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Standing Committee on Access to Information, Privacy and Ethics

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Thursday, October 7, 2010

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Chair

The Honourable Shawn Murphy

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[English]

The Chair (Hon. Shawn Murphy (Charlottetown, Lib.)): It is 3:30, so at this point in time I will call the meeting to order.

Bienvenue à tous.

The first item we're going to deal with, colleagues, is the minutes of the steering committee that was held on Tuesday of this week. Those minutes, which have been circulated, basically set out the steering committee's recommendations for future business.

Proposed for today is that we debate Mr. Siksay's motion. The next three days, which would be Tuesday, October 19, Thursday, October 21, and Tuesday, October 26, we're going to call some of the commissioners. We don't have the specific dates because we have to respect their schedules, but it will be the Commissioner of Lobbying, the Conflict of Interest and Ethics Commissioner, and the Privacy Commissioner, who have all tabled annual reports in the last three months.

Those are the basics of the minutes of the steering committee.

The chair would entertain a motion for their approval.

So moved by Ms. Davidson.

Is there any discussion?

All in favour? Any contrary minded?

(Motion agreed to)

The Chair: The final item, colleagues, is Mr. Siksay's motion. He tabled it for notice at the last meeting of this committee.

I'd like to make a few opening comments on the motion, the gist of which is to report certain matters to the House. The motion is lengthy, and it has a number of appendices attached, but when you boil it down, it really concerns the right of parliamentary committees to call before them exempt political staff of ministers and the Prime Minister himself.

I believe the gist of the government's position is laid out in the letters of Minister Baird and Minister Ambrose to the committee. We also have—and we've circulated and tabled before this committee—the legal opinion that we asked for and received from the parliamentary legal counsel.

I have a couple comments. I'm not going to invoke closure or anything, but it probably is a motion that doesn't deserve two hours of debate. I don't think we have to get into all the facts, as I think

those have been canvassed by the committee previously. I would ask that you not confuse the ability of the committee to call witnesses with questions that could be put to a witness that might be ruled out of order, for instance, those involving cabinet confidences or things of that nature.

The issue before the committee is whether this is a matter that ought to be referred to the House. Is it of a significant nature? Can it be handled by other means? It all boils down to whether it's in the public interest and the interest of Parliament to refer this matter to the House.

As everyone here knows, the committee has no jurisdiction to order the attendance of the witness or to sanction or to punish any witness who does not appear. These are matters that have to be adjudicated by the House, acting as an assembly.

With those opening comments, I'm now going to invite the mover of the motion, Mr. Siksay, to speak to his motion. We will have a list after that.

Mr. Siksay, the floor is yours.

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

I want to thank the committee for putting this on the agenda for today, because I think it's a very important matter that we've spent considerable time on. I also want to thank Madame Freeman for her assistance in crafting this motion and for her support for this important work.

Chair, the ethics committee decided early in the spring to engage in a study of alleged political interference into access to information requests. I think it came to our attention because of media reports that were very concerning, I suspect to all of us.

We decided to undertake that study to get to the bottom of what happened, given our responsibilities as one of the accountability committees of Parliament and of the House of Commons. That has been a particular responsibility of this committee; the structure of committees here in the House has put that responsibility particularly for our committee. That's why it has some different features compared to other committees that work in the House of Commons.

So I think it's something that was very crucial for us to look at, given the serious nature of what was alleged and given our responsibilities for accountability, and specifically for the Access to Information Act.

Now, as that study unfolded, members will remember that it became clear that there were certain people who needed to be called. The original motion did list a number of people who we believed were crucial to the work of this committee to get to the bottom of this particular issue.

As we worked our way down that witness list, we ran into a problem with certain people on that list—in particular, folks who worked for cabinet ministers or for the Prime Minister. Members will remember that as we got to some of those members, it became difficult to have them appear before the committee. You'll remember in particular Mr. Togneri, Mr. Soudas, and also Ms. Jillian Andrews, who was added to the list after she was mentioned in some testimony that we had heard—all staff of either a minister or the Prime Minister.

We had some conversations with some of them. Then their willingness to appear petered out. We also had the government intervene, frankly, to block their appearance and to say that ministers would appear in their stead, making an argument around ministerial responsibility. I have to say some of that happened with great disruption to the committee, with ministers appearing uninvited and attempting to speak at the committee. I think that was a very difficult time for the committee, and, frankly, I think it was a sad time seeing that kind of disruption happen.

It's not that any of us want to dissuade ministers from taking responsibility for their departments or their staff, and I'm sure all of us believe it's a crucial piece of that, but for some of us it became clear that it wasn't necessarily ministers taking responsibility; it seemed to be, certainly to me, that it was ministers trying to prevent the committee from hearing from the people directly involved in what we were looking at, the staff who were alleged to have been involved in interfering in access to information requests and the allegations that were made that way. I think those were the crucial people for us to hear from, and there was clearly a suggestion, an attempt, to block their appearance before the committee.

Chair, I want to say that I thought at one point we'd found a compromise and that the former chair had found a compromise that seemed appropriate to me and seemed to work when it happened. Committee members will remember when Mr. Sparrow was called before the committee and Minister Finley arrived and made the case that she wanted to take responsibility as minister and as his boss. The chair ruled that she couldn't speak directly to the committee at that moment, that he was the witness who was being called, but that if she wanted to remain and advise Mr. Sparrow before he answered the committee's questions, that was acceptable.

It seemed to me that was something that demonstrated the minister's responsibility for the work of her employees and for her political staff, but maintained the committee's ability to question the witness and hear from the witness it had called and who the committee believed had direct information to offer about the situation we were investigating.

• (1535)

Sadly, that decision by the chair and perhaps that precedent didn't seem to carry the day, and the situation deteriorated to the point where attempts were made to prevent the committee from hearing directly from the other staff people.

We had a statement by the government leader in the House to the effect that it was now government policy. We had a letter from Minister Paradis to the committee suggesting that he was the one who would speak for Mr. Togneri and Ms. Andrews and that he would appear in their stead. We had a similar letter from the Prime Minister regarding Mr. Soudas.

I'm disappointed that the minister and the Prime Minister and the government didn't encourage their staff to testify fully and to be forthcoming with the committee about their involvement in this situation. Instead, I believe that pressure was put on these staff people to defy a parliamentary committee, to refuse our invitations, and to ignore summons that were eventually issued by the committee, all of which are very serious matters.

Committees can only do their work and hold government accountable if we have access to the information we believe we require to do that job. When witnesses refuse invitations and ignore summons, that is a very serious matter indeed.

Chair, some people have said that they believe the staff people who came here were mistreated, and I will vehemently argue that this was never the case. Staff were asked direct questions. Committee members came very well prepared for those meetings with the staff people who initially appeared, and I don't believe there was ever any suggestion or any reason to believe that these staff people were being mistreated or questioned inappropriately. I don't believe there were any times when the chair overruled the questioning by committee members of these witnesses.

I do wonder, though, what kind of pressure was put on them to not appear, given that they are people who have made a commitment to this institution. They have taken jobs working in Parliament, working for ministers, which I would assume is because they respect and have a deep interest in this institution of Parliament. In fact, some of them did say that to us. Mr. Togneri made that clear when he appeared before us.

I do worry, on the flip side of that accusation about the committee, about what was really going on there.

Chair, you pointed out that the committee doesn't make the judgment about this, that all we can do is report the facts of the situation and request that the House be advised of it and engage in consideration of whether there is, in fact, a case of privilege to be heard. I believe it is our responsibility. We can't let this one slide. It goes to the heart of a committee's ability to do its work and to hear from the witnesses it believes are necessary to that work. If we drop the ball on this one, we drop the ball for colleagues who serve on other committees and for colleagues who come to this place in the future, because it is a crucial piece of the way committees function and do their work. It is something we need to follow up on.

I don't think I have too much more to say about it. The committee will see that the motion itself is structured to point out the study the committee undertook. It talks in particular about what happened with the three staff people—Mr. Togneri, Ms. Andrews, and Mr. Soudas—in separate sections. It then draws the conclusion that we have reason to believe that there might have been a breach of privilege and says that we need to put these matters before the House so that the House can take such steps as it considers appropriate.

Chair, the motion is very straightforward in that sense. It's based on a model that was provided to the committee. It was a recommendation to the committee from the clerk's staff late last spring, so it is in line with what was suggested to us at that time.

I will conclude there, Chair.

Thank you.

• (1540)

The Chair: Thank you very much, Mr. Siksay.

We're now going to hear from Madam Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Thank you for giving me the floor, Mr. Chair.

The Bloc Québécois and the NDP worked very closely in fact on the motion put forward today by Bill Siksay. I support the motion, of course, but I would like to make a few comments.

In a democracy, access to information legislation is vitally important. It enables people to obtain information. When we first began looking into this matter, we suspected that a parallel system existed in ministers' offices for retaining information. The legislation was not clearly applied. The act stipulates that officials are the ones who receive and process access to information requests. So then, some kind of parallel system was in place in the departments.

I have to thank the members of the Liberal Party, who also sit in opposition, for initiating this review. I hope that they will be consistent in their actions today. I will be very disappointed if they are not.

You may recall that on March 30 last, a member of the Liberal Party tabled a motion requesting that Dimitri Soudas, Guy Giorno and Sébastien Togneri be summoned to appear before the committee. On May 11, the committee asked to see all of the emails that had been exchanged. On May 19, the Liberal Party asked that Jillian Andrews be called to testify. All of these witnesses were summoned to appear. Some did testify, including Mr. Togneri, Mr. Giorno and Mr. Sparrow, together with Ms. Finley.

I hope the Liberals will not deviate from the course of action they have undertaken. They are the ones who initiated this debate, and we have wholeheartedly supported their efforts. We have spent a good many hours on this matter and I hope the Liberal Party will not back down, as it has done in the past. That, to my mind, would be a blow to democracy. In fact, failure to support today's motion would be a blow to democracy. The public has a right to know the facts. Not supporting this motion would be an insult to Quebeckers and to Canadians, who need more clarity and transparency. Transparency has not been this government's strong suit.

That's all I wanted to say. Obviously, I support the motion, since we are more or less moving it jointly.

• (1545)

The Chair: Thank you, Ms. Freeman.

[*English*]

We're now going to hear from Mr. Easter.

Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Mr. Siksay's motion is I think a very good run-through of the facts surrounding the government's attempt, and indeed some success, at covering up its actions. So I basically agree with the facts in that motion. I think it clearly shows that there's been a fairly substantial attempt by the government to subvert the ability of committees and indeed Parliament to do their work.

I'd just like to make a couple of further points on the motion itself. The first point I think we have to bear in mind is that Mr. Togneri admitted, under oath before this committee, that he had in fact broken the law. In testimony before this committee, Mr. Togneri, on May 11, 2010, admitted to having sent the e-mail that caused the ATIP request to be withheld. According to the provisions of subsection 67.1(1) of the Access to Information Act:

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).

At page 4 of his testimony on May 11, Mr. Togneri implicated Jillian Andrews as the political staff person he had delegated to amend, redact, edit the ATIP document, which had already been approved by the departmental ATIP office. Mr. Togneri also referenced the role of the Prime Minister's Office, as well as implicating his own minister, during testimony on May 6 and May 11, stating that the Minister of Public Works had given him informal authority to be involved in access to information issues; and, secondly, that the issues management team of the PMO had told ministerial exempt staff to be vigilant and to review access to information requests; and further, that if access to information requests could become an issue, they were discussed with the issues management team of the PMO.

I think Mr. Siksay mentioned earlier that the role of Dimitri Soudas, director of communications in the Prime Minister's Office, is certainly relevant to this motion and this issue, given Mr. Soudas' knowledge of the functioning of communications between PMO and ministers' offices.

I guess the real concern, Mr. Chair, is where do we go from here? Do we, at this stage, push this motion through to Parliament and have the Speaker rule on it, as happened on the Afghanistan affair? I think there's a good body of Canadians who really and sincerely believe that this government is probably the most secretive and most controlling in access to information that we've ever seen in Canadian history, which goes against the very commitment the Prime Minister made in the last election.

Do we go down that avenue as stated? Or do we find another approach and see if there is any goodwill on the part of the government to make the system work and allow committees to function as they're supposed to be able to function in this place, with a proper hearing process and proper evidence, so that we can, as committees, make the decisions based on the facts? I think we, here on our side, the Liberals, are willing to try one more time to see if there is goodwill on the part of the government. We've seen many times that goodwill isn't there.

The minutes of the procedure and House affairs committee just came out a few moments ago, Mr. Chair, and have already been reported in the press.

● (1550)

I'd like to read a motion that was agreed to at that committee:

That the Committee study the issue of the appearance of exempt staff and staff of parliamentary secretaries as witnesses before parliamentary committees and report its findings to the House no later than March 31, 2011.

I'm referring to the procedure and House affairs committee.

So that committee, with the deadline that's in place, rather than provoking further animosity at this time, gives the opportunity for all parties to come together and find a process that works under the rules.

We will be supporting the effort by the procedure and House affairs committee to try to find another avenue, rather than inflame this issue further at this time. But we certainly see the option in the future, if there isn't goodwill shown by the government on their part, to come back to a very serious and direct motion, as Mr. Siksay has put forward here, which is absolutely correct on the facts.

Thank you.

The Chair: Thank you very much, Mr. Easter.

We're now going to hear from Madame Thi Lac.

[*Translation*]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Thank you, Mr. Chair.

I am a little disappointed that the Liberals are unwilling to support Mr. Siksay's motion. I would remind them that they mentioned March 11, 2011 as a possible date for a report. May I remind committee members that the House was prorogued in both 2008 and 2009. There are no guarantees that Parliament will not be prorogued or that an election will not be called before March 2011. If Parliament is prorogued, all of the studies that we have undertaken will fall by the wayside, and we will have to start all over again...

This government is said to have cooperated and acted in good faith. However, I'm not prepared to wait until March 2011 for a report to the House or for a committee to meet. As the saying goes, things happen in threes. Even though I didn't become an MP until 2007, I have experienced two prorogations. Canada hadn't seen many over the course of the 20th century. I have lived through two recently and like most people here, I don't want to write the government a blank cheque. We shouldn't be encouraging the government either to create two classes of citizens by deciding that parliamentary aids do not have to testify before committees because they are aids, not citizens. That, in my view, is a tendentious

argument. We've seen assistants and government officials testify in the past.

Mr. Siksay's motion is complete. It reflects the position taken by the three opposition parties last spring, further to motions tabled by my Liberal colleague. I intend to support Mr. Siksay's motion, as does my Bloc colleague. I know the Conservatives will not be backing it, but perhaps the Liberals will rethink their position.

● (1555)

[*English*]

The Chair: Merci, Madame Thi Lac.

Madame Freeman.

[*Translation*]

Mrs. Carole Freeman: Thank you for recognizing me, Mr. Chair. I'm reading the motion of the Standing Committee on Procedure and House of Affairs. As I see it, the Liberals are going out on a limb to save this Conservative government. How incredible is that!

I've never seen such a group of individuals who year after year, set out to rescue this government. What we really have here, in my view, is a Liberal-Conservative coalition. Don't look any further for the real coalition, the Liberals and Conservatives have formed one. No need to look any further. They make up the government. It's come to that. The loser in all of this is democracy and the public. It is a very sad day indeed. I'm outraged. It would seem that once again, the Conservative government has been saved by the Liberals. This government should be praising the Lord!

[*English*]

The Chair: We'll hear from Mr. Siksay, and then I think that may have exhausted the debate.

Mr. Siksay, the floor is yours.

Mr. Bill Siksay: Thank you, Mr. Chair.

I too want to respond briefly to Mr. Easter's statement. It begs the question about the importance of what happened to this committee over the last few months. The committee was prevented directly from hearing from witnesses we had agreed were important to the work we had decided to undertake on a very serious issue of the application of the Access to Information Act and alleged attempts to interfere with it.

I despair of what will happen with other committees in the six months until this apparent report—this second chance, third chance, or fifth chance, or whatever it is for the Conservative government to show some goodwill and negotiate with other parties in this House.... I despair of what will happen with other committees when they're faced with a similar situation and what message this will send to other committees.

Right now, it will look as though committees do not have the ability to summon the people they believe are necessary to their work. I think that's a very serious affront to our parliamentary democracy and to the rights and privileges of members and committees here in this place.

I also want to raise a very specific concern. He says that if the negotiations on these new guidelines break down, we can always go back and bring the motion again. Well, I don't believe that's the case, Chair. There is a real question of timeliness that's involved in bringing a question of privilege before the House.

If we delay now and don't bring this at this moment in time, as we continue our work on this particular issue, the question of timeliness will be one that's raised down the road. If we wait until after March and the breakdown of some negotiation on some possible guidelines, I think we'll be in trouble and we will lose all around on that.

So I can't support the argument that's put forward by Mr. Easter on behalf of his party. I hope we will take this matter with the seriousness it deserves, given the importance to our work, given the importance to the work of other committees in this place, and given the importance to our democracy and to the work Canadians have sent us here to do.

Thank you, Mr. Chair.

• (1600)

The Chair: Thank you very much, Mr. Siksay. We'll now hear from Ms. Bennett.

Ms. Bennett, the floor is yours.

Hon. Carolyn Bennett (St. Paul's, Lib.): I too thank Mr. Siksay for what, not having been on the committee, I believe and have come to understand is a very fair representation of what went on.

We believe this is about the culture of and respect for this institution of Parliament and that it needs to be settled once and for all, for all committees, and that the work of this committee can proceed with our ability to call ministers, but also to call former staffers. There's nothing that will prohibit us at this committee from hearing Mr. Togneri in a way such that we can proceed as a committee.

We want this settled once and for all, and the procedure and House affairs committee seems to be the place to do it. Doing it piecemeal, committee by committee, will only allow misinterpretation and chance in the way committees can be disrupted, in this present situation and with this government. I think the safest course is to let a proper study be done at the procedure and House affairs committee and for us to proceed with the very important work of this committee.

The Chair: Okay. The chair is prepared to put the question. The motion has been circulated. I don't think there's any requirement to read the motion again.

Mr. Bill Siksay: Can we get a recorded vote?

The Chair: The member wants a recorded vote, which he's entitled to. I'm going to ask the clerk to record the vote on the motion that has been circulated in both official languages.

(Motion negated: nays 5; yeas 3)

The Chair: I think that concludes today's agenda.

I just want to remind the members of the steering committee that we have a meeting a week from Tuesday morning, after the break, at nine o'clock. You will receive a notice from the clerk on that meeting.

[Translation]

Mrs. Carole Freeman: We're talking here about giving advance notice.

[English]

The Chair: Madam Freeman.

[Translation]

Mrs. Carole Freeman: I'd simply like you to clarify what you said earlier, Mr. Chair. The steering committee will meet at 9 a.m. on Tuesday, but later that afternoon, there may be—

[English]

The Chair: Yes, the steering committee Tuesday morning is at nine o'clock. The next regular meeting of the committee is on Tuesday afternoon.

[Translation]

Mrs. Carole Freeman: The committee will hold a regular meeting on Tuesday afternoon.

[English]

The Chair: Yes.

• (1605)

[Translation]

Mrs. Carole Freeman: We don't yet know which of the commissioners mentioned will be available. We will be informed, will we not?

[English]

The Chair: It's not final. We have somebody tentatively lined up, but we don't know that for sure.

[Translation]

Mrs. Carole Freeman: So then, we won't know until Tuesday morning?

[English]

The Chair: Yes.

[Translation]

Mrs. Carole Freeman: Not before Tuesday morning?

[English]

The Chair: He'll have that confirmed, hopefully, by tomorrow at the latest. That notice will be sent out for the meeting on Tuesday morning, the 19th.

[Translation]

Mrs. Carole Freeman: I see. We will find out in advance of the meeting, however. We're waiting for the briefing notes—

[English]

The Chair: You will be advised tomorrow or the first of next week.

[Translation]

Mrs. Carole Freeman: I see. I just want some assurances, Mr. Chair, since that is our break week, that the research officers will be able to get the briefing notes to us early next week, so that we can prepare ourselves accordingly.

Ms. Élise Hurtubise-Loranger (Committee Researcher): We'll get them to you as quickly as possible. We're already working on them. In fact, some are ready now.

Mrs. Carole Freeman: Fine. Thank you very much.

[*English*]

The Chair: Mr. Easter, before we adjourn.

Hon. Wayne Easter: Mr. Chairman, at the last meeting we talked about possibly making a change with the steering committee. Was

anything discussed on that? Or will that take place in another meeting?

The Chair: I'm putting that on the agenda for the steering committee next Tuesday.

Hon. Wayne Easter: Thank you.

The Chair: Is there anything else to come before the meeting? Nothing?

I will now adjourn the meeting.

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