government policy, rather than the determination of what that policy should be. Consequently, public servants have been excused from commenting on policy decisions made by government. In addition, committees ordinarily accept the reasons that a public servant gives for declining to answer a specific question or series of questions which involve the giving of a legal opinion, which may be perceived as a conflict with the witness' responsibility to the Minister, which are outside of their own area of responsibility, or which might affect business transactions.

Carrying on, on page 1,069, it states:

Witnesses appearing before committees enjoy the same freedom of speech and protection—

• (1115)

Mr. Pierre Poilievre: Can you slow down for translation?

Hon. Wayne Easter (Malpeque, Lib.): Yes. Please slow down.

Mr. James Bezan: Okay. It states:

Witnesses appearing before committees enjoy the same freedom of speech and protection from arrest and molestation as do Members of Parliament. At the committee's discretion, witnesses may be allowed to testify in camera when dealing with confidential matters of state or sensitive commercial or personal information. Under special circumstances, witnesses have been permitted to appear anonymously or under a pseudonym.

So I would suggest that since we are dealing with sensitive information here involving an investigation by the Information Commissioner, and based upon the practices of the House, we are directed by O'Brien-Bosc and by the Standing Orders, that we should take into consideration that if we're going to hear information that Mr. Togneri is going to present today—and he has been advised, as Mr. Poilievre has already said, by the Assistant Information Commissioner—that this should be done in camera.

The Chair: The order of today is the Easter motion, which says that the committee “study regarding allegations of systemic political interference by Ministers' offices to block, delay, or obstruct the release of information to the public regarding the operations of government departments and that the committee call” witnesses, one of which is Mr. Togneri.

It is my ruling, Mr. Bezan, that this is not a matter of sensitive, secretive information. This is, in fact, a study of a committee seeking to get the facts as to what the operations are as they relate to the matter of access to information requests. This is not a specific allegation against anyone. It is simply a study of this committee.

Accordingly, I will rule that we are going to proceed with the witness.

Mr. Togneri, I would just indicate to you that refusal to answer a question is not an option. However, should you believe that there is a substantive reason why you cannot, I would request that you give that reason to the chair, and I'll make a ruling. Okay?

Let's proceed. Thank you.

Hon. Wayne Easter: On a point of order—

The Chair: Is it necessary?

Hon. Wayne Easter: Yes, I do want to... I'm suggesting—

The Chair: All right. Mr. Easter, on a point of order, are you saying...?

Hon. Wayne Easter: My point of order is that the witness be sworn.

The Chair: Okay.

Would the clerk please swear in the witness?

Mr. Sébastien Togneri (Former Parliamentary Affairs Director, Department of Public Works and Government Services, As an Individual): I, Sébastien Togneri, do solemnly, sincerely, and truthfully affirm and declare the taking of any oath is according to my religious belief unlawful. I do also solemnly, sincerely, and truly affirm and declare that the evidence I shall give on this examination shall be the truth, the whole truth, and nothing but the truth.

The Chair: Mr. Togneri, please proceed with your opening statement. Thank you.

Mr. Sébastien Togneri: Mr. Chair, thank you for allowing me to make these opening remarks.

First, allow me to state my complete respect for Parliament and its committees. Prior to joining a minister's office, I was the lobby assistant and worked closely with all parties with respect to the running of the House of Commons. In that role, I learned a lot about parliamentary procedure and developed a deep appreciation for this institution and those who serve it. I fully respect the powers of the committees to examine all matters that fall under their mandates and the motions they adopt to study those matters.

If you will allow me, I will take a moment to expose the chronology of the events that led me to appear before you today.

[Translation]

The Information Commissioner of Canada, who is an officer of Parliament, is currently conducting an investigation into a complaint pursuant to the Access to Information Act against the head of Public Works and Government Services Canada.

As part of that investigation, I testified at the Office of the Information Commissioner of Canada on March 23, 2010. During that examination, I received the following confidentiality order pursuant to sections 34, 35, 36 and 64 of the Access to Information Act.

IN RE a complaint under the *Access to Information Act* [...] against the head of Public Works and Government Services Canada;

AND IN RE an investigation by the Information Commissioner into this complaint, carried out in private and *ex parte*, in the absence of any person, including the head of the government institution, the Attorney General of Canada and the complainant under the Act.

Pursuant to sections 34, 35, 36 and 64 of the *Access to Information Act* and by the powers vested in her of a superior court of record, the Assistant Information Commissioner orders as follows:

Mr. Sébastien Togneri shall not communicate either the questions put to him, or his answers to those questions, or the exhibits used during his questioning under oath by the lawyer representing the Office of the Information

Commissioner, on March 23, 2010, in any way or to any person, until such time as the investigation by the Office of the Information Commissioner has been completed, with the exception of his lawyer, **Jean-François Lecours**.

It is signed by Andrea G. Neill, Assistant Commissioner, Complaints Resolution and Compliance.

With your permission, Mr. Chair, I would like to submit the order.

● (1120)

[English]

On Thursday, April 1, about a week after I received the order from the Information Commissioner that I just read and tabled, your committee, the Standing Committee on Access to Information, Privacy and Ethics, adopted the following motion:

That the committee conduct a study regarding allegations of systematic political interference by Ministers' offices to block, delay or obstruct the release of information to the public regarding the operations of government departments and that the committee call before it...

Then it lists all the names, including mine: Sébastien Togneri, former parliamentary affairs director, Public Works Canada.

When I received this motion asking me to appear before you, I asked myself the following question: does this committee's motion go against the order I received from the Information Commissioner, who herself is an officer of Parliament, and if so, should I decline the request to appear?

I have to admit that I didn't intuitively have an answer to this question, not being a lawyer myself. Because of my respect for this institution, I decided to agree to this request. That's why, on Friday, April 9, I sent an e-mail to the clerk of this committee, agreeing to come before you on April 15.

I have to admit to you that immediately after having agreed to your request, I started having doubts. I wondered if I had acted appropriately in accepting the request. While I was reflecting on this, the clerk answered by e-mail, indicated that the committee couldn't hear me on April 15, and suggested another date in May.

Before accepting this new date, I decided to consult my lawyer, who reviewed the order from the Information Commissioner and your motion requesting that I appear. He advised me that I should decline your request, as it goes against an order from an officer of Parliament conducting an investigation. A letter to that effect from my lawyer was sent to the clerk of this committee on Wednesday of last week, April 28.

Last Tuesday, May 4, I received a summons signed by you, Mr. Chair, indicating that I was required to appear here today. The summons indicated, and I quote: "Failure to appear may lead to proceedings against you for contempt of Parliament".

[Translation]

If I may, Mr. Chair, for the benefit of the committee, I will reread this paragraph of your summons in French: "Failure to appear may lead to proceedings against you for contempt of Parliament."

[English]

Not wanting to be in contempt of Parliament, Mr. Chair, I agreed to come before you today.

That said, you and this committee must understand that I am bound by the order from the Information Commissioner that I tabled and read today. I apologize in advance to this committee if I am forced to refer to that order instead of answering in detail the questions that this committee will pose to me today.

• (1125)

[*Translation*]

The Information Commissioner of Canada was very clear when she wrote that I could not discuss the investigation “in any way or to any person, until such time as the investigation by the Office of the Information Commissioner has been completed”.

[*English*]

Let me read that in English, Mr. Chair. The Information Commissioner clearly instructed me to not disclose anything regarding the investigation, and I quote, “in any manner to anyone until the Information Commissioner’s investigation is complete...”.

[*Translation*]

There, Mr. Chair.

[*English*]

The Chair: Thank you, Mr. Togneri.

As I had indicated to the committee at the last meeting, and again today, the opinion of the law clerk of Parliament, which, incidentally, mirrors the decision of the Speaker of the House with regard to the Afghan detainee documents, reaffirms the full authority of Parliament to call for persons, papers, or records, and that that authority of Parliament and of the House of Commons has been delegated to all standing committees, including this one.

We have the full authority. That is the opinion of the clerk. Also, as I had indicated to the committee, I have spoken directly to the Information Commissioner. Your words about any matter on anything is not exactly what it says here. It says with regard to the questions or the answers that you gave.

We don’t know what those questions or answers are. What we do know is that the proceeding will take months, maybe years, before it’s finished, and it would be unreasonable to deal with that. So I’ve made a ruling on that, and I thank you for your input, but we’re going to proceed. As I had indicated, I encourage you to answer the questions.

Mr. Easter, please, for seven minutes.

Hon. Wayne Easter: Thank you, Mr. Chair—

Mr. James Bezan: Mr. Chair, I have a point of order.

The Chair: Just a minute, Mr. Easter.

Mr. Bezan, I’ve made a ruling, very clearly, and I’ve repeated it three times. I don’t want to anticipate what you’re going to go after, but if you want to discuss that any further, your recourse is not to again make the same argument. You must challenge the ruling of the chair, and that’s the way it—

Mr. James Bezan: This is a separate point of order, Mr. Chair.

The Chair: All right. I just wanted to make that clear.

Mr. James Bezan: Mr. Chair, I’ll just draw your attention to chapter 3 of O’Brien and Bosc as it applies to my rights and privileges as a member of Parliament. It says that “the Chair of a committee does not have the power to censure disorder...”.

Hon. Wayne Easter: What page is that?

Mr. James Bezan: That is on page 150. I’ll let Mr. Easter reference it.

You don’t have the power to censure disorder. As the chair of a committee, you do have to manage it, and I appreciate that. I understand that. But you have to allow all the members here a right to debate points of order. You can organize that the way you see fit, but you can’t just go out and start censoring people from speaking because that then is impugning our ability to have our freedom of speech, which is a right that we have here as members of Parliament.

The Chair: Just a moment. Mr. Bezan. With due respect, all I did was remind you that I had made a decision on certain questions, that I would not entertain further discussion, and that your option would be to challenge the chair’s ruling. You then advised me that you had a different point of order, and I recognized it. I don’t think the censure allegation is appropriate, and I would ask you to withdraw it.

Mr. James Bezan: I do withdraw.

The Chair: Thank you.

Carry on. You have a point of order.

Mr. James Bezan: Yes, I’m just trying to reference it here now.

Here’s the concern I have. You’re talking about the law clerk’s letter, and I agree that as committees and as members we have the power to investigate things that are substantive, that we feel are important to standing committees, but as standing committees, we’re still governed by the House.

We have decided that we are masters of our own domain under procedure, but essentially we are created by the House and we are responsible to the House, and we need to make sure that we respect the rulings from the House. So we want to make sure that when we are questioning a witness, we are making sure that the rights they are granted under O’Brien and Bosc, as I stated earlier, on page 1,068.... As a public servant, he doesn’t have to answer all questions put to him, especially if they affect the study and the inquiry that’s being conducted by the Information Commissioner.

I would just ask that as questions are being asked, you consider that in terms of what you call admissible and inadmissible. I’m just asking you to use your—

• (1130)

The Chair: Mr. Easter, please.

Hon. Wayne Easter: On a point of order, before I get to my question, Mr. Chair, I do have a question, because it seems to me what we are seeing here is—

The Chair: Mr. Easter, in fairness, although Mr. Bezan indicated that it was a different point of order, it wasn’t. It was continued debate on the prior discussion. It was not a point of order and we’re going to move on with your—

Mr. Pierre Poilievre: Mr. Chair, the member—

The Chair: There was no point of order.

Hon. Wayne Easter: That's fine. I'm just making my point in my introduction to my question, Mr. Chair.

The Chair: Okay. Please.

Hon. Wayne Easter: Because it seems to me what we're seeing from the Parliamentary Secretary to the Prime Minister and from Mr. Bezan are collusion and coaching from the government to a witness who's before this committee and who we're trying to find out information from relative to the Access to Information Act. That concerns me greatly.

We seem to be seeing more and more of deny, delay, and cover-up from the government, and the performance of government members in this committee just can't lead me to any other conclusion.

To go to my question, welcome, Mr. Togneri. It is kind of too bad that we had to basically present an order to bring you here, but in any event, thank you for coming.

I want to background the issue, where the issue really, to a certain extent, started, just so we all know what we're talking about. From a CP story by Dean Beeby of February 7, I quote:

A federal cabinet minister's aide killed the release of a sensitive report requested under freedom-of-information in a case eerily similar to a notorious incident in the sponsorship scandal.

A bureaucrat had to make a mad dash to the department's mailroom last July to retrieve the report at the last minute under orders from a senior aide to then-Public Works minister Christian Paradis.

The order was issued by Sebastien Togneri, Paradis' parliamentary affairs director, in a terse email after he had been told the file was already on its way to The Canadian Press, which had requested it.

"Well unrelease it," Togneri said in a July 27 email to a senior official in the department's Access to Information section.

That's basically the background to why, in part, we're here today.

So my question to you is, are you aware that your interference in the access to information process is an offence under the Access to Information Act?

Mr. Sébastien Togneri: Mr. Chair, thank you for the question.

I refer you to the order from the Information Commissioner that I tabled today, which says that "Mr. Sébastien Togneri shall not disclose the questions asked—

The Chair: Order.

Mr. Togneri, you've indicated that you would invoke the opinion of your lawyer, etc., and I'll take it that you do not want to answer with regard to that position. What I would say to you is that, in my view, the question asked to you has nothing to do with secrets or confidential information. This is a question to you personally and I'm going to instruct you to answer the question.

Mr. Pierre Poilievre: Point of order, Mr. Chair.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Yes. The question is indeed out of order.

The Chair: No.

Mr. Pierre Poilievre: In fact it is.

The Chair: Order. Order.

Mr. Pierre Poilievre: I'm going to help you bring order.

The Chair: No. Mr. Poilievre, please.

Mr. Easter has a line of questions. He has the full latitude to pursue whatever he wants, but he has asked a very direct and clear question. To challenge whether a member's question is in order is simply not a point of order.

It's up to the chair to determine, and I have indicated to Mr. Togneri that I believe it's a straight question; it has not anything to do with private, secret, or confidential information. It is asking for his knowledge of the Access to Information Act, which is related to the work that he does.

I don't want to waste any more time of this committee's meeting.

•(1135)

Mr. Pierre Poilievre: I'm sorry, Mr. Chair. That was not my point.

The Chair: Well, there was no point of order. There was a debate. I have to move back to Mr. Easter, please.

Mr. Pierre Poilievre: You responded to my point before hearing it.

The Chair: No. Your point of order was that his question is out of order.

Mr. Pierre Poilievre: The chair has a lot of powers, none of them telepathic. You don't know what my point is, so therefore you cannot respond to it.

The Chair: I'm going to Mr. Easter.

Carry on, Mr. Easter.

Mr. James Bezan: Point of order, Mr. Chair.

The Chair: I've been patient, but what I'd like to do at this point is ask members who wish to raise points of order—which is their right, first of all—to state clearly the basis for the point, rather than have a bit of a story leading up to it. I want to know the basis for the point of order. It could be something like relevance, or repetition, or not related to the matter before this committee, and stuff like that, but be very specific.

Mr. Bezan, before you start debating it, what is the nature of your point of order?

Mr. James Bezan: My point of order is Standing Order 117, very specific to committee, which states:

The Chair of a standing, special, or legislative committee shall maintain order in the committee, deciding all questions of order subject to an appeal of the committee; but disorder in a committee can only be censured by the House, on receiving a report thereof.

I refer to your powers as chair, under "Procedural Responsibilities", on page 1,030 of O'Brien and Bosc, in chapter 20, which says that:

They ensure that any rules established by the committee, including those on the apportioning of speaking time, are respected. They are responsible for maintaining order and decorum in committee proceedings, and—

This is referring to your work.

—rule on any procedural matter that arises, subject to an appeal to the committee...

Furthermore, the Chair...

But anyway, what I am getting at, Mr. Chair, is that you have to recognize points of order and that if any member is raising a point of order based upon any of the questioning here, you have to hear those points of order, as outlined in Standing Order 117. If you feel that things are getting out of control, Mr. Chair, you can report this back to the House if the committee agrees to it. I just wanted to raise that with you.

The Chair: Thank you.

Mr. Togneri, please answer the question.

Mr. Sébastien Togneri: In response to the question, I'm not here to give opinions, legal opinions. I'm not a lawyer and I am unable to give that kind of legal opinion.

The Chair: Okay.

My recollection is that the question was, were you or are you aware of the sections of the act?

Mr. Pierre Poilievre: No. That wasn't the question.

The Chair: Okay, if I may, if I am mistaken—

Mr. Pierre Poilievre: You are.

The Chair: Mr. Easter is the questioner. I will ask him to pose the question again.

Hon. Wayne Easter: Yes, Mr. Chair.

I have just a point first, before I get to that. I hope all the government's points of order on delaying here are not coming out of my time because—

The Chair: No. Carry on. But it's going now.

Hon. Wayne Easter: Okay. That sounds good.

The question specifically was, Mr. Chair: are you aware that your interference in the ATI process is an offence under the Access to Information Act? That was it specifically.

Mr. Sébastien Togneri: And my answer is that I'm not here to give legal opinions. I'm not a lawyer.

Hon. Wayne Easter: With all due respect, Mr. Togneri, it isn't a legal opinion; it is whether you were aware whether it was interference. But set that aside, then, if you're not willing to answer that question.

In terms of that interference, was Minister Paradis or anyone at the PMO or PCO aware that you were instructing the bureaucrats to “unrelease” the report that already was on its way to the media?

• (1140)

Mr. Sébastien Togneri: Mr. Chair, I again refer to the order from the Information Commissioner that I tabled today.

Hon. Wayne Easter: I would submit to you, Mr. Chair, that that question has nothing to do with the order of the....

This is a direct question to you about whether your minister or anyone at PMO or PCO was aware that you were instructing the bureaucrats to unrelease a report that they were prepared to release. That was the question. It has nothing to do with the order of the access to information commissioner or the letter that your lawyer sent us.

Mr. Pierre Poilievre: On a point of order, Mr. Chair.

The Chair: Stop the clock, please.

On a point of order, Mr. Poilievre.

Mr. Pierre Poilievre: Yes. We are in the process of—

The Chair: Please state the actual—

Mr. Pierre Poilievre: Figure 20.5, at page 1,064, chapter 20.

The Chair: That doesn't tell me anything. Give me the nature of the point of order before you start giving —

Mr. Pierre Poilievre: I'm going to cite right out of the book.

The Chair: No. Give me the title of it.

Mr. Pierre Poilievre: It is, “Usual Order of Business for Committee Study Leading to a Substantive Report”. Decisions to study.... We have here in this figure a list of steps that are involved in carrying out a study of the kind in which we are now engaged. What I have learned by looking at this figure is that the way in which you are carrying out this meeting is in violation of that order of business.

The steps are as follows. A decision to conduct a study is made. The drafting of a work plan, schedule, and witness list is established. Briefings to committee members are provided. Hearings of witnesses and gathering of advice and opinions are produced. There are proceedings relating to the draft report, which will come later. There are review, revision, and adoption of the draft report, and presentation of the report to the House of Commons. Finally, there is the government response if the standing or special committee has requested one.

Now, the most important step of all in this is the second-last one, which is the presentation of the report to Parliament. That is because this committee is an arm of the House of Commons and it works for the House of Commons.

The House of Commons has established an Information Commissioner through legislation, through statute, through law. That Information Commissioner has issued an order. That order has been provided to the witness in writing.

To counter that, you have produced a rough regurgitation of a conversation that you claim to have had this morning at 9 a.m. You have not produced any documentation to support either the existence of that conversation or its contents.

Right now, you are in the process of demanding that the witness violate an order provided to him by an officer created through statute of the House of Commons, and if that House is supreme, then so too are its laws, and we as a committee cannot instruct the violation of those laws.

So I would ask that in the interests of the rule of law, you advise members to cease all questions that would violate a written order from an officer of Parliament whose powers are laid out in statute adopted not only by the House, but by Parliament itself. That is my point.

The Chair: Thank you.

An hon. member: Mr. Chair—

The Chair: No, no, I'm going to rule on this.

Mr. James Bezan: Just on that point of order, Mr. Chair.

The Chair: The chair is going to rule on this.

Mr. Poilievre has referred to O'Brien and Bosc, specifically the matter of the "Usual Order of Business for Committee Study Leading to a Substantive Report", and he specifically talked to the step, "Presentation of the report to the House", which we haven't done yet—and if we keep going like this, I don't think it ever will happen.

What I object to, Mr. Poilievre, is the use of that point of order, which is obviously not applicable at this time, to go back to challenge the chair's ruling on the ability of this committee to deal with this witness. I could also indicate to you that the committee approved the motion, the witnesses, and the summons I issued to bring Mr. Togneri here, notwithstanding that we had the letter from his lawyer and a copy of the ruling from the Information Commissioner's office.

I made that ruling. I made that decision that we are to proceed because we have the right, the authority, and the duty to discharge these responsibilities the committee has adopted, is proceeding with, and is in the middle of. Mr. Togneri is one of the last witnesses.

So I don't want to hear any more arguments about whether or not this committee has the right to do what it's doing. The committee approved it. The chair is following the instructions of the committee and has called the witnesses. I issued a summons with the authority and approval of the committee. The witness is here.

I would suggest to the witness, as well, that to invoke the letter from the Office of the Information Commissioner is no longer a valid reason, because the opinion of the law clerk of the House of Commons is that our work supersedes the investigation and the matters before the Information Commissioner. That is the opinion from the clerk. That is the opinion and the decision that I have taken.

I am now going to go back to questions from Mr. Easter, who still has a couple of minutes left.

I encourage you, sir, not to invoke the matter of the Office of the Information Commissioner. That has been superseded. We are proceeding under the authority of the Parliament of Canada and the members have the right and the delegated authority to do this.

First of all, I'm going to ask all honourable members not to go back over that other ground. To repeat what I said: the decision has been taken. The chair has affirmed more than once today that the opinion of the law clerk and my decision stand. If the committee members believe that the chair is in error in its decision, your option is not to raise a second point of order on the same matter. It is to challenge the decision of the chair.

So if everybody understands clearly, I'm going to go back to Mr. Easter.

Mr. Easter, you still have a couple of minutes.

• (1145)

Hon. Wayne Easter: Thank you.

The Chair: I would suggest to all members that we get to questions rather than make speeches, okay?

Hon. Wayne Easter: Because of the deliberate attempt by government members to prevent us from really getting information here, Mr. Chair, I'll review the first two questions.

Mr. Togneri, you refused to answer whether or not you were aware that you had interfered with the ATI process. You refused to answer whether Minister Paradis or anyone at the PMO or PCO was aware that you were instructing the bureaucrats to unrelease the report.

Here's my third question, and I hope you don't refuse to answer this, because I think you're very close to being in contempt of this committee—in fact, I would suggest that you may well be already—in refusing to answer these questions, based on the ruling of the chair. But in terms of interfering in the ATI process, were you acting on instructions from anyone else when you intervened? From anyone else?

Mr. Sébastien Togneri: Mr. Chair, thank you for the question.

Again, I'm put in a very difficult position. I have a confidentiality order pursuant to sections 34, 35, 36, and 64 of the Access to Information Act which states that I am not to give any answers nor repeat the questions during my examination under oath before the counsel to the Information Commissioner.

• (1150)

The Chair: Thank you.

Again, I'm going to suggest to you that if you're going to want to invoke that, I've made a decision on that already. You don't need to read it back to us, or the other details; if you'd indicate that... I'm just going to take note of the questions that you have refused to answer, but I want to proceed.

I'm going now to Madam Freeman for her seven minutes, please.

Point of order, Mr. Bezan.

Stop the clock, please.

Mr. James Bezan: Thank you, Mr. Chair. I just wanted to note because we have a witness who definitely has some difficulty answering the questions, the committee has... As described in chapter 20 at page 1,068 of O'Brien and Bosc's *House of Commons Procedure and Practice*, "The actions of a witness who refuses to answer questions may be reported to the House". So we always have the power to do that, and I think it wouldn't be a bad thing to do, to report it back.

I also want to reference page 994, where it states: "Committees are bound by their orders of reference or instructions and may not undertake studies or present recommendations to the House that exceed the limits established by the House".

You and the law clerk are suggesting we have more powers than the House. I think we need to have that clarified since the House has a public office-holder, that being the Information Commissioner, who definitely reports to the House and to the Speaker, so we need to keep that in mind.

I also want to keep in mind, too, for Mr. Togneri's sake, that, as cited on page 1,047 of O'Brien and Bosc:

The idea that committees are “masters of their proceedings” or “masters of their procedures” is frequently evoked in committee debates or the House. The concept refers to the freedom committees normally have to organize their work as they see fit and the option they have of defining, on their own, certain rules of procedure that facilitate their proceedings.

It continues on page 1,048:

These freedoms are not, however, total or absolute. First, it is useful to bear in mind that committees are creatures of the House.

The Chair: Mr. Bezan, order, please.

You've already done this once and gone through it.

Mr. James Bezan: Not this part, sir.

The Chair: When you say that we have somehow taken a decision that is contrary to the rights of this committee, that, sir, is totally incorrect. We have the opinion; we've made a decision on that, sir.

Mr. James Bezan: To go back to my original point—

The Chair: Yes, your point was that we could report it to the House if we have a problem.

Mr. James Bezan: And I want to go back to that, sir.

The Chair: And sir, the committee—not the chair—will decide if we do that when we finish our meeting with this witness. Okay? We're going to deal with that at the end of the questioning, because we need to know what questions are asked and which questions have been answered or were refused answers, and we don't know. We can't anticipate those questions, but I have noted that the witness has not yet responded to any questions.

Mr. James Bezan: I'm just suggesting that in this report, sir—

The Chair: So that is.... But in the report—

Mr. James Bezan: In the report, Mr. Chair—

The Chair: —which we will talk about when we finish—

Mr. James Bezan: There is conflicting legal advice coming from the law clerk and coming from the Information Commissioner.

The Chair: Well, okay, thank you. Sir, I hear you and I understand, and we will, if the committee so decides, make a report to the House on this matter. But we're not going to do that now. We'll do it when we've completed with the witnesses. Okay?

Thank you.

Madame Freeman, I'm sorry, but we're going to carry on with this witness until we have the full normal time, the two rounds. We'll have to reschedule.

Madame Freeman, please.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): There are currently allegations regarding systemic political interference by ministers' offices to block, delay or obstruct the release of information.

My first question is for Mr. Togneri.

Is there a procedure or directive in place to handle access to information requests at the office of the Minister of Public Works and Government Services, to which you belonged?

[*English*]

Mr. Sébastien Togneri: Thank you for the question.

First of all, I want to say that I'm not refusing to answer any questions. I was asked for a legal opinion, and I said that I am not a lawyer and therefore I have no opinion on legal matters. I was also asked—

[*Translation*]

Mrs. Carole Freeman: Excuse me, Mr. Chair, point of order.

• (1155)

[*English*]

The Chair: Madame Freeman, please.

[*Translation*]

Mrs. Carole Freeman: My question is very clear and does not require a legal opinion.

Is there a directive?

[*English*]

The Chair: Madame, that's not a point of order.

Your time is.... We'll get back to it.

Mr. Togneri, I would appreciate it if you wouldn't go back to some other questioner's questions and try to explain what you said or didn't say. We have a transcript.

Madame Freeman has asked you a question.

Madame, would you please repeat the question for the witness? I'm going to ask the witness to please respond to your question.

[*Translation*]

Mrs. Carole Freeman: Mr. Chair, if I restate my question, I want to keep the time I was allotted, in other words, seven minutes. I already asked the question. If I restate it, I want to keep my seven minutes. I would ask that you reset the clock to zero. Thank you, Mr. Chair.

I will repeat my question. There are currently allegations of systemic political interference by ministers' offices to block, delay or obstruct the release of information. Were you aware of that happening, or did you receive directives to handle access to information requests?

Mr. Sébastien Togneri: Mr. Chair, I want to thank the member for her question.

I would need some clarification. Are you talking about directives from the department, directives from who exactly?

Mrs. Carole Freeman: That is precisely my question. Is there a procedure or directive in place to handle access to information requests? Who does that come from?

Mr. Sébastien Togneri: Are you talking about Public Works and Government Services Canada?

Mrs. Carole Freeman: You are here because you intervened in a report that was supposed to be released, you intervened to block information. So I am asking you where the directive came from. From your minister?

Mr. Sébastien Togneri: I did not receive any directives from anyone.

Mrs. Carole Freeman: So what you are telling us today under oath is that you acted contrary to the law and contrary to what your minister expected of you, on your own initiative.

[*English*]

Mr. Sébastien Togneri: Mr. Chair, could I just have moment?

The Chair: Yes.

[*Translation*]

Mr. Sébastien Togneri: Mr. Chair, I never said that I contravened the act, and, in my opinion, that question gives rise to hasty conclusions. That is my answer.

Mrs. Carole Freeman: You do not have to admit that....

The Access to Information Act says that no person shall hinder, block, destroy or alter a document. The fact that you blocked the release of a document as you did contravenes the act, more specifically, section 67.1 of the Access to Information Act, a contravention that has consequences of a criminal nature.

Did you or did you not contravene the act or block the information in question? If you did, did you receive a directive to do so? There are two possibilities: either you did it on your own initiative, directly contravening the act, and you are responsible, or you received a directive to do so.

What I want to know is whether you received a directive. Is there a procedure that was not part of your mandate but that you were subject to, or did you do it on your own initiative? That is what I want to know.

Mr. Sébastien Togneri: I think I already answered the question about directives. I did not receive any directives.

As for the other question, once again, I think it gives rise to hasty conclusions. I never admitted to contravening the act.

• (1200)

Mrs. Carole Freeman: Very well. You answered the question again. I will ask you something else.

Did you receive or did you have knowledge of people receiving access to information requests at the minister's office?

Mr. Sébastien Togneri: If I received...?

Mrs. Carole Freeman: Did you receive access to information requests in which you intervened, at the minister's office? Were access to information requests submitted to you at the minister's office?

Mr. Sébastien Togneri: Thank you for your question. If I understand correctly, you would like to know whether we see access to information files, for information purposes. Yes, we see them.

Mrs. Carole Freeman: So access to information requests are submitted to the minister's office.

Mr. Sébastien Togneri: Yes, they are, for information purposes.

Mrs. Carole Freeman: Is it done on a regular basis? I will ask the question another way. Are all requests submitted or just some?

Mr. Sébastien Togneri: In which period?

Mrs. Carole Freeman: I am asking whether it happened before, whether you had knowledge of it. I am not talking about a period but your entire mandate.

Mr. Sébastien Togneri: At the time, yes, I received a number of access to information files.

Mrs. Carole Freeman: What type of files were they? Did the files you received have to do with the identity of the applicant, the type of request or the scope of the request?

[*English*]

Mr. Pierre Poilievre: On a point of order, Mr. Chair.

The Chair: On a point of order, Mr. Poilievre. Please state the specific—

Mr. Pierre Poilievre: My point of order deals with relevance. I refer you to page 32, chapter 1, under “Parliamentary Institutions”. The title is “Responsible Government and Ministerial Responsibility”:

Responsible government has long been considered an essential element of government based on the Westminster model. Despite its wide acceptance as being a cornerstone of the Canadian system of government, there are different meanings attached to the term “responsible government”. In a general sense, responsible government means that a government must be responsive to its citizens, that it must operate responsibly (that is, be well organized in developing and implementing policy) and that its Ministers—

I repeat: “its Ministers”.

—must be accountable or responsible to Parliament. Whereas the first two meanings may be regarded as the ends of responsible government, the latter meaning—the accountability of Ministers—may be regarded as the device for achieving it.

The reason this relates directly to the relevance of the questioning is that, for the questioning to be relevant, it has to be posed to the relevant authority, and the relevant authority in this case is a minister of the crown.

We have in this country something called ministerial responsibility. We didn't invent it; it was handed to us from the birthplace of the parliamentary system. It goes back hundreds of years. Neither you, nor this committee, nor anyone else can rewrite that history. As such, it is appropriate that ministers respond on behalf of their departments and on behalf of their ministries.

That is why we had the Honourable Diane Finley appear before us in her capacity as the Minister of Human Resources just last meeting. She fielded questions about the subject of costs for an advertising campaign and was held accountable for exceeding the standards of transparency that exist for advertising.

Today, we have questions about the conduct of a given ministry, but we do not have a minister here to answer those questions. Instead, we have here before us someone who has been instructed by the Information Commissioner that he cannot comment.

So in the interest of respecting ministerial responsibility and its description on page 32, under “Parliamentary Institutions”, I would ask that the committee allow the minister to be responsible for the conduct of the department and the ministry, and that it operate on that guiding principle here. That's my point.

●(1205)

The Chair: That's your point. I just wanted to see how long you were going to go.

Respectfully, colleagues, it is not helpful to the committee to raise points of order on one matter and to go back to arguing the initial decision of the chair that the Information Commissioner's communication does not supersede the authority and the work of this committee. As approved by this committee, the calling of this witness was made by the committee, the committee's decision.

As to the argument that somehow a minister must respond on behalf of his or her staff, Mr. Poilievre, I submit to you that, as you know, ministers cannot be ordered to come before committees. In fact, just recently, Minister Raitt and Minister Paradis refused to go to the Standing Committee on Government Operations and Estimates. Ministers cannot respond if they refuse to appear.

The committee did not ask for the minister, and if the member would like to guarantee that the relevant minister will appear before this committee to answer these questions, that would be very helpful. I hope the member will make that inquiry.

That said—

Mr. Pierre Poilievre: You've posed a question to me, Chair.

The Chair: Just a moment. That's a rhetorical question, because I know what the answer is.

Mr. Poilievre, the other point that you raised was this idea that this witness cannot answer questions because it's the ministerial responsibility. Well, with regard to Minister Finley, we have called a witness: Mr. Ryan Sparrow. She is aware of that. Her chief of staff is aware of that. We've had some conversations.

Mr. Sparrow has agreed to appear before this committee on May 13 of his own volition, without me having to issue a summons. He's coming voluntarily to answer questions. Therefore, his decision, with the full knowledge of the minister, would tend to refute the argument you've made.

So I'm going to rule against your point of order, and I am going to have to move now to Mr. Siksay for his seven minutes.

Madame, your seven minutes was up.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you.

Mr. Togneri, I wanted to ask if you had been officially delegated authority by Minister Paradis to have any role with the Access to Information Act or the access to information procedure?

Mr. Sébastien Togneri: Mr. Chair, thank you for the question.

No.

Mr. Bill Siksay: So there was no ATI delegation order from Minister Paradis that officially named you?

Mr. Sébastien Togneri: Thank you for the question.

The answer is no.

●(1210)

Mr. Bill Siksay: Mr. Togneri, were you unofficially delegated any authority by the minister to have a role with access to information in his office?

Mr. Sébastien Togneri: Mr. Chair...

Could you be more precise?

Mr. Bill Siksay: Informally, in the absence of a specific delegation order, did he ask you at any time to assume responsibility for that in his office?

Mr. Sébastien Togneri: If I understand you correctly, I would have been responsible for reviewing access to information files, so yes, I guess, would be the answer.

Mr. Bill Siksay: Okay—

Mr. Sébastien Togneri: There was no written or delegated authority per se, but informally, yes.

Mr. Bill Siksay: Can you help me understand what Minister Paradis meant when he said publicly that you, specifically, and I quote, "won't be in charge of access-to-information files anymore". Can you tell me what the minister meant by you being "in charge" of access to information files?

Mr. Sébastien Togneri: I would suggest that you should maybe ask the minister that question. I can't answer for Minister Paradis.

Mr. Bill Siksay: Did you have a sense in the minister's office that you were the person in charge, in terms of political staff, of access to information?

Mr. Sébastien Togneri: The answer to that, Mr. Chair, would be yes; I looked after them.

Mr. Bill Siksay: Did you have a written job description, Mr. Togneri, with regard to your role as director of public affairs in the minister's office?

Mr. Sébastien Togneri: I actually don't recall. I started in July 2008, and I believe I signed a job offer. I can't remember if that job offer had the specific details, but I don't think so.

Mr. Bill Siksay: So you're not aware of any specific requirements that were made of you, in writing, around the Access to Information Act?

Mr. Sébastien Togneri: No.

Mr. Bill Siksay: Did you receive any training with regard to your role with regard to the Access to Information Act or with regard to the Access to Information Act itself?

Mr. Sébastien Togneri: Yes. When we all started at Public Works, we all got briefings on access to information, yes.

Mr. Bill Siksay: As part of those briefings, was section 67.1 of the Access to Information Act part of the training you received with regard to the act?

Mr. Sébastien Togneri: I'm sorry, could you remind me of what...?

Mr. Bill Siksay: Section 67.1 with regard to political interference and the penalties and the seriousness with which the act takes that: was that part of your training?

Mr. Sébastien Togneri: Could you just hold for a moment, please?

I would request to see the document so that I can review it and so that I can answer more properly.

Mr. Bill Siksay: I could read you the whole section 67.1; I'm sure you're aware of it now, however.

But you don't recall that ever being part of the discussion when you were being trained with regard to the Access to Information Act?

Mr. Sébastien Togneri: I don't recall.

Mr. Bill Siksay: Okay—

Mr. Sébastien Togneri: But if it's an important part of the act, then I imagine I was, yes.

Mr. Bill Siksay: Mr. Togneri, did you participate in meetings with PMO issues management staff as part of your work for Minister Paradis?

Mr. Sébastien Togneri: Yes, I did.

Mr. Bill Siksay: Was the Access to Information Act a subject of discussion at those meetings?

Mr. Sébastien Togneri: I don't recall.

Mr. Bill Siksay: You never recall that being on the agenda of those meetings or coming up in the course of those meetings?

Mr. Sébastien Togneri: I recall that we should be vigilant and watch, you know, do our job and review the access to information requests, so—

Mr. Bill Siksay: When you say “vigilant”, do you mean vigilant in the sense of ensuring that information was released appropriately or do you mean vigilant in terms of protecting your minister, or the reputation of the government, or protecting the government from the release of sensitive or embarrassing information?

Mr. Sébastien Togneri: No: vigilant in the sense that if we know an access to information request is going to be released, we are well prepared to answer any questions, either in the House or through the media.

Mr. Bill Siksay: So that's in terms of preparing the minister for the release of the information, in that sense.

Mr. Sébastien Togneri: Yes.

Mr. Bill Siksay: Did you feel pressure from the PMO or the Privy Council Office to head off the release of sensitive or explosive information?

Mr. Sébastien Togneri: No.

Mr. Bill Siksay: Did you feel pressure from the PMO or your minister to take a hard line on releasing information?

• (1215)

Mr. Sébastien Togneri: No.

Mr. Bill Siksay: Did you ever get yelled at by officials of the PMO because information was released from your minister's office that they felt was sensitive or embarrassing?

Mr. Sébastien Togneri: No.

Mr. Bill Siksay: Did you experience other political staff being dressed down, criticized, or ridiculed because information was released from the office of the minister that they worked for?

Mr. Sébastien Togneri: No.

Mr. Bill Siksay: When your minister's office was notified that information was about to be released as part of an access to information request, were you the person who would have received that notification in terms of political staff?

Mr. Sébastien Togneri: If you mean did I... I'm sorry, can you be more precise?

Mr. Bill Siksay: Well, if the department, the ATI officials, were recommending release of information, were you the person on the minister's political staff who would have received that notice of the impending release of that information?

Mr. Sébastien Togneri: Yes.

Mr. Bill Siksay: What process did you engage at that point when you received that notice?

Mr. Sébastien Togneri: How it would usually work was that we would have.... And again, I'm put in this difficult position because I'm not supposed to talk about this, but—

Mr. Bill Siksay: Well, I'm not asking you to reveal the questions that were put to you by the Information Commissioner's office, Mr. Togneri. I'm asking my own question. I'm not asking you to release anything about the investigation that's under way there. I'm asking you a question on what your role was when you received that notification that information was about to be released. What did you do at that point?

Mr. Sébastien Togneri: Under my delegated...under the delegated authority, I just reviewed the information and made sure that our communications were prepared for any answers or any questions that might be put to my minister, so I—

Mr. Bill Siksay: But you told me earlier that you didn't have delegated authority, Mr. Togneri.

Mr. Sébastien Togneri: That's what I said; I didn't have delegated authority so I would receive the information, the access to information request, and I would ensure that any policy adviser or communications person be prepared with lines.

Mr. Bill Siksay: Did you vet the information or seek changes to its content?

The Chair: Mr. Siksay, I apologize. I have to be fair to all members, but there will be a second round.

Mr. Bill Siksay: Thank you, Chair.

The Chair: Mr. Poilievre, please, for seven minutes.

Mr. Pierre Poilievre: Thank you very much, Mr. Chair.

I would like to thank the witness for appearing.

I know that you've been put in a very difficult position because you have an officer of Parliament, created by statute, by law passed by the House and Senate, telling you not to speak about matters related to this investigation, and you have that order in writing, and then you have a chairman of a committee telling you that he has had a conversation with that same commissioner saying the exact opposite.

It must be difficult for you to know what you are being asked to do when an arm of Parliament is telling you not to speak about the matter, and then a chair of a parliamentary committee is telling you that you must speak to the same matter. The whole matter must be further complicated by the fact that this chairman has not provided any written confirmation of the conversation he claims to have had this morning with the Information Commissioner.

So I will pose my questions in recognition of the fact that the chairman's conduct has put you in some state of—

Hon. Wayne Easter: On a point of order, Mr. Chair, if Mr. Poilievre had a problem with the chair he could have challenged the chair and he didn't, and—

The Chair: All right.

Hon. Wayne Easter: —all he is trying to do is cover for the government by attacking the chair. It's unacceptable at this committee.

The Chair: That's okay—

Mr. Pierre Poilievre: Point of order, Mr. Chair?

Hon. Wayne Easter: How far will the government go to subvert Parliament? How far will it go?

The Chair: Order.

From time to time, members don't like what others are saying during their questions, but members have the right to ask their questions, make their statements, and use their time as they wish. I get a little concerned when people start to characterize what I have said or what I have done or what I haven't done. I can defend myself, though, because we have a remedy for this, and I will propose it to the committee at the end of the meeting.

But having said that, I did stop the clock. That is not a point of order. I understand your frustration, Mr. Easter, but we have to respect the member's right to use his time in a manner that he feels is fit.

So I have just a little over a minute and a half used up, so you still have five and a half minutes, sir. Please proceed.

●(1220)

Mr. Pierre Poilievre: Thank you, Mr. Chair. I have a great deal of sympathy for what you are confronted with. I have to say that this chair in particular has, in prior meetings, in my view, in my judgment, done quite a good job of carrying out the business of this committee. I don't know what has happened today, but it isn't consistent with his track record, unfortunately.

My first question to you is as follows. You have served the Canadian people in your role as a member of the political staff personnel. Do you consider it to be a privilege to serve in that capacity, to serve your fellow Canadians in that role?

Mr. Sébastien Togneri: Mr. Chair, thank you for the question.

It's a great privilege to work as a political staffer in this government, absolutely.

Mr. Pierre Poilievre: Right. And how long have you had political positions around Parliament Hill?

Mr. Sébastien Togneri: Thank you for the question.

Other than my stint as a parliamentary guide in 1999 and in 2001, I've been on the Hill since November 2004.

Mr. Pierre Poilievre: How many people would you have guided through Parliament's halls during that time?

Mr. Sébastien Togneri: Probably tens of thousands.

Mr. Pierre Poilievre: Tens of thousands—and during that time you would have elevated the importance of Parliament in their eyes.

Mr. Sébastien Togneri: Absolutely. I have a great respect for this institution and I was always interested by the political process and felt privileged to share that with visitors. Usually it's their first and only time here, and I loved to educate them on that process.

Mr. Pierre Poilievre: Yes, on the importance of Parliament, on the importance of ministerial responsibility, which is one of the principles of Parliament itself.

Mr. Sébastien Togneri: Absolutely: responsible government and ministerial responsibility.

Mr. Pierre Poilievre: Right, and in all the splendour of the halls of this place, you get the sense that the thing that holds it all together is the fact that ministers, in their role, defend the actions of the executive branch of government, and while they can't expect to have perfection amongst all of their employees, both ministerial and bureaucratic, they answer for their departments and their ministries.

Mr. Sébastien Togneri: That's my understanding of this, yes, absolutely.

Mr. Pierre Poilievre: Right. Good. Well, given that tradition in which you were prepared for your role, that tradition of telling thousands of Canadians about Parliament, it is clear that you have a background in this parliamentary tradition and that you have shown respect for Parliament.

I want to close by pointing out that members across the way asked some extremely inappropriate questions, particularly the member for Malpeque, when he presumed an outcome of the Information Commissioner's investigation. He said that there was a breach or infraction of the law. In fact, no such breach or infraction has been found by the Information Commissioner.

Is that correct?

Mr. Sébastien Togneri: That is correct. She has not reported back on my testimony and, I imagine, the testimony of others.

●(1225)

Mr. Pierre Poilievre: That's probably one of the reasons she provided you with this order. Because I don't think she needs her investigation interfered with by politicians, whether they be the chair of a parliamentary committee or a member of the opposition caucus.

Mr. Sébastien Togneri: Mr. Chair, thank you for the question.

Again, that's precisely why I refused to come in the first place—or in the second place, I should say. Of course, my respect for Parliament and this process...when I was summoned, I was not going to put myself in a position to not show up and then be in contempt. So that's why I'm here today answering your questions.

Mr. Pierre Poilievre: Right. I want you to know that I think you have demonstrated your willingness to cooperate with this committee. You've answered questions where you have been permitted to answer them. I encourage you to continue with your long track record of service to the Canadian people.

Mr. Sébastien Togneri: Thank you.

The Chair: Thank you kindly.

We'll move on. This is round two.

Madam Foote, for five minutes, please.

Ms. Judy Foote (Random—Burin—St. George's, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Togneri, for appearing before us this morning.

Canadians, including the media, have the right to access the information the government has. Certainly, under the Access to Information Act, I'm sure you would agree with that.

Mr. Sébastien Togneri: Yes. Thank you for the question. Absolutely.

Ms. Judy Foote: Are you aware that interference in the ATI process is an offence under the Access to Information Act?

Mr. Sébastien Togneri: Yes, absolutely.

Ms. Judy Foote: Then would you consider your actions, when there was a bureaucratic response prepared and sent to the mailroom, and then you instructed a bureaucrat, as you said in your e-mail of July 27 to a senior official in the department's access to information section, "Well unrelease it"...would you consider that to be interference?

Mr. Sébastien Togneri: Thank you for the question.

I don't think I...

[*Translation*]

I did not interfere in the procedure. The commissioner is currently conducting an investigation that will determine whether or not there was a violation.

[*English*]

Ms. Judy Foote: Are you aware of the memos that were sent out by the Prime Minister's Office through Mr. Giorno with respect to interfering in the process in terms of access to information?

Mr. Sébastien Togneri: Thank you for the question.

Which memo specifically?

Ms. Judy Foote: Actually, there were several sent out, and all of them pointed to reminding political staff of their responsibilities with respect to the Access to Information Act, in that they were not to be involved in that particular access to information or interfere with it in any way.

Mr. Sébastien Togneri: Yes, I am aware of those memos.

Ms. Judy Foote: At this point, then, you don't think that any of your actions did anything that was contrary to what Mr. Giorno had indicated to political staff that they were supposed to do or not do?

Mr. Sébastien Togneri: I'm sorry. Could you be more precise in the instructions given?

Ms. Judy Foote: Mr. Giorno's memo says, in fact:

Staff members should also be aware that subsection 67.1(1) of the Access to Information Act makes it an offence to obstruct the right of access:

No person shall, with intent to deny a right of access under this Act,

(a) destroy, mutilate, or alter a record;

(b) falsify a record or make a false record;

(c) conceal a record; or

(d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

While most political staff members are familiar with the law and their responsibilities, it is useful to refresh their knowledge and awareness.

I want to go back to the request that you asked to have unreleased. In looking at the (a), (b), (c), and (d), and "destroy, mutilate, or alter a record", clearly when that information was ultimately released, what had been prepared by the bureaucrats I think was something in the order of 132 pages, and what finally went out was 30 pages. I think that's what it was.

So I guess I'm just asking: would you not consider that to be altering a record?

•(1230)

[*Translation*]

Mr. Sébastien Togneri: Mr. Chair, I am being asked to interpret the law, and that is not my job.

[*English*]

As I have already responded, I did not have delegated authority, and therefore any decisions on how a document was released were never mine.

Ms. Judy Foote: So you had no part to play in ensuring that the document—the 130-page document—that you asked to have unreleased ultimately ended up being just 30 pages?

Mr. Sébastien Togneri: Thank you for the question.

I had no role to play in that.

Ms. Judy Foote: So the part you played was to unrelease the document. Under whose direction did you do that?

Mr. Sébastien Togneri: There were no directions from anybody. I did send, in a hurry, a stupid e-mail, as I would put it. I refer you again to the fact that there was no delegated authority. It was a mistake on my part and that's all I have to say.

Ms. Judy Foote: Was it a mistake on your part as well—

The Chair: Madam Foote—

Ms. Judy Foote: —to say, "What's the point of asking for my opinion if you're just going to release it!"

The Chair: I apologize, Madam Foote.

Ms. Judy Foote: I'm sorry. Thank you.

The Chair: I had indicated that the time had elapsed.

Before I go to Madam Block, we also have witnesses today from the Department of Human Resources and Skills Development, as listed on our notice. Since this meeting has to end at one o'clock, it would appear we will not be able to hear those witnesses.

You're excused. We will communicate with you about reappearing. Given the break week, my estimate would be that a week from today we may be able to accommodate you for the last hour.

Thank you.

Madam Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

Thank you, Mr. Togneri, for being here today. I recognize, as my colleague has, that having you come here has put you in a difficult situation in terms of the directive from the Interim Information Commissioner and what we have heard from our chair today.

We have been having this ongoing study on access to information. There have been communications and open letters that have talked about the ability for an information commissioner to release information in terms of any kind of investigation that is going on. We know full well when we look at the Access to Information Act and the Lobbying Act that those things cannot be released until an investigation is complete. I recognize that there is an investigation going on, and we know this because the acting Information Commissioner has announced that it is happening.

Today we learned that the member for Mississauga South had a private telephone conversation with the commissioner, in the midst of an ongoing investigation, about that investigation. I'm assuming that when he came forward to the committee today and said she had assured him that no questions we might ask today would hinder her ability to conduct her investigation unimpeded.... I guess I can't imagine what questions he might have known that any of us would ask, to have sort of vetted those through the Information Commissioner to ensure they would not be problematic, either for you or for her. I just think it was highly improper to have a private conversation and then not provide us with any information to indicate she had in fact given our chair that information.

No member has the right to interfere in an ongoing investigation. That has been made very clear in other matters. No member should engage in a private conversation with the commissioner, in the midst of an ongoing investigation, about that investigation. There were no witnesses and we don't know what attempt was made to not influence the investigation. We don't know whether pressure was brought to bear. The Liberals appear to have a hard time recognizing this.

The commissioner is responsible to Parliament collectively. She does not work for any individual member, and no individual member should try to give her direction.

I do have a question for you in regard to perhaps your understanding of the work that you do. I just want to ask this one question: do you believe it is important to be open and transparent in the work that you do?

•(1235)

Mr. Sébastien Togneri: Thank you for the question, Mr. Chair.

I believe it's absolutely important to be open and transparent with the work that I do.

Again, I have ultimate respect for the process and the committee here, and that's why I'm here. I am.... Again, I was put in a difficult position and what has happened here is that I've broken my confidentiality order to be here today—not to be here, but with how I've testified. And I hope the Information Commissioner's investigation will not have been hindered too much by what has gone on here today. That's all I'd like to say about that.

Mrs. Kelly Block: Thank you very much.

The Chair: Madame Freeman is going to be after this, and then we have Mr. Siksay.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: Good afternoon, Mr. Togneri. Thank you for being here.

When asked by the media, Minister Paradis said he was not aware of what was going on. Can you confirm that?

•(1240)

Mr. Sébastien Togneri: Thank you for your question. What are you referring to exactly?

Mrs. Ève-Mary Thaï Thi Lac: I am referring to the acts you are being accused of, the allegations against you. When the media asked Minister Paradis, he said he was not aware of what was going on.

Mr. Sébastien Togneri: Thank you for your question. You would have to ask the minister himself.

Mrs. Ève-Mary Thaï Thi Lac: I am asking whether you can confirm that the minister was not aware of it. He said you did not inform him. My question is clear. Can you confirm what the minister said?

Mr. Sébastien Togneri: I did not inform him of.... If you are referring to the ATIP in question, no.

Mrs. Ève-Mary Thaï Thi Lac: Very well.

Have you read the Access to Information Act before?

Mr. Sébastien Togneri: I took training on it when I started, but I have not read it all.

Mrs. Ève-Mary Thaï Thi Lac: Earlier, you mentioned "delegated authority" and then you said you did not have any delegated authority. Who made the decisions, and who had that authority?

Mr. Sébastien Togneri: Public servants have the delegated authority. I think they are the officials...

Mrs. Ève-Mary Thaï Thi Lac: Can you give us a name, sir?

Mr. Sébastien Togneri: No, I cannot give you a name.

Mrs. Ève-Mary Thaï Thi Lac: Very well.

Who is paying your legal fees? Is it your employer or yourself?

Mr. Sébastien Togneri: Mr....

[*English*]

Mr. Chair, I'd like to read the summons that brought me here today:

Take notice that you are hereby summoned and required to appear in Ottawa and give evidence before the Standing Committee Access to Information, Privacy and Ethics of the House of Commons of Canada on matters relating to its study of Allegations of interference in access to information requests on Thursday May 6, Centre Block....

I don't think these matters are related to the study of allegations of interference in access to information.

The Chair: With regard to who is paying the fees of your lawyer, it may be relevant.

Maybe the member could elaborate on the relevance of the question. I think that's what the witness is suggesting. He's not sure that it's relevant, but....

[Translation]

Mrs. Ève-Mary Th   Thi Lac: Actually, I was asking because you felt you had to come here with a lawyer. Since you are here today and, from time to time, you ask your lawyer for advice, I would think you are doing so further to this investigation. That is why I am asking the question.

Mr. S  bastien Togneri: Thank you for your question. But I do not think it is relevant, I do not think it has any bearing on the matter for which I was summoned here.

[English]

It has nothing to do with this subject, the pertinence of this question.

An hon. member: I just wondered—

The Chair: Don't debate it.

An hon. member: Point of order.

The Chair: Let me just—

Mr. Chris Warkentin (Peace River, CPC): Point of order, Mr. Chair.

The Chair: Just a moment, just a moment.

Mr. Chris Warkentin: But I just wondered—

The Chair: Just a moment, please. Order.

I wanted to remind all honourable members that to say the words "Point of order" is not a proxy for "I want to speak". There must be a specific point of order. If it persists to be an abuse of the opportunity, the chair has a responsibility to keep order of the committee and may in fact not recognize a member who has been persistent in abusing that opportunity.

Mr. Warkentin, you asked for a point of order. Please—

• (1245)

Mr. Chris Warkentin: Yes.

The Chair: —specifically, what is the character of the point of order, before you start arguing or describing it?

Mr. Chris Warkentin: Yes, exactly, Mr. Chair.

What I was actually going to ask you specifically, Mr. Chair, is if you could rule on if this is relevant to the study by which we've been called—

The Chair: Okay.

Mr. Chris Warkentin: —so I specifically was—

The Chair: Order.

Mr. Chris Warkentin: —curious about that and was wondering

The Chair: Order. Order.

Mr. Warkentin, we dealt with this a little earlier. Members have an opportunity, have their time, to make questions of the witness. They're having the conversation. The witness has responded and it's up to them. But it's not up to us to decide what a member can raise at this meeting in their questions. It may have relevance. We don't know. It's up to the questioner to establish that or refute the claims.

That's not a point of order. What you've really done is you've decided to jump in on the conversation, okay? So let the members use their time contiguously. We don't need to have any further delays, because I do want to get through the rest of it. and one of your members is going to lose his time to ask questions if we keep on this.

So I want to move back to Madam Thi Lac to complete. She has two minutes left.

[Translation]

Mrs. Ève-Mary Th   Thi Lac: Today, I think it is pretty clear that you are getting legal advice to help you answer our questions. You say that the question is not relevant. In the beginning, you told us you would be consulting him. So the question is quite relevant.

What I want to know is whether Canadian taxpayers are the ones footing the bill so you can consult a lawyer during your appearance here today. Is the government paying or someone else? My question is clear. Today, who is paying the bill for Mr. Lecours, who is giving you advice as you answer the questions put by the members of this committee?

[English]

Mr. Pierre Poilievre: A point of order, Mr. Chair.

The Chair: A point of order, Mr. Poilievre.

Mr. Pierre Poilievre: The witness may or may not want to answer that question, but I would point out that the member is asking him to divulge a solicitor-client privilege before this committee.

The Chair: That is not a point of order. It's a matter of debate. I'm going to go back to Madame Thi Lac.

I think Madame Thi Lac has indicated clearly what the question is and the reason why she asked the question. The witness is the one, Mr. Poilievre...and to all honourable members, if a question is posed to a witness and they believe there is a valid reason that they cannot or should not answer it, it is the responsibility and the right of the witness to do that—not committee members to represent the witness. Please remember that.

Mr. Togneri, you responded. Please respond again in the fashion that you feel is appropriate to the member's question.

Start the clock again, please.

[Translation]

Mr. Sébastien Togneri: My conversations with my lawyer are protected by solicitor-client privilege. I do not think the question has any relevance or bearing on the matter for which I was summoned. No, no.

[English]

The Chair: Okay.

Madame Thi Lac, please. Then I have Madame Freeman.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac: I will let you continue.

[English]

The Chair: Madame Freeman.

[Translation]

Mrs. Carole Freeman: I will wrap up. If you hired your lawyer yourself and your discussions with him are truly confidential—I am a lawyer myself—that means that you, as an individual, are paying Mr. Lecours's bill. But, if Mr. Lecours is here as a government-paid lawyer, you can no longer make that argument, Mr. Togneri.

Is the government paying him to protect its interests, or are you paying him to protect yours?

[English]

The Chair: That's it. I'm sorry.

Please respond. We're going to go on to Mr. Rickford after your answer.

• (1250)

[Translation]

Mr. Sébastien Togneri: Thank you for your question.

That question has nothing to do with the reason I was summoned here today. If you want to form a committee to discuss legal fees, you can go ahead and do so.

[English]

The Chair: Mr. Rickford, please.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you to the witnesses and your legal counsel for coming today.

I have some questions for you, Mr. Togneri, but I do have a bit of a preamble that I hope will not be interfered with. This is a key theme that has occurred today.

I'm a little disappointed, if I could speak frankly, because I had a thoughtful conversation with the chair yesterday. And since we're introducing conversations, it seems relevant to say that I took away a great appreciation of some of the finer points of participating in committee with him, only to come here today to find out, with some great disappointment, that we seem to be in the business of trampling on more than a century of parliamentary custom and in fact laws—custom is related.

We've seen an introduction of a conflict of laws, and it has been brought in a rather curious way: with a telephone call. We don't know whether the chair requested this conversation or whether the

commissioner requested it. We also don't know whether the commissioner was aware that this conversation might in fact pose serious, substantive concerns, at least from my perspective. In that regard, I will put it out there that I am a lawyer and have thought through all different kinds of scenarios with respect to this fact pattern and whether the commissioner's response to an order by her office would seriously compromise that document and your ability to give thoughtful and effective testimony today to guide this committee in its work.

I'm confused, because I thought the chair was in a position to provide guidance in a non-partisan kind of way, and I, in my own observation, saw enthusiastic partisanship that I think has really put this investigation of the office of this particular commissioner in serious jeopardy.

That said, I have no doubt that you have found yourself in a situation today where you may indeed feel uncomfortable having given any testimony dealing with an ongoing investigation. A simple yes or no: do you feel that way?

Mr. Sébastien Togneri: Thank you for the question.

Yes, absolutely.

Mr. Greg Rickford: That's unfortunate.

So what I'm hearing you say, then, in that answer is that you indeed think it's inappropriate to have appeared at this committee when you're in fact...relevant information is involved in an investigation. Is that true?

Mr. Sébastien Togneri: Thank you for that question.

Yes, indeed, that is true. On March 23, 2010, I testified under oath at the offices of the Information Commissioner. I was given a confidentiality order and I've had to break it here.

Mr. Greg Rickford: Similarly, unfortunate. So I might respectfully submit, then, that we have gone down an improper road and we may be looking at certainly a substantive cause, if you will, for interference in that investigation, and I'd like to put that on the record.

But I want to focus, in my last—

Am I running out of time?

The Chair: You have 30 seconds left.

Mr. Greg Rickford: Okay. I have some simple questions, then.

I want to just review this again. Do you believe it is important to be open and transparent in the work that you do?

• (1255)

Mr. Sébastien Togneri: Yes, absolutely.

Mr. Greg Rickford: And have you at all times and to the best of your ability acted in an open and transparent way?

Mr. Sébastien Togneri: Yes, absolutely.

Mr. Greg Rickford: Thank you.

I have no further questions.

The Chair: Mr. Siksay, please.

I do need the last two minutes to instruct the committee on what happens next, so I'll have to cut you off, but I will make it up at an appropriate time.

Mr. Bill Siksay: Thank you, Chair.

Mr. Togneri, I just wanted to come back to a question that was recently asked of you. Can you tell us who had the delegated authority in Minister Paradis' office for ATI requests?

Mr. Sébastien Togneri: No one has delegated authority.

Mr. Bill Siksay: So there was no one in Minister Paradis' office who had delegated authority in the department to deal with access to information requests, and you don't know the name of any person who had official delegated authority under the Access to Information Act.

Mr. Sébastien Togneri: You're asking who in the department? I don't know.

Mr. Bill Siksay: So even though you were the person who the minister had put in charge of access to information requests, on his political staff, you have no idea who the people in the department were who had delegated authority to deal with access to information in the minister's office?

Mr. Sébastien Togneri: I don't know. I don't know if it's one person or more than one person. I don't know who has delegated authority.

Mr. Bill Siksay: Okay. I appreciate your answer. I'm troubled by your answer, but I appreciate it.

Mr. Togneri, when you received notification of an access to information request, that the release was pending—or impending—did you often negotiate back with officials in the department about what would be released or when it would be released? Did you undertake those kinds of consultations and negotiations?

Mr. Sébastien Togneri: Once again, I'm not sure that I really understand your question, but I'll try to answer it. I have no delegated authority to make any of those kinds of...any kinds of decisions as to.... So no, I don't have negotiating powers or.... So no.

The Chair: Thank you.

Colleagues, there is another committee meeting that I must attend on behalf of the liaison committee to approve travel budgets for committees. I must be there. There are important votes. We have to terminate this meeting shortly.

I want to indicate, first of all, that I'm sorry members thought to make some assumptions about what happened this morning with the Information Commissioner. I think members may want to rethink their logic when they understand that it was the Information Commissioner who called me.

An hon. member: [*Inaudible—Editor*]

The Chair: No. She called yesterday to ask to speak with me at nine o'clock this morning. I was in my office at nine o'clock this morning. The Information Commissioner called and I took her call. That's how it happened.

Mr. Pierre Poilievre: Did you ask her for a written confirmation?

The Chair: We will deal with this later.

Mr. Togneri, the Assistant Information Commissioner's statement to you has put you in a situation where you have not answered a number of questions, or only partially answered some questions. As a consequence, I think it's only fair, to clear this up, that I will be undertaking to get in writing from the Information Commissioner a clear assessment and statement of the obligations you have under that communication you had received and to provide it to be circulated in both official languages to the committee before the next meeting.

Because, sir, the summons indicates that you will remain in attendance until discharged, and I think under the circumstances, sir, it would be inappropriate for me to discharge you from appearing before the committee. Accordingly, I'm indicating to you that this summons remains in force, and I expect you to be here on Tuesday, May 11, at 11 a.m. in this room, unless otherwise advised of those details. Do you understand that order, sir?

Mr. Sébastien Togneri: I heard you. I understand.

The Chair: Thank you.

We're adjourned.

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